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Top News

Ad Hoc Measures

Rosenworcel, Clyburn Object to Proposed Section 7 Rules

The FCC approved a notice proposing rules implementing Section 7 of the Communications Act, designed to speed review of “innovative” technologies and services, over objections by Commissioners Jessica Rosenworcel and Mignon Clyburn Thursday. Chairman Ajit Pai said the goal is simple—get out of the way of innovation. “Bureaucratic inertia” is a common barrier, he said. The agency has been taking steps on his watch to promote innovation, from approving the first LTE-unlicensed devices to approving ATSC 3.0 standards to greenlighting a power-at-a-distance wireless transmitter, Pai said: “We have stood on the side of innovation, but these are ad hoc measures.”

Rosenworcel dissented, saying the FCC tried a similar approach in the 1990s with the failed Pioneer’s Preference Program. “We should have learned a lesson,” she said. “The FCC is poorly equipped to identify whether a proposed technology or service is in fact, new. That’s what makes the lack of any meaningful guidance in this rulemaking troubling.” The proposed rules are also ripe for abuse and don’t recognize that “genius takes time,” she said. New forms of communications raise novel questions, she said. “They rarely fit into existing regulatory paradigms. They often raise issues of classification and pose interference challenges.”

Clyburn questioned the need for the notice. “The absence of procedural rules to implement Section 7 has not impeded innovation in the technology and communications industries,” she said. She partially dissented because of concerns the rules wouldn’t require a commission-level vote at the request of a single commissioner. “This customary practice is an important check on new procedures that have the potential to adversely impact consumers, competition and innovation,” she said.

Commissioner Mike O’Rielly supported the notice, saying the FCC should impose a shot clock for decisions on other applications. “For now, this notice will start a worthwhile discussion,” he said. The NPRM also raises questions about how much staff should do under delegated authority, he said. “No one really knows what could be filed under ... these procedures,” he said. “Commissioners appropriately should have a role.”

Pai took on both Democrats. Rosenworcel complained the item wasn’t workable, but no suggested changes were offered when the item was on the eighth floor, he said. “Nor was [a plan] offered during the many years in which the previous majority had a chance to implement this law,” he said. “Abstract ideas offered at the 11th hour are nice, but factual suggestions and a meaningful willingness to work in good faith are even nicer.”

Rosenworcel said after the meeting she didn’t offer suggestions for changes because she was fundamentally opposed to the NPRM. “We decided not to engage and to offer substantial edits,” she said.

“Today, we make up for lost time,” said Commissioner Brendan Carr. “There’s much the commission can do to encourage innovation and this is a solid step in the right direction.” — *Howard Buskirk, David Kaut, and Matt Daneman*

Meeting Notebook


Commissioners’ unanimous approval Thursday of the draft NPRM on mid-term equal employment opportunity reports—as expected (see [1802160024](#))—saw O’Rielly briefly rebuking colleagues for last-minute edits. O’Rielly said the Form 397 material is now available in stations’ public files, making the form irrelevant and so the filing requirement isn’t “the right outcome.” He said it’s inappropriate “to hijack this item” to tackle unrelated issues, and there’s a lack of “common courtesy” from colleagues when his office reaches out to make sure there are no issues with the item, only to find out at 5 p.m. Wednesday edits are in the works. “That is not right,” said O’Rielly, saying in the future, he plans to oppose edits from colleagues not initiated at least 24 hours before the meeting. Clyburn said last week’s talk with Common Cause about the item (see [1802200059](#)) brought up questions about compliance practices to ensure the FCC is enforcing EEO rules effectively. Those questions seeking comment about the enforcement record, how it can improve enforcement and whether the elimination of Form 397 will affect enforcement were added to the item, she said. She didn’t comment later. Rosenworcel said there can be last-minute disagreements and negotiations, and “we should be open to those things and not impose artificial deadlines.” She said the rulemaking “misses the mark” by focusing on reducing filing burdens and not focusing on EEO policies. She hopes the rulemaking could lead to modernized reporting duties.

Rosenworcel said Thursday she has “deep concerns” about Sinclair’s sharing agreement that would see Chicago, New York and San Diego stations put into a divestiture trust (see [1802210062](#)). Such sharing agreements are useful in small markets, where stations can run greater risk of shutting down, but “inherently more complex and difficult” in major markets, she said. She called it “curious” Pai last year rescinded 2014 FCC guidance on such sharing agreements and how it would assess them (see [1702030070](#)). “I wonder how those two things are related,” she said. Asked about Sinclair’s sharing proposal, the Republican commissioners said they are reviewing it. Rosenworcel agrees with any inspector general review of Pai’s actions on rulemakings that have benefited Sinclair. She said she hasn’t talked with the IG. “Once again, Commissioner Rosenworcel has her facts wrong,” an FCC spokesman emailed, adding that the agency

proposing the largest fine ever against Sinclair for violations of the agency’s sponsorship identification rules (see [1712210042](#)) “certainly didn’t benefit that company.” Pai “has had a consistent position on [the shared service agreement] guidance at issue since it was issued way back in 2014,” the representative said.

Members approved 5-0 Thursday an order addressing various petitions for reconsideration of Mobility Fund II rules. The order clears the way for an MF-II auction, which will provide up to \$4.53 billion in high-cost support over 10 years to extend high-speed mobile voice and broadband coverage to unserved and underserved areas across the U.S. The order clarifies the collocation requirement for MF-II applies to all newly constructed towers (see [1802010042](#)). It also offers companies that want to bid an easier path to obtaining a letter of credit. But the FCC otherwise turned down requests for changes to the rules. “I have pushed to make this auction happen ever since the completion of Mobility Fund Phase I, so I am pleased that this item finally clears the decks of the last disputed policy details,” said Clyburn, regretting the rules weren’t revised to allow for a small business bidding credit. Pai noted he made rural broadband deployment his top focus: “Today, we take weedy but important steps toward addressing that priority.” The FCC should have front-loaded MF-II support “to better match initial capital outlays,” the Rural Wireless Association said. “Carriers will have substantial up-front deployment costs at the beginning of the support term. While carriers can take out loans to cover the deployment costs and then seek reimbursement, doing so comes at a price.” RWA said the FCC should have provided more money for the fund.

The FCC unveiled a new interactive national broadband map to help policymakers and others figure out the extent to which areas have high-speed internet access and competition, or not. Commissioners welcomed the update, with Pai calling it a “really incredible tool,” though Democrats said the map and data need further improving. The cloud-based [map](#) of fixed (fiber, DSL, cable, satellite, fixed wireless and other) service deployment can be updated more frequently and has various other improvements over a

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previous platform, said a [release](#). NTIA created the map seven years ago and the FCC took it over in 2015, said Wireline Bureau Chief Data Officer Steve Rosenberg. He said the new display uses December 2016 data from provider Form 477 filings, with 2017 data expected to be incorporated before summer. Users can pull up maps and data on broadband availability and service—by providers, technologies and speeds—for the nation, states, congressional districts, counties and census blocks, he said. O’Rielly noted high-cost USF providers are reporting more-granular, geo-coded broadband data to Universal Service Administrative Co., and he voiced interest in using that data to improve the tool. Rosenberg said the FCC is working with USAC on its version and is looking at how the two data sets could be joined, though there are challenges. He said USAC is “capable” when O’Rielly voiced concern about a “flop.” Clyburn said the map was only as good as the data on which it’s based, and called for improving Form 477 data; otherwise, the map just puts “lipstick on a pig.” Rosenworcel called it a good start but said shortcomings must be addressed, including the need to incorporate mobile data. She said the system has errors, including on what’s offered where she lives. She said the FCC should use crowdsourcing to channel public input to improve the map, and invited feedback at broadbandfail@fcc.gov. Carr told reporters he’s for collecting more data, as long as it’s not bad data. Rosenberg said staff was looking into crowdsourcing, but that raises technological and Paperwork Reduction Act issues.

Commissioners voted 5-0 to scrap payphone compensation audit, reporting and other rules that the agency said are outdated. The audit rules ensure that long-distance and other carriers handling payphone-originated calls compensate payphone providers fairly, said a [release](#). With the rise of mobile phones, payphones dropped from 2.1 million in 1999 to fewer than 100,000, and “no complaints over improper compensation have been filed in recent years as clearinghouse vendors act as intermediaries between payphone providers and connecting carriers,” it said. “The record clearly showed that, because of the dramatic decline in payphone revenues, the fixed costs of conducting audits and certifications outweighed any benefits associated with the regulations,” Pai said. Carr said the audits sometimes cost hundreds of thousands of dollars. One provider reported audit costs were 18 times what it pays to payphone companies, the release said. Closely tracking a [draft](#) summary, Wireline Bureau attorney Michele Berlove said the order would “eliminate the payphone call tracking system audit and associated reporting requirements”; “permit a company official, including but no longer limited to the chief financial officer, to certify that a completing carrier’s quarterly compensation payments to payphone service providers are accurate and complete”; and “eliminate expired interim and intermediate per-payphone compensation rules that no longer apply to any entity.” O’Rielly would have “gone further” in deregulating but hopes the FCC prunes more rules during its next biennial review starting later this year. AT&T ([here](#)) and USTelecom ([here](#)) praised the action.

Democrats backed the payphone item but also sought inmate calling service actions. Rosenworcel said payphones remain essential in prisons, but the price of an individual inmate call can be as much as what others pay for unlimited monthly plans. “This agency should be ashamed,” she said, noting it took the FCC more than a decade to address “exorbitant rates” targeted by a petition. “Last year, the FCC gave up and refused to even defend this effort in court. There is something profoundly wrong here. The moral compass of this agency is broken. We can fix this problem.” Clyburn said: “The one population in our country that still uses payphones daily, has no omnibus federal protection from exorbitant rates and fees. This commission has the ability to act, but to date, has done nothing. That needs to change.”

Pai said he’s reviewing the local number portability administrator transition and trying to figure out what to do after stakeholders indicated they are deadlocked over a contingency plan to roll back operations

to incumbent Neustar if iconectiv's new systems initially fail (see [1802200051](#)). Answering a reporter's question, Pai couldn't yet say what the next steps will be, as a scheduled April 8 initial regional system cutover from Neustar to iconectiv approaches.

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DMCA Compliance

More Subscriber Terminations Could Result From 4th Circuit Cox Decision

ISPs are likely to get more stringent on policing copyright infringement by subscribers in light of the 4th U.S. Circuit Court of Appeals' decision on Cox Communications earlier this month (see [1802010026](#)), with one possible result increased termination of subscribers, experts told us. People involved in Digital Millennium Copyright Act compliance at ISPs are likely to engage in more terminations to show the operator is assiduously following its own policies, said internet lawyer Lawrence Walters.

ISPs' policies aren't likely to change much, since the 4th Circuit decision involved a failure of application by Cox, lawyers said. DMCA compliance lawyer John Seiver of Davis Wright said the ruling could have ISPs looking at how they handle infringement notices since the decision indicated that not forwarding notices to subscribers could constitute a safe harbor problem. Experts said it's hard to know if Cox's repeat infringement policies made it an outlier among ISPs, since they generally don't make those precise policies known.

ISPs undoubtedly will undertake extensive management and staff training to make clear their repeat infringer policies and how to apply them to real-world situations, said Richard Chapo, who specializes in DMCA compliance.

Large ISPs likely changed policies after the lower court's 2015 summary judgment stripping Cox of safe harbor protections, said IP lawyer Rick Sanders of Aaron Sanders. "The writing was on the wall." He said that decision, and the 4th Circuit's, leave ISPs largely in the dark about best practices (see [1802080001](#)), though at least clarifying that adjudicated infringers aren't the sole definition of infringers. Sanders said it's likely "a smell test" eventually will emerge for takedown notices, with fast web providers receiving notices and doing at least a cursory read to make sure there aren't obvious fair use defenses, but not a deep analysis, and regarding that as enough to call a subscriber an infringer.

Comcast told us it amended its DMCA compliance policy last year in light of the lower court's Cox decision and that it now well reflects the guidance by the District and Circuit court rulings. The changes included more clarity to customers about the escalating series of notices customers receive in response to DMCA violation notices and a predictable process for educating and informing subscribers, it said. Asked if it expects more terminations, Comcast said the policy doesn't affect overwhelming majority of its customers since very few ever receive any DMCA notices and only a fraction of that group ignores repeated warnings.

Wireless ISP Association board member and Amplex Internet President Mark Radabaugh said the compliance issue likely would come up at WISPA's industry show in March. He said for a fair number of WISPA members, infringement notices are often problematic because multiple customers can be bundled onto one IP address due to the ISPs' use of network address translation.

It wouldn't have been appropriate for the 4th Circuit to look at the details of an ISP's repeat infringer policy and rule on its appropriateness, since the DMCA requires only having a policy for terminating repeat infringers and reasonable implementation of it, said Electronic Frontier Foundation Senior Staff Attorney Mitch Stoltz. Courts have been consistent that service providers lose their safe harbor protections when the policy looks like a sham since it's not implemented in good faith, Stoltz said. He said broadband provider general counsels could be recommending internally that the companies execute their own policies in good faith.

Providers undoubtedly are looking closely at repeat infringer policies, making sure they're being implemented properly and responsible staff is fully trained, said Walters. While generally hesitant to terminate a subscriber's internet access—"you're talking about somebody's connection to the world, essentially"—providers are on notice they must enforce those policies. It could mean more terminations since service providers that considered only adjudicated infringers to be repeat infringers can't take that stance anymore, he said. The question of what evidence is needed to declare a subscriber a repeat infringer is left open, and ISPs potentially are stuck with crafting new ways of evaluating and quantifying infringement notices and coming up with new tests for apparent or repeat infringers, Walters said.

MPAA Vice President-Copyright and Legal Affairs Jennifer Pariser said the Cox decision makes clear that DMCA Section 512 applies equally to ISPs as to other online service providers, meaning at minimum ISPs can't ignore notices from copyright owners and must implement a termination policy for termination of repeat infringers. "We are hopeful that other ISPs will take to heart the hard lesson that Cox learned when it flouted the DMCA's requirements," she said in a statement.

The 4th Circuit, using a heightened knowledge standard when it remanded the case for new trial, conflicts with other circuit court decisions and the common-law rules underlying copyright infringement, said plaintiff/appellee BMG in a docket 16-1972 petition for rehearing (in Pacer) filed last week with the 4th Circuit. It said even under the willful blindness standard, the panel should have affirmed the jury's verdict since it was proven that Cox was told of a million-plus specific infringement acts by its subscribers and responded by configuring its computer systems to block BMG notifications. Cox didn't comment. — *Matt Daneman*

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'Moxie'

FCC Approves NPRM on Spectrum Horizons

Commissioners approved 5-0 an NPRM on spectrum above 95 GHz for new services and technologies, opening a "spectrum horizons" proceeding. Industry has shown little interest (see [1802200058](#)), but Chairman Ajit Pai said Thursday the FCC shouldn't be deterred. After the meeting, commissioners clashed over the lack of scheduled auctions for any bands.

"If the United States is to remain the world's leader on wireless technologies, we can't play it safe," Pai said. "I realize that some are skeptical that this spectrum can be used productively. Skeptics have been proven wrong before." In the early days of wireless, some saw spectrum above 3 GHz as not useful for mobile communications, he said. "The demand for mobile broadband is insatiable."

Julius Knapp, chief of the Office of Engineering and Technology, said it's not "surprising or concerning" industry hasn't been active in the proceeding. "The title of it is spectrum horizons because this

is really kind of the communications out in the distance,” he said. “What we’ve seen over the years is that new technologies and services develop in bands that we might see today as not really useful.”

Commissioner Mike O’Rielly generally supports the NPRM but has questions. “Whether it’s mid-band spectrum or millimeter-wave bands, we must continue to push the boundaries of physics and work to ensure that every megahertz is used as efficiently as possible,” he said. O’Rielly said it may be too early to devise rules for bands that mightn’t be used for years. “This feels to me like designing zoning laws for the moon,” he said. “We don’t exactly have the best track record allocating spectrum and hoping that what is conceptualized takes off.”

Commissioner Jessica Rosenworcel hopes the agency will allocate more spectrum above 95 MHz for unlicensed use. “Our questions here range far and wide,” she said of the NPRM. “A few deserve more attention than they get in the text. To this end, I hope commenters offer their thoughts about how we could proceed if we were to reorganize these bands.” Some of the proposed rules make mistakes the commission has made before, she said. “We suggest we should continue to reward first-in-time registration, whether or not there is actual construction. Should these airwaves prove valuable, this approach is teeming with potential for abuse.”

The U.S. has led the world on wireless by moving quickly, said Commissioner Brendan Carr. “We’ve not waited for technologies to develop fully before giving entrepreneurs the incentives to invest and experiment.” U.S. rules have tended to limit experimentation in the extreme high-frequency spectrum, he said. “We turn the corner today by proposing to open up large swaths of this spectrum for licensed, unlicensed and experimental use.”

“We are on our way to higher, more efficient use of our spectrum,” said Commissioner Mignon Clyburn, who said making more frequencies available will help the spectrum crunch. “This will likely translate into utilizing more spectrum for weather and air traffic control radars,” she said. “It would probably increase automobile safety, by clearing the path for additional scientific research, and more.”

With the first high-frequency bands being prepared for eventual auction, Rosenworcel said after the meeting, the FCC should be able to find a workaround to get past the current hold on spectrum auctions requiring upfront payments (see [1802140064](#)).

“If we want to lead the world in 5G, we need to have some nerve, we need to have some moxie,” Rosenworcel said. The FCC found a way around the problem in the incentive auction, she said. “We just need to be creative here.” Other nations are holding 5G auctions this year, she said. “I do not understand how we can continue to lead the world in wireless technology if we don’t plan an auction,” she said. Pai should be talking to the Federal Reserve “or anyone else in order to secure a workaround, assuming that one is even needed,” she said.

The Connect America Fund auction is starting in July and no other auction is likely before that, O’Rielly said. Work remains before any pending bands will be ready for auction, he said. The CAF auction doesn’t require upfront payments by bidders. O’Rielly predicted Congress will address the issue: “I’m optimistic that we can schedule auctions in the very near future. It has been high on my priority list.”

Carr said the FCC needs to start moving forward on auctions, though the secondary market is working. “I don’t think this statutory issue is pinching us yet,” he said. “We’re still in the pole position when it comes to leading the world on 5G.” Rosenworcel disagreed with the Republicans. “It’s already a problem,”

she said. Other countries are planning 5G auctions this year, she said: “The FCC is sitting around in study hall.” — *Howard Buskirk*

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Cybersecurity Key

Trump Administration Seeking 'Creative Solutions' on Spectrum, White House Aide Says

The Trump administration is looking at what approach it should take on a spectrum plan, said Kelsey Guyselman, policy adviser to the White House Office of Science and Technology Policy, at an FCBA 5G [session](#) Wednesday. Guyselman and other speakers also stressed the importance of cybersecurity in a 5G world. The Obama administration took an active role in spectrum, pushing sharing over exclusive use licenses in many cases, but the Trump administration has been relatively quiet 13 months in (see [1712270032](#)). “We’ve been thinking a lot about that and how to approach that,” Guyselman. “There’s not just sort of the traditional low-hanging fruit anymore.”

Putting a number on how much spectrum should be made available for broadband is difficult, Guyselman said. “It’s almost impossible to identify a number goal and have it actually make sense and sort of drive the debate.” The administration is looking at how to balance various interests, “not only the needs of industry and consumers but also what the federal government and federal agencies will need,” she said. The administration wants “creative solutions” on how spectrum is used, shared and allocated, she said.

Guyselman declined to comment directly on the administration’s leaked memo by a “senior National Security Council official” proposing the U.S. build a national 5G network, selling access on a wholesale basis to carriers (see [1801290034](#)). “It does illustrate an important point, which is how critical cybersecurity is going to be as we move towards 5G,” she said. “It’s top of mind for everything that we’re doing in the administration when we’re thinking about these new networks.” Lots of work remains, she said. The FCC, Congress, the administration, industry and other federal government agencies all have a role to play, she said: “We will be in a position where a bad actor could cause a lot of harm.”

A huge number of devices will be attached to the 5G network, Guyselman said. “While there’s great potential, there’s also great risk,” she said. “It’s a little terrifying. ... It’s really something that we’re going to have to address.” There’s no “silver bullet,” she said. The relevant bodies will have to set standards “conducive to cybersecurity,” she said. “American leadership is so critical so that we have networks and devices that are protective of consumers and of our networks in the federal government and other critical users.”

There’s “perennial debate” over whether there needs to be a “top-down government-mandated approach to cybersecurity or more of a bottom-up market-driven approach,” said Sean Farrell, House Communications Subcommittee staffer. The market moves so quickly that regulation “is doomed to failure,” he said. “There’s no way government regulators and regulations could keep up with the pace of innovation.” The National Institute of Standards and Technology’s proposed framework (see [1802160043](#)) is a good start and takes more of a “bottom-up approach,” he said. “That’s the way we should consider going.”

A fix is coming on giving the FCC the ability to again hold spectrum auctions, with language addressing the upfront payments issue included in the FCC Reauthorization Act (HR-4986), which cleared the Commerce Committee last week (see [1802140064](#)), Farrell said. The bill should move “expeditiously” through the House, he said. “Predictions for the Senate are anyone’s guess.”

Sanjay Udani, Verizon vice president-technology policy, said there are some things 5G is not. “It’s not a replacement” for 4G or LTE, he said. “We’re used to the next generation ... replacing the previous one,” he said. The next generation won’t be one network but several different networks, some of which are already deployed, he said. Verizon already has deployed nationwide a narrow-band network for the IoT, he said. In the works, Verizon is launching a second narrowband IoT network for devices that need little connectivity and operate at low power levels, Udani said. “It’s basically going to be dial-up speeds,” he said. “What 5G is going to do is come up with more different flavors of a network that adapts to what you’re doing,” he said.

Fifth generation is beginning to become reality, said Jeff Stewart, AT&T assistant vice president-external and legislative affairs. AT&T is opening a new lab in Austin to test new radio features of 5G, he said. The standard likely will be deployed in “waves,” starting with enhanced mobile broadband—with a boost in speed that will be noticeable to consumers, he said. The next wave will be massive IoT followed by ultra-low latency and ultra-reliable network uses, Stewart said. — *Howard Buskirk*

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'Dramatic Giveaway'

Microsoft, MVPDs, Unlicensed Spectrum Advocates Battle Broadcasters on ATSC 3.0

Broadcasters clashed with Microsoft, MVPDs and unlicensed spectrum advocates responding to an FCC Further NPRM on ATSC 3.0, in filings in docket [16-142](#) Wednesday. Broadcast entities such as [NAB](#) and One Media want transitioning broadcasters to have the option to use vacant channels, but Microsoft, the New America Foundation’s Open Technology Institute and Public Knowledge [said](#) that request is a spectrum grab. Such “a dramatic giveaway” to broadcasters is a legal violation “inconsistent” with the public interest and spectrum policy, and is “likely unnecessary to facilitate the voluntary ATSC 3.0 transition,” Microsoft [said](#). The sides also disagree about the standards to be applied to broadcaster waivers of the 3.0 order’s simulcast requirement.

Vacant channels should be able to temporarily host broadcasters transitioning to the new standard, said NAB, Pearl TV and One Media. “It is critically important to reiterate that this spectrum is reserved for broadcast use; it is not unallocated spectrum available for any other use,” One Media [said](#): “Under no circumstances” should the FCC limit broadcaster access to the vacant bands “to expand mythical unlicensed use, which has proven to be a massive flop over the last decade.” [Said](#) Pearl: “It is a core tenant of the Commission’s rules that unlicensed devices are not entitled to protection against licensed operations.” Since broadcasters would use the vacant channels only temporarily during switches, vacant bands wouldn’t be permanently barred for unlicensed users, Pearl said. America’s Public Television Stations, CPB and PBS [said](#) the FCC should let public TV channels that can’t find simulcast partners use the vacant bands to assist in moving to 3.0.

Letting broadcasters have “exclusive use” of the vacant bands “would harm consumers by effectively foreclosing the public’s unlicensed access to the vacant channels for rural broadband and other innovative services,” said OTI and PK. Since the 3.0 order let broadcasters downgrade signals to standard definition and to simulcast only their primary stream, they won’t be so starved for bandwidth as to require the vacant bands, the groups said. Several broadcaster opponents raised the point that the industry initially assured the FCC that the changeover would require no spectrum. “Broadcasters gave assurances that they

could undertake this project without asking for additional spectrum and without asking the government, cable operators and consumers to share the burdens or subsidize the costs,” NCTA [said](#).

The FCC is forbidden by statute from granting exclusive use of spectrum without holding an auction, Microsoft said. The agency isn’t permitted “to simply assign additional spectrum to stations whenever, in the Commission’s view, this additional spectrum would ease the transition to ATSC 3.0,” the company said. Letting stations crowd unlicensed uses out of the vacant bands will hurt innovation and investment in spectrum sharing, [said](#) the Wi-Fi Alliance. Wireless mic users would be similarly hurt, [said](#) Sennheiser and [Shure](#). “Adequate spectrum resources are required for content creation,” Sennheiser said. Low-power TV station owner Watch TV [went against](#) full-powers in opposing such vacant band use: “For the Commission to reduce further the already small number of channels available for displaced LPTV stations would be to impose hardship on the least financially able licensees and the least served audiences.”

The simulcast requirement shouldn’t keep broadcasters from moving forward with the new standard, NAB said. Don’t “set a waiver standard so high that viewers in small or rural markets are shut out,” said NAB. The Media Bureau should be delegated authority to quickly grant simulcast requests, [said](#) Meredith. “Speed is important, as other ‘daisy chain’ elements may be waiting on a waiver.”

Public media filers asked the FCC to exempt all noncommercial educational stations from simulcast requirements, as they have before. Since must-carry rights for NCEs aren’t connected to designated market areas, those stations tend not to be as clustered with commercial stations, said APTS, CPB and PBS. “These geographic differences make simulcasting difficult, if not impossible, for many public television stations.”

Making simulcasting waivers easy to obtain would burden MVPDs and undermine the voluntary aspect of the transition, NTCA said. The FCC should consider costs to MVPDs in deciding on waiver requests, it said. The agency should provide narrow relief to broadcasters, [said](#) the American Television Alliance, which has many MVPDs as members. Instead of waiving the simulcast requirement, where possible the agency should instead waive the coverage requirement of how much of a broadcaster’s coverage area is receiving the station’s signal, ATVA said. Don’t entertain simulcast waivers until a later stage of the changeover, NCTA said. ATSC 3.0 is “an experiment” at its current stage, NTCA said. It doesn’t require “universal broadcaster participation” and there’s “no reason to sacrifice the simulcasting rules’ protection against disruption and costs to consumers and cable operators just so every broadcaster under any circumstance may try it out,” the group said. The cable association said the broad public media exemption request would be disruptive to MVPDs. Wait to grant waivers until equipment and TVs for receiving 3.0 and transmitting it via cable are available, NCTA said.

One point of agreement for broadcasters and MVPDs was on significantly viewed status. NAB and NCTA agreed with the FCC tentative conclusion that the switchover shouldn’t alter a station’s significantly viewed designation. — *Monty Tayloe*

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States, Advocacy Groups Suing

Lawsuits Arrive as Net Neutrality Order Is Published in FR

Net neutrality litigation flared Thursday after *Federal Register* publication of the FCC’s December “Restoring Internet Freedom” order, as expected (see [1802210057](#)). New York Attorney General Eric

Schneiderman (D) [announced](#) he and 22 other Democratic AGs filed their [petition](#) for review at the U.S. Court of Appeals for the D.C. Circuit. The order is “arbitrary, capricious, and an abuse of discretion within the meaning of the Administrative Procedure Act,” and violates the Constitution, Communications Act and notice-and-comment rulemaking requirements of 5 U.S. Code § 553, the AGs said.

[Public Knowledge](#) said it also [filed](#) suit Thursday at the D.C. Circuit, and Free Press [said](#) it will soon refile its petition for review at the 1st Circuit. The California Public Utilities Commission [sued](#) the FCC in the 9th Circuit. Litigants have 10 days to file petitions for review if they want to be included in a court lottery to determine the venue for consolidating challenges expected to be filed in different circuits.

[FCC Democratic commissioners noted publication with disdain](#). “Today it is official: the FCC majority has taken the next step in handing the keys to the internet over to billion-dollar broadband providers by publishing the Destroying Internet Freedom Order,” [said](#) Mignon Clyburn. “I am both disappointed and hopeful. Disappointed that this is one more anti-consumer notch on this FCC’s belt, but hopeful that the arc of history is bent in favor of net neutrality protections.” Jessica Rosenworcel [said](#): “This agency failed the American public. It failed to listen to their concerns and gave short shrift to their deeply held belief that internet openness should remain the law of the land. It turned a blind eye to all kinds of corruption in our public record—from Russian intervention to fake comments to stolen identities in our files. As a result of the mess the agency created, broadband providers will now have the power to block websites, throttle services, and censor online content. This is not right. The FCC is on the wrong side of history and the wrong side of the law and it deserves to have its handiwork revisited, reexamined, and ultimately reversed.”

[Both lawmakers leading the planned introduction of a Congressional Review Act resolution](#) aimed at repealing the FCC’s order—Sen. Ed Markey, D-Mass., and House Communications Subcommittee ranking member Mike Doyle, D-Pa.—touted the coming legislation in Thursday statements. Doyle and Markey plan a Tuesday news conference in conjunction with that day’s net neutrality “Day of Action” at which the lawmakers will “discuss momentum” for the measure. Supporters of the 2015 rules are “coming for our net neutrality and we will not stop,” [Markey](#) said: Publication “just triggered a timeline that will culminate in a Senate vote on my resolution, and we cannot let up until we win.”

[Markey again sought at least one more Republican senator’s support](#) for the resolution, which would give it bare majority support in the chamber. Sen. Susan Collins, R-Maine, and all 49 members of the Senate Democratic caucus already publicly support the measure (see [1801160055](#)). The time “in which legislation to overturn the order can be introduced has begun, and we can begin the legislative process to overrule the FCC and preserve net neutrality,” Doyle [said](#) with House Commerce Committee ranking member Frank Pallone, D-N.J. At least 143 representatives have signed as co-sponsors of Doyle’s resolution. — *Adam Bender and Jimm Phillips*

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Emergence of AI

House Democrat Wants More Presidential Leadership on AI

[The U.S. needs more presidential leadership on developing artificial intelligence](#), said Rep. John Delaney, D-Md., Thursday. The founder of the AI Caucus told us he expects movement on his legislation to establish a federal advisory committee for development and implementation of AI.

The bill is “bipartisan, and it’s related to an area that we all should agree on, so yeah I do” think there’s going to be movement on the Fundamentally Understanding the Usability and Realistic Evolution of Artificial Intelligence Act of 2017 (Future) ([HR-4625](#)), Delaney said before his appearance at a Technology Policy Institute conference. The bill, sponsored by six Democrats and two Republicans, isn’t “particularly controversial,” he noted, saying the group has been pushing for a hearing. The advisory committee would be a “safe place for people to go” if they want to learn about the implications of AI, he said, calling it “an incredibly important topic” (see [1712120051](#)).

During later Q-and-A, Delaney was asked what role the White House should play in formulating AI strategy. One role, Delaney said, is to lead the country into important conversations “in a way that’s truthful, balanced and hopefully optimistic.” This White House is “more backwards-focused on some issues than they are forwards-focused on some issues,” he said. “This is an issue that we need more presidential leadership on,” said Delaney, who in July announced he’s running for president in 2020.

The Future Act calls for workforce planning, promotion of American global competitiveness for AI, unbiased development of the technology and privacy protections. Government “lives in the moment” and doesn’t do a good job forecasting trends, Delaney said. Large parts of the country were hollowed out by globalization, he said, though he believes innovation is always a net positive. The government didn’t lead the country well through the cost of change, he said. “We’re going to watch this movie play out again” with the next wave of tech innovation, he said, saying AI is going to be a disruptive and “very big test.”

Delaney believes AI will inevitably displace jobs, but he thinks it will also create more positions that can’t be predicted. He understands discussion around AI “freaks” people out when thinking about the workforce’s future. Delaney thinks many observers overestimate full-time jobs lost to automation and many jobs will have only certain tasks replaced. That will mean narrower worker skill sets, but it also opens the door for new skills, like working alongside AI, he added.

Delaney worries about the impact on American youth from AI, while discussing digital products that monitor and learn from a person’s facial expressions. He called it a form of “brainwashing” to use facial reactions to sell products. — *Karl Herchenroeder*

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Stock Down 7.2% Thursday

Pandora Faces 'Headwinds' in Tough Competition With Surprising CRB Rate Increase

Pandora challenges include more competition, increased royalties and hardware integration, executives and analysts said as shares closed down 7.2 percent to \$4.52 Thursday. Q1 sales projections were lower than expected. On Wednesday’s earnings call, Chief Financial Officer Naveen Chopra said Pandora will face many of the same advertising revenue “headwinds” this quarter as in second half 2017, projecting Q1 revenue of \$295 million-\$305 million. The company cut 5 percent of staff this month (see [1802010055](#)).

Recent changes in royalty rates for interactive streaming (see [1801290001](#)) set by the Copyright Royalty Board—increasing gradually through 2022 to 15.1 percent of revenue from 10.8 percent—were “a little bit of a surprise,” Chopra said. He said there’s industry discussion about how to handle the increases and noted “a pretty significant dissenting opinion from one of the judges.” Industry players are evaluating an appeal, and Pandora will continue to monitor the situation, he said.

The music streamer expects one in two people to have a connected device at home by 2022, leading to more listening, in what CEO Roger Lynch predicted will be a “sea change” in audio. The company has partnerships for Comcast’s Xfinity X1, Sonos, Amazon Fire TV and Android TV. Pandora listening on voice-activated devices jumped 145 percent in Q4 vs. the 2016 quarter, Lynch said.

Lynch, “a big believer in building a business with partnerships,” referenced his days launching Sling TV, saying half of subscriber adds came through partnerships. “My approach has always been with device partners to think of them not only as devices that play back your content but as distribution partners who can help market your service,” he said: There’s opportunity for integrated billing.

Consumers’ listening to more audio content challenges Pandora, said Dougherty & Co. analyst Steven Frankel. Spotify and Apple expanded their subscriber bases through aggressively priced family plans, something Pandora is working with the labels to roll out, Frankel said. On the device side, Pandora won’t have Amazon Echo support until later in the year, he said.

Macquarie’s Amy Yong told investors of “glimmers of hope”—1.4 percent quarter-on-quarter active user growth and a 12 percent jump in Q4 advertising revenue per user—but cited investments including restructuring initiatives and said the focus on ad-tech, device integration and marketing. Industry cost structure and competition “remain tough.”

In Q4, revenue rose 7 percent to \$395.3 million, with 300,000 subscriber additions to 5.48 million total. Total listener base was 74.7 million, said the company. — *Rebecca Day*

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Comm Daily® Notebook

Industry Players Join Resistance to FCC Plan to Eliminate Lifeline Support for Resellers

More parties opposed an FCC plan to exclude resellers from Lifeline USF participation and voiced a mix of concerns and some support for other proposals, as dozens of additional comments posted in [docket 17-287](#) Wednesday and Thursday. Major industry players joined consumer advocates, state regulators and others in objecting to an FCC proposal to shift Lifeline low-income support to facilities-based service. [CTIA](#), [ITTA](#), [Mobile Future](#), [Sprint](#), [USTelecom](#) and [Verizon](#) voiced resistance to the proposed exclusion of resellers. The commission should “reject proposals to condition receipt of federal Lifeline support on network build-out,” said Sprint: “The modest per-subscriber subsidy, whose receipt is not guaranteed, makes the Lifeline program ill-suited as a direct mechanism to spur capital-intensive broadband deployment.” USTelecom “strongly supports policies that encourage investment in broadband-capable networks,” saying “the Commission should not utilize the Lifeline program to achieve a goal for which it is not designed. Instead, the Commission should focus its efforts on ensuring the successful implementation of the National Verifier, which will cure the clear majority of the issues raised in the Notice.” Among others objecting to the facilities-based proposal were: [NARUC](#); some state regulatory commissions; [National Grange](#); NATOA and National League of Cities ([here](#)); National Urban League and others ([here](#)); [New York City](#); Boston, Los Angeles and other cities ([here](#)); the Multicultural Media, Telecom and Internet Council and others ([here](#)); Rainbow Push Coalition’s [Jesse Jackson Sr.](#) and [former Rep. Dennis Kucinich](#), D-Ohio. [ATN International](#) backed the FCC proposal to dedicate support to facilities-based carriers, as did

District of Columbia Public Service Commission Chairman [Betty Ann Kane](#), with a caveat. Various parties opposed capping the Lifeline budget and argued for continuing to support voice-only services. There were mixed views on whether a federal Lifeline broadband provider designation should be eliminated. —*DK*

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O’Rielly Calls Wheeler Views on FCC Cybersecurity Authority ‘Gibberish,’ Section 1 ‘Abuse’

FCC Commissioner Mike O’Rielly called Tom Wheeler’s cybersecurity regulation views unhinged from the law. O’Rielly said he had ignored Wheeler’s “musings, despite their inaccuracies and overall misguided perspectives,” but felt compelled to call out the former chairman for “gibberish” he had “pontificated” ([here](#)) on the commission’s lack of action on internet network security. “Wheeler’s views reaffirm that he is unwilling to read the law and follow basic principles of statutory construction,” O’Rielly [blogged](#) Wednesday. He said Wheeler is “abusing” Communications Act [Section 1](#) (which explained the purposes for creating the FCC) by arguing it gives the commission direct “authority over all communications activity, especially cybersecurity.” That reading would constitute a “massive” expansion of jurisdiction, giving the FCC “authority over ‘communications by wire or radio’ ... without bounds,” O’Rielly said. He said the plain reading of Section 1 is as a preamble, offering a “policy statement, not actual authority.” If the section gave the FCC direct authority, he said, it wouldn’t need “ancillary authority” or the rest of the Act. O’Rielly said U.S. Court of Appeals for the D.C. Circuit rulings support his view, including *Comcast v. FCC* (2010) on net neutrality. While respecting O’Rielly “as a patriot,” Wheeler said Thursday the blog post “seems to be in keeping with Donald Trump’s refusal to respond to Russia’s attack on our system. Networks have always been attack vectors; that a new network has opened up a new means of attack is no surprise. What is surprising is that when our nation is under attack we decide to have law-school quibbles about language instead of stepping up and protecting the nation.”

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FCC TAC Meeting Delayed Until April 12

The first meeting for 2018 of the FCC [Technological Advisory Council](#) will be April 12 rather than March 7, as originally scheduled, said a [notice](#), citing scheduling conflicts. The main topic will be the workload for the rest of 2018, the agency said. The meeting starts at 12:30 p.m. in the Commission Meeting Room.

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Capitol Hill

Trump Cites ‘Intolerable’ Connectivity Issues in Call for Broadband Infrastructure Improvements

President Donald Trump urged Congress to improve broadband infrastructure, citing concerns about a lack of connectivity in 25 percent of U.S. schools and 39 percent of citizens in rural areas. “It is intolerable to continue pretending that this is the best America can offer to our students,” Trump said Wednesday in a letter accompanying the Council of Economic Advisers’ annual [report](#). The CEA report cites investments in broadband and emerging technologies as giving workers access “job opportunities without geographic

relocation,” potentially making “geographic immobility less relevant for labor force participation.” Even citizens in rural areas who do have broadband access “face a more limited choice set of service providers than their urban counterparts, and tend to adopt at lower rates,” the council said. “Access to broadband is key for modern private enterprise, and a lack of available infrastructure prevents investment in rural communities.” The CEA cited a USF revamp, loans, grants, tax incentives and changes to regulatory rules as potential tools for encouraging infrastructure deployments. The administration released last week its infrastructure legislative proposal, including a focus on streamlining the federal environmental permitting process, including for small-cells deployments. It included proposals for state block grants and federal matching funds that broadband projects could qualify for, but no dedicated broadband funding (see [1802120001](#)).

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Senate Commerce to Mark Up FTC Nominees Next Week

The Senate Commerce Committee is scheduled to vote on four FTC nominees at 10 a.m. on Wednesday (see [1802140047](#)). The full committee [will hold](#) an executive session in 106 Dirksen.

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House Vote Expected on Anti-Sex Trafficking Bill

The House likely votes Monday on [anti-sex trafficking legislation](#), with the lower chamber proposing an amendment to include victim-focused language from the bill’s Senate version, lawmakers said Wednesday. Rep. Ann Wagner’s, R-Mo., Allow States and Victims to Fight Online Sex Trafficking Act (HR-1865) will be amended to include language from Sen. Rob Portman’s, R-Ohio, Stop Enabling Sex Traffickers Act (S-1693) (see [1801300047](#)). Rep. Mimi Walters, R-Calif., introduced the amendment, which includes victim-focused provisions from the Senate bill. The legislation alters Section 230 of the Communications Decency Act, making it easier to bring criminal charges against websites that knowingly facilitate or promote sex trafficking. Walters [said](#) her amendment would allow victims to pursue federal civil claims against websites that deliberately facilitate or support sex trafficking. The legislation “is the most effective way to empower victims, equip state and local prosecutors, and ensure websites can no longer traffic children with impunity,” Wagner [said](#). Consumer Watchdog [praised](#) the measure, saying it will allow prosecutors to hold websites like Backpage accountable for enabling child sex trafficking.

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Wireline

FCC Wireline Bureau Partially Grants Allband Waiver of USF High-Cost Loop Cap

FCC staff partially granted an [Allband Communications Cooperative](#) petition to waive a rule establishing a presumptive per-loop cap of \$250 per month on total high-cost USF support. It will let the rate-of-return incumbent LEC “continue to provide voice and broadband services in parts of rural Michigan, which otherwise would go unserved,” said a Wireline Bureau [order](#) Thursday in docket 10-90.

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Wireless

Qualcomm Board Urges Shareholders to Ignore Broadcom's 'Inadequate' Offer

Qualcomm directors urged shareholders in a Thursday [letter](#) to ignore proxy cards they receive from Broadcom and vote for re-election of the existing board. They cited Broadcom's lower takeover proposal for \$79 per share, down from \$82, saying it made "an inadequate proposal even worse despite the indisputable increase in value and certainty that Qualcomm stockholders will receive from the compelling and highly accretive acquisition of NXP." Broadcom refuses to engage with Qualcomm on price, said the board. Broadcom's current proposal "undervalues Qualcomm, fails to take into account the strategic and financial benefits of acquiring NXP, and continues to face a long and highly uncertain path to regulatory approvals," it said. An NXP acquisition would provide "significant strategic benefits" including increased revenue diversification, substantial expansion of serviceable addressable markets and more scale in high-growth automotive and IoT segments, it said. Qualcomm reached [agreement](#) with NXP Tuesday to increase its previously announced cash tender offer to buy all outstanding stock from \$110 to \$127.50 per share.

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Wireless Industry Needs Regulators' Help to Meet Mobile Demand, GSMA Says

Mobile network capacity could struggle to keep up with demand in New York and other big world cities unless regulators make more spectrum available and ease deployment of small-cells infrastructure, GSMA [reported](#) Thursday. By 2025, 48 percent of traffic demand may go unserved in ultra-dense urban areas, it said. GSMA predicted mobile demand will grow by more than 50 percent in major cities by 2025 as 5G and IoT expand. Mobile operator spending would have to triple to meet demand, but that's not sustainable under current conditions, it said. GSMA recommended releasing affordable spectrum, facilitating deployment of fronthaul and backhaul infrastructure, reducing siting costs, OK'ing network sharing agreements, streamlining small-cell deployment and harmonizing power density limits with internationally recommended limits.

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T-Mobile US COO Named to Board

T-Mobile named Mike Sievert, chief operating officer, to its board, raising the number of directors from 11 to 12, T-Mobile [said](#) Thursday. Sievert joined T-Mobile as chief marketing officer in 2012, moving to his current role three years later.

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Internet

SEC Issues Cybersecurity Risk Guidance for Companies

The SEC adopted interpretive guidance to help companies prepare disclosures about cybersecurity risks and incidents, the agency [said](#) Wednesday. Chairman Jay Clayton [said](#) the guidance highlights federal

securities laws' disclosure requirements and the importance of policies and procedures for disclosure controls. He said the aim of the guidance is "clearer and more robust disclosure by companies" about cybersecurity risks, giving investors more complete information. The commission said it's not suggesting companies must make detailed disclosures such as specific technical information about their systems or potential system vulnerabilities, but they should disclose incidents and risks material to investors, including financial, legal or reputational consequences. The agency said companies might need to disclose previous or ongoing incidents to put risk discussions in context.

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Most Connected Car Drivers Not Interested in Buying an Autonomous Car, Says Survey

More than half of U.S. connected car drivers said they wouldn't buy a self-driving car, researcher Solace [reported](#) Thursday. Two-thirds believe they drive more safely in connected cars, but 40 percent wouldn't trust their cars to brake for them. Forty-six percent of drivers ages 18-25 wouldn't trust their car to automatically react to driving conditions vs. a third of drivers 65 or older. Safety and navigation are the most trusted and valued features, with 49 percent of drivers most likely to rely on safety sensors—such as lane departure alerts—in a connected car, 35 percent on navigational prompts. Forty-eight percent weren't aware their vehicle could store personal data such as social security numbers and birthdays. The online survey occurred Jan. 17-19 with 1,500 drivers.

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State Telecom

O'Rielly Tweets Washington Metro Lacks Competency, Accountability

FCC Commissioner Mike O'Rielly slammed the Washington Metropolitan Transit Authority for not responding to his letter seeking a status update on upgrading wireless communication in tunnels. "It's not cash but competency & accountability that's needed," O'Rielly [tweeted](#) Thursday. WMATA this month said it's on track with a six-year project to upgrade to radio and cellular communications in Metro tunnels (see [1802020015](#)). The authority didn't comment Thursday.

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Telecom Notes

McSweeney: Antitrust Enforcers Can Do More to Foster Digital Competition

Antitrust enforcers can do more to police digital market competition, with one option being FTC examination of serial acquisitions by dominant firms, outgoing Commissioner Terrell McSweeney [reported](#) this week. With attorney adviser Brian O'Dea as co-author, McSweeney said the agency could do such examinations of defensive acquisitions as a course of conduct under FTC Act Section 5 "unfair method of competition" authority. She acknowledged arguments against taking a more aggressive approach, citing Herbert

Hovenkamp and Phillip Areeda’s assessment that dominant firms habitually buying rivals can actually add incentive for investors to enter markets. She also cited economist Carl Shapiro, who said competition and innovation might increase if the DOJ and FTC “could selectively prevent mergers that serve to solidify the positions of leading incumbent firms, including dominant technology firms, by eliminating future challengers.” While outside the realm of antitrust, McSweeney suggested another way to increase competition and improve services in digital markets is to give consumers more control over data: “Regulations permitting consumers to withdraw their data in a usable format when they want to use a different service may also lower barriers to entry for less data-rich innovators.”

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Intellectual Property

CO, Parts of LOC Sites Offline

The Copyright Office website “is currently unavailable, due to technical problems,” the CO said Thursday afternoon, and at that time we couldn’t access its website or some pages associated with the parent Library of Congress. Clicking on some URLs associated with CO and LOC returned this error message on our browser: “The requested URL / was not found on this server. Additionally, a 404 Not Found error was encountered while trying to use an ErrorDocument to handle the request.” The LOC didn’t comment further.

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Broadcast

O’Rielly Slams Colorado Town That FCC Warned on Pirate Radio Station

FCC Commissioner Mike O’Rielly slammed the small Colorado town of Ward, which the Enforcement Bureau warned for running an FM station without a license (see [1802200048](#)). “Pirate radio is not acceptable & not legal no matter where it is located,” he [tweeted](#) Wednesday. “Very troubling that local government would facilitate in any capacity.” Town officials didn’t comment Thursday.

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Media Notes

Roku CEO Smart TV Growth But Stock Falls

Roku executives are optimistic about smart TV usage increases but investors were less pleased with forecasts, sending the stock closing down 17.7 percent at \$42.05 Thursday. Wednesday after regular U.S. markets closed, the company [forecast](#) Q1 sales of \$120 million to \$130 million, [reportedly](#) less than some analysts expected. Nonetheless, with one in five smart TVs sold in the U.S. last year having Roku operating systems built in, the company is “increasingly tapping into” the \$70 billion pool that U.S. advertisers spend

on TV “as the TV ad ecosystem moves to streaming,” said CEO Anthony Wood on a Wednesday earnings call. The “large secular shift” to streaming from “traditional linear TV” is “causing a lot of positive trends for us,” said Wood. The streaming TV provider is using automatic content recognition to measure audiences, said Scott Rosenberg, senior vice president-advertising. “It gives us visibility into what’s happening on the linear side of viewership.” —*PG*

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Parents See Stopping Inappropriate Video Content Their Job, Not YouTube's, Poll Says

Among parents whose children watch YouTube videos, 62 percent say their kids have seen inappropriate content, and 81 percent see preventing of that kind of viewing as their job vs. 10 percent who think it’s YouTube’s responsibility, said Common Sense/SurveyMonkey survey [results](#) Thursday. Forty-seven percent of parents believe their children are addicted to mobile devices, vs. 32 percent of parents who say that about themselves. Sixty-eight percent of parents are somewhat to extremely concerned mobile device usage is negatively affecting the mental health of their children. YouTube didn’t comment. The online poll of 4,201 adults, including 1,024 with children under 18 years old, was conducted Jan. 25-29.

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Satellite

DirecTV 'Worry-Free' Ad Claims Challenged

DirecTV should discontinue some advertised claims about its DBS service, the National Advertising Division (NAD) [said](#) Thursday. It said Charter Communications challenged claims in five print and online ads, including multiple claims of “worry-free signal reliability.” NAD said DirecTV indicated it plans to appeal.

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First Test Satellites for SpaceX Broadband Constellation Launched

Two test satellites for SpaceX’s planned Starlink broadband satellite constellation were successfully launched on SpaceX Falcon 9, CEO Elon Musk tweeted (see [here](#) and [here](#)) Thursday. They are called Tintin A and B, he said.

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10th Circuit Affirms Insurer Not Responsible for Dish TCPA Defense

The 10th U.S. Circuit Court of Appeals upheld a lower court summary judgment in favor of Ace American Insurance that it has no duty to defend or indemnify Dish Network in a Telephone Consumer Protection Act (TCPA) telemarketing lawsuit. In the docket 17-1140 [decision](#) (in Pacer) Wednesday, the appellate court agreed TCPA statutory damages were civil penalties and uninsurable under Colorado law and the insurance policies don’t cover injunctive relief. Ruling were Judges Carlos Lucero, Monroe McKay and Carolyn McHugh, with McHugh writing the decision. Dish didn’t comment Thursday.

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Communications Personals

Georgia Public Service Commission unanimously elects Commissioner **Lauren “Bubba” McDonald** as chair for a two-year term, succeeding Commissioner **Stan Wise**, resigned from the commission (see [1802210022](#)), succeeded by **Tricia Pridemore**, tech and workforce development expert, added to the PSC after Gov. Nathan Deal (R) appointed her to finish Wise’s term through Dec. 31 ... WTA promotes in Washington office **Derrick Owens** to senior vice president-government and industry affairs and **Eric Keber** to succeed him vice president-government affairs.

ICANN Senior Vice President-Global Communications **Duncan Burns** leaves at the end of March, after ICANN61 conference; his deputy, Senior Director **Gwen Carlson** for now runs Communications and Language Services, and Vice President-Stakeholder Engagement, North America and Global Business Engagement **Chris Mondini** leads U.S. government engagement; Senior Vice President-Chief Technology Officer **David Conrad** continues running Information Transparency Initiative.

ESync Alliance names **Rick Kreifeldt**, founder and president of Motoforza, executive director ... Ipswitch advances [Michael Grossi](#) to CEO; Chief Financial Officer [Kevin Bisson](#) was interim CEO ... Digital products and solutions company Tavant hires **Atul Varshneya**, ex-Samsung, as head of its artificial intelligence practice ... Tegna board changes: **Howard Elias** moves up to non-executive chairman, replacing **Marjorie Magner**, retiring; **Stuart Epstein**, ex-Evolution Media and NBCUniversal, joins board ... Mellanox adds to board **Steve Sanghi**, Microchip Technology, and **Umesh Padval**, Thomvest Ventures.

Telecommunications Industry Association [starts](#) Edge Data Center Working Group; executive committee members are **Rebecca Hunter**, Crown Castle, chair of working group; **Don Duet**, Vapor IO, chair of Whitepaper Committee; and **Don Byrne**, Metrix411, chair of 942 Edge Integration Committee ... ATSC board names LG Electronics consultant **Madeleine Noland** to chair its Technology Group 3, committee responsible for framing and implementing ATSC 3.0, effective with the May 22 TG3 meeting, succeeding **Rich Chernock**, Triveni Digital.

Lobbyist registrations: Securus, **Holland & Knight**, effective Jan. 30 ... Lyft, **InSight Public Affairs**, effective Jan. 23 ... Akamai Technologies, **Monument Policy Group**, effective Jan. 15 ... Univision, **Peck Madigan**, effective Jan. 2 ... SAS Institute, **Monument Policy Group**, effective Jan. 1 ... T-Mobile USA, **InSight Public Affairs**, effective Jan. 1.

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