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TODAY'S NEWS

INCENTIVE AUCTION REPORT still seen an FCC priority. Must get in line in short term behind push for AWS-3 rules. (P. 1)

CLYBURN SAYS CIN STUDY GOALS can be met without surveying journalists. (P. 3)

SPECTRUM HOARDING NOT SENSIBLE, Verizon executive tells Congress. (P. 5)

PEG CHANNELS CONCERNED about negotiations with a combined Comcast/TWC. (P. 7)

DHS CYBERSECURITY ROLE depends on private sector partnerships, Secretary of Homeland Security tells House committee. (P. 9)

TELECOM NOTES: H-block auction speeds to conclusion at 16 bidding rounds per day ... House passes Goodlatte's cellphone unlocking bill, with Democrats split ... Microsoft pushing E-rate modernization. (P. 13)

MEDIA NOTES: DOJ letter opposes joint retrans negotiation, ACA says ... Camp takes on ad tax deductibility in latest tax draft legislation ... FCC should grandfather existing JSAs, Nevada broadcasters say. (P. 17)

AWS-3 Auction Temporarily Stealing Thunder From Incentive Auction at FCC

FCC work on incentive auction rules appears to be quietly pushed to the side, as key staff steam forward full-speed on rules for the AWS-3 auction, which must be wrapped up later this year, said agency and industry officials in interviews this week. While Chairman Tom Wheeler has promised the FCC is still on track to get out an incentive auction order in the spring (CD Dec 10 p6), industry and FCC officials said big parts of the rules simply can't be ready then. Several industry officials pointed to two highly technical FCC workshops last week (CD Feb 24 p15) on "feasibility checks" for whether channels can move during the repacking part of the auction and on interservice interference prediction as a sign of the kinds of issues that seem far away from decision.

"It sounds like they're going to have more of a framework document, in the timeframe that Wheeler has laid out and then follow that with a series of orders that bite off pieces," said a wireless carrier executive. "We're all trying to understand how that kind of thing can work, because all these issues are so interleaved." Several carrier and wireless industry officials said they're hearing the same thing: FCC staffers are working hard on an order, but it's likely to leave many gaps to be filled in later. Many questioned whether that order is likely before April or May.

An FCC official said Wednesday "many incentive auction issues and policy decisions will be determined" in the upcoming report and order. "Here's what we can expect: The commission will adopt a framework for the auction in the R&O, seek comment on further specifics about key implementation issues in the auction comment [public notice] and issue final rules in the procedures PN," the official said. "Any other outstanding issues will be addressed through a process that ensures public input and will conclude well in advance of the auction itself. This will provide the commission with the necessary flexibility to make important initial

decisions regarding the structure of an auction and then seek further public input about specifics that are contingent on the policy determinations made in the R&O. Given the innovative nature of the incentive auction, preserving flexibility on implementation details is particularly advantageous and important.”

“It is always the case that the first order is dealing with high-level directional issues, policy issues ... but that there is also always an implementation order that deals with many of the sometimes more technical issues,” said Coleman Bazelon, principal at the Battle Group, which provides economic consulting to carriers. “An example of the distinction would be the order will tell us that they’re deciding to do, say, a multiple round, descending clock auction for the procurement and that that’s going to require something like a feasibility checker. The details about the feasibility checker, what approach they take, how long before it times out, all that stuff, is an implementation question.”

Bazelon said the initial order likely won’t be able to address all high-level policy questions. “It will have follow-on inquiries in it,” he said. “The high-level decisionmaking will get some direction this spring, but won’t be completed this spring.”

“The decision to focus on the AWS-3 auction makes a great deal of sense given that it’s likely to generate the same amount of paired spectrum nationwide as the incentive auction, but with far less complexity and hassle,” said Rick Kaplan, NAB executive vice president and former Wireless Bureau chief. “Most people are completely taken with the incentive auction, but the AWS-3 auction is likely to give the federal government far more bang for its buck at the end of the day,” he said. “To get any kind of order out this spring, I agree that it will have to leave a great deal of questions unanswered. The key issue will be for the commissioners, and not the staff on delegated authority ... to vote on each of those subsequent issues. It’s a major auction, and I am confident Congress would like those nominated by the president and confirmed by the Senate making all of the substantive decisions as we move forward.”

Former Commissioner Robert McDowell acknowledged the FCC faces a tough challenge on the two pending auctions. “It’s a challenging needle to thread with all of the time pressures to have the AWS 3 auction squared away before the 600 MHz [incentive] auction takes off,” said McDowell, now a visiting fellow at the Hudson Institute. “The two are interrelated and auction players are anxious to have certainty.”

“As far as I can tell, this will be the last major auction of good spectrum we may ever do,” said Blair Levin, a fellow at the Aspen Institute and the former manager of the FCC National Broadband Plan. “When I got to the FCC in 2009, there was no plan for any [auction]. It’s good that we actually have one, but it’s so important to get it right and Tom [Wheeler] should take the time he needs.” Levin is now executive director of the Gig.U project to connect municipalities where university campuses are with high-speed broadband.

BTIG analyst Walter Piecyk said the AWS-3 auction should take precedence. “The FCC needs to get the AWS-3 in order before they worry about the incentive auction,” he said. “While the incentive auction is the top priority for the FCC, the focus right now needs to be on getting the AWS-3 auction rules out to keep within the timeline required by the spectrum act.”

The FCC is understandably focusing on the AWS-3 auction first, said Jeff Silva, analyst at Medley Global Advisors. “While the incentive auction is larger and more complex than AWS-3, the latter more so than the former faces acute time pressures and has its own unique technical/administrative coordination challenges,” Silva said. “Moreover, there's also this: the AWS-3 auction is disproportionately important relative to its modest size and to Chairman Wheeler's competitive agenda because it offers such a strategi-

cally significant spectrum acquisition opportunity for the national wireless carrier — T-Mobile — with the weakest spectrum position of the field of four. The FCC obviously wants to get the AWS-3 auction right. Doing so will create momentum in advance of the incentive auction and generally should help advance key policy goals of the chairman."

"I have extreme confidence that Chairman Wheeler and his team will make the best possible decision for the wireless industry and the U.S. taxpayer, and they will do it in the most time efficient manner that circumstances allow," said Steve Berry, president of the Competitive Carriers Association. "There is an old saying, 'if you want it bad, you may get it bad.' I want Chairman Wheeler to be supremely confident he has the right policies in place to execute a successful auction. The chairman has been very transparent in his thought process, and I expect he will continue that practice."

"If it turns out that the auction rules are progressing a bit slower than earlier anticipated — or hoped for — I'd cut Wheeler slack on this one," said Randolph May, president of the Free State Foundation. "Unlike some matters at the agency that drag on way past when they should, getting certain aspects of the auction rules right is complicated business. While undue delay could be problematical, going forward with poorly designed proposals would be even more problematical, especially if taking some more time would likely improve the ultimate auction outcome. So I don't want to be critical of any delay without knowing more about the work going at the commission that may create the schedule slippage." — **Howard Buskirk** (*hbuskirk@warren-news.com*)

JSA 'Quandary'?

CIN Study Goals Can Be Met Without Newsroom Questions, Clyburn Says

The goals of the FCC critical information needs (CIN) studies can be met without using the questions for journalists that were stripped out by Chairman Tom Wheeler (CD Feb 24 p21), Commissioner Mignon Clyburn said at a Media Institute lunch Wednesday. But she also defended the original form of the study, saying that as a former Charleston, S.C., newspaper publisher, she would never "be a part of any effort to chill speech, shape the news or influence news gatherers." Commissioner Mike O'Rielly said after Clyburn spoke that it's time to kill the CIN study, a report every Republican senator joined their GOP House counterparts in opposing.

The FCC should "seek a better understanding of the industry it regulates" and make decisions "based on research and not rhetoric," Clyburn said. Media reports on the objections to the CIN studies from Republican lawmakers (CD Dec 11 p11) and Commissioner Ajit Pai (CD Feb 13 p1) haven't included enough coverage of the objective of the study, she said. Studying barriers to entry and determining whether it's appropriate to craft policies to remove them is what Congress ordered the FCC to do, she said. It's difficult to create a "sound regulatory landscape" in a "data vacuum," she said.

The CIN studies can't be revised enough to make them viable, said O'Rielly in a written statement Wednesday (<http://fcc.us/1jBb1AZ>). "If any value was ever to come from this particular exercise, that ship has sailed," O'Rielly said. "It is probably time to cancel the CIN study for good." He shares the concerns aired by Pai and Republican lawmakers, wrote O'Rielly. "I appreciate the Chairman's willingness to make revisions, but I am afraid that tweaking it is just not enough."

Republican senators slammed Wheeler for the agency’s role in the CIN studies in a letter to Wheeler dated Wednesday. “We demand an explanation of how the Commission internally justified the CIN Study as fulfilling its statutory requirement to report on market barriers to entry, as well as the costs incurred by the Commission on this blatantly inappropriate study,” Senate Republicans said in the letter released by the office of Sen. Dan Coats, R-Ind. “We also insist all commissioners be involved in future statutorily required studies in order to guard against the clear potential for abuse.” They said it’s “impossible to imagine a rationale” for the agency putting together this study, calling it “flagrantly unconstitutional.” House Republicans have also weighed in against the studies (CD Dec 11 p11). Wheeler had agreed the study design overstepped bounds but insisted the FCC had no intent to regulate speech or exert any role in that capacity. Republicans have widely feared a revival of the Fairness Doctrine (CD Feb 13 p1). The FCC didn’t comment.

There are “very important questions” in the rest of the draft CIN study that make it worthwhile to forge ahead even without the newsroom questions, said United Church of Christ policy adviser Cheryl Leanza in an interview. She disagreed with the decision to “remove the newsmaker perspective” from the study. Moving the study along may be more than a matter of simply removing the controversial questions, Leanza said. “It’s a very carefully crafted research design” that may require extensive work to proceed without the journalism questions, she said. Clyburn said the final form of the study and the timeline for the pilot program to proceed are decisions “that will be made by the chairman.”

Meanwhile, the CIN studies are continuing to take heat from broadcasters despite the decision to remove the newsroom questions. State broadcaster associations are planning to ask the commission to “eliminate the study in its entirety,” said an ex parte letter filed Wednesday by the Nevada Broadcasting Association. “The NBA is pleased that the Commission has decided to rethink the survey of newsrooms,” said the filing (<http://bit.ly/1lmcxKu>).

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Plans to change the way joint sales agreements are regulated “present a quandary” for Clyburn, because of the conflict between her desire to look out for the needs of small and medium-size markets, and protect local journalism in those markets, she said at the Media Institute luncheon. Clyburn has “an open mind” on the issue of regulating sharing arrangements, and she said she will “look closely” at any proposed rule changes when they are put in circulation “to ensure consumer choice.” Clyburn said she favors competition and markets should be “left alone when things are going well,” but she also favors a “diversity of voices” and policies that recognize that some groups face barriers to entering the market. Wheeler appears to plan to circulate an order for the next FCC meeting that would make it harder for broadcasters to have JSAs (CD Feb 25 p1).

Efforts to rewrite the Communications Act should build on the 1996 Telecom Act without “destroying the fabric of the law,” Clyburn said. Competition, consumer protection, universal service and public safety should remain “a core part” of a rewritten act “no matter what,” Clyburn said. She said the process of rewriting the act is “quite a bit away.” — *Monty Tayloe* (mtayloe@warren-news.com), *John Hendel*

'Alarming Talking Point'

Verizon Executive Dismisses Spectrum Hoarding Fears

The idea that carriers may buy spectrum to hoard it and hurt competitors makes no real sense, a Verizon official insisted Wednesday. He was among several executives, including from T-Mobile and C Spire, speaking at a Senate Judiciary Antitrust Subcommittee hearing on wireless competition. “I find the prospect, while theoretically interesting and an alarming talking point, to be vanishingly small,” Verizon Executive Vice President Randal Milch told subcommittee ranking member Sen. Mike Lee, R-Utah, saying it would not make sense to “stockpile something that is so capital intensive.”

Milch cited his company’s low-band spectrum, hailed by the smaller carriers, saying Verizon did not “outmuscle” anyone for that auction-bought spectrum. “They didn’t participate,” he said of T-Mobile. He also questioned whether low-band spectrum is really the boon the smaller carriers made it out to be, noting how T-Mobile earlier this week had touted its strength in urban areas due to its mid-band spectrum. “A lot of this depends on what we need at the time,” Milch said of the value of different spectrum to carriers.

Lee had cited the possibility of “spectrum hoarding” and whether bigger carriers may try to “box out others” in their purchase of spectrum. The Justice Department raised the issue in a filing to the FCC last April, spurring denials then of any hoarding intentions (<http://1.usa.gov/1mHMD5q>). The question has been vigorously debated as regulators and lawmakers consider spectrum aggregation limits in the design of the broadcast incentive auction, slated for mid-2015. Earlier in the hearing, Lee said, “We must be careful around any antitrust analysis” absent evidence that any carrier is actually “hoarding spectrum.”

One central focus of the hearing was on the market power of Verizon and AT&T and the question about what is real competition. Sen. Amy Klobuchar, D-Minn., chaired the hearing and asked T-Mobile Vice President-Federal Regulatory Affairs Kathleen Ham about recent quarterly losses and whether T-Mobile could stay competitive for the long haul. In her opening statement, Klobuchar had hailed T-Mobile as a recently reemerged “maverick” providing new “vigorous competition” in recent months, as

advertisements during the Super Bowl showed. But AT&T and Verizon still have 68 percent of subscribers and “dominant” market power, Klobuchar said.

“T-Mobile’s the little engine that could,” Ham said, saying “we’ll have to see in time” on its ability to stay competitive. “Right now we’re doing our darnedest to compete.”

Ham had testified about the company’s “fundamental challenges that put at risk its ability to retain its disruptive presence in the marketplace,” with a smaller scale yielding smaller profit margins, lower cash flow and other shortfalls. Verizon and AT&T benefit in terms of equipment purchase, backhaul clout and low-band spectrum, she said. AT&T and Verizon have about 80 percent of low-band spectrum, Ham said, citing the influence of the broadcast incentive auction, which could be a game-changer for years.

Mobile Future Chairman Jonathan Spalter warned against “any special weight given [to] spectrum below 1 GHz.” Competitors seek spectrum above that, too, he said, instead urging a focus on consumer needs. Carriers should have “flexibility” in acquiring and using spectrum, Spalter said.

Stakeholders have become “too complacent and comfortable” with the idea of two dominant wireless players, which would not hold water in other industries like aviation, said C Spire Senior Vice President-Strategic Relations Eric Graham. He complained of stratification, with two giants, two metropolitan operators and then a few smaller carriers. C Spire’s challenges involve a clear pathway to latest devices, spectrum access and certainty on roaming, and with those dimensions covered, C Spire can “compete with anyone,” Graham said. He worries about an urban-rural divide because spectrum is not interoperable in the larger world of devices.

The rumored possibility of a T-Mobile-Sprint merger “likely would lead to a reduction in competi-tion,” with the market going from four players to three, said Free Press Policy Director Matt Wood. He said the “jury still out” on that possible merger, with no formal announcement of any sort. The wireless market shows “some signs of improved competition, especially when compared to other telecom sectors,” but affordable roaming rates and special access rates remain challenges for smaller players, Wood said, urging the FCC to do more about market concentration. He lauded the Justice Department’s blocking of the AT&T/T-Mobile deal and said the health of the wireless market comes “because of, not in spite of, well-timed oversight.”

But one panelist welcomed consolidation. “You certainly can see competitive markets with only two players,” said Roslyn Layton, a doctoral fellow with Aalborg University’s Center for Communication, Media and Information Technologies. “It’s very difficult to be the third or fourth carrier.” She’s vice president of Strand Consult, which represents 170 mobile providers.

Verizon’s Milch deflected concerns that the market isn’t competitive enough. “Last year alone, the wireless carriers invested \$34 billion in their networks,” Milch said, noting that figure’s several times higher than elsewhere in the world. “It’s one of the characteristics, I believe, of a competitive market that you” have all this investment in order to compete. He cited “deep rivalry among the carriers” and efforts to attract customers. Verizon has more than 50 data roaming agreements, he said, also noting how cable companies are involved in the business of backhaul. “Between January and September 2013, telecommunications companies spent almost \$7 billion on advertising, an 11.7 percent increase over the same period in 2012, and during a period when other consumer segments’ advertising spends were decreasing,” Milch testified (<http://1.usa.gov/1bMxIC4>). “These fierce marketing spends reflect the competitive struggle for

wireless customers through a wide range of devices, applications, voice and data plans, as well as other innovative services.”

The witnesses were generally receptive to the idea of a kill switch requirement, as Klobuchar has proposed in cellphone theft prevention legislation introduced earlier this month. “We are eagerly awaiting secure and free kill switch capabilities from other phone manufacturers,” Milch said. “We don’t want an instance where it’s a hackable kill switch.” But Verizon is “actively engaged” with app developers and manufacturers “to bring forward these options,” he said. T-Mobile’s Ham said, “We share your goals.” C Spire’s Graham mentioned general support for the initiative.

Klobuchar said one of takeaways from the hearing is that there are “still challenges, particularly where it comes to rural areas” and that more proposed mergers and acquisitions would deserve attention. “Any further consolidation will naturally raise concerns” and have to pass a “high bar,” Klobuchar said. — **John Hendel** (jhendel@warren-news.com)

'Worrisome' Deal

PEG Community Sees Challenges Coming From Combined Comcast/TWC

The public, educational and government channel community plans to continue its push to protect the interests of PEG channels while monitoring Comcast’s efforts to buy Time Warner Cable for about \$45 billion, PEG advocates said in interviews this week. If the companies combine, PEG channels could be negatively impacted, they said.

American Community Television is working to schedule meetings with Comcast and gain its support for the Community Access Preservation Act, said Bunnie Riedel, its executive director. The bill, reintroduced last year by Sens. Tammy Baldwin, D-Wis., and Ed Markey, D-Mass., would order cable operators to provide support for PEG channels (CD Dec 11 p6). “If they made that part of their stated commitment, that would go a long way in easing fear,” she said. Comcast needs to show that it has a real public interest obligation and show a commitment to the local community, she said. Some PEG channels have said Comcast carries them in more favorable channel positions than other pay-TV companies, after it agreed to FCC conditions on its 2011 deal to buy control of NBCUniversal (CD Feb 3 p17). A Comcast spokeswoman referred our request for comment to its most recent NBCUniversal order compliance report, which discussed its efforts to make PEG content available online and on VOD in addition to on cable channels.

"We’re going to keep trying" to get the CAP Act to pass, said Paul LeValley, executive director at Arlington Independent Media (AIM), a PEG channel in Arlington, Va. “But it’s tough because cable companies are not very anxious to allow national requirements on what they need to provide in exchange for the use of the right-of-way.” There’s plenty of pushback against it and there aren’t many federal lawmakers who see a tremendous political gain in supporting it, he said. “It should be obvious to them that a little space in the marketplace of ideas ought to be reserved for the public and that really requires federal protection because it is under assault in places all over the country.”

Comcast buying Time Warner Cable is "worrisome" for PEG channels that would go from working with four large cable operators to three, said Riedel. “I’ve seen the cable operators become more and

more entrenched as they've gotten bigger and bigger and they've moved away from being part of the local community into being these very large national corporations," she said. "They tend to be very intransigent when it comes to PEG provisions." Comcast becoming larger and moving into more communities makes it more difficult to deal with, she said. Even in places where PEG channels no longer have negotiating power due to statewide franchising, Comcast remains powerful at the state level and more influential with state regulators than other cable operators, she added. City and county franchise authorities are expected to approve franchise transfers letting Comcast buy Time Warner Cable (CD Feb 14 p16).

The impact on PEG channels would likely be negative, said Tracy Rosenberg, Media Alliance executive director. "Whenever we've seen cable companies get bigger and stronger with their market position, PEG channels have suffered accordingly." Further concentration in the cable sector won't benefit PEG channels, she said. When there's less competition in the cable sector, the incentives to provide PEG services to local communities are reduced, she said: "This cuts down on civic interaction, educational opportunities and technology access." Negotiations are dependent on having options, Rosenberg added: "When you cut down competition in the sector, it ties the hands of local communities to be able to negotiate."

Arlington County negotiates with Comcast in franchising agreements for AIM, LeValley said. Arlington is lucky, he said: "Verizon and Comcast have been very responsive and very good actors." But the county may have some difficulty negotiating with Comcast if it buys Time Warner Cable, he said. "One of the biggest problems with the county negotiating with Comcast is that Comcast is already so big, it's hard to find people who are in authority." Issues are passed on to lawyers or to staff at Comcast's headquarters in Philadelphia, "and the county never hears from them again," LeValley said.

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Franchising agreements' PEG terms are almost always the result of negotiations between local governments and the cable company, LeValley said. Comcast could opt into a Virginia statewide franchise in the negotiation process, he said. But Comcast hasn't indicated any interest in the state franchise, he said: "They seem amenable to doing negotiations at the local level." Later on if Comcast buys Time Warner Cable, it could have much more power to influence legislation at the local, state and national levels "to try to legislate things like PEG access out of existence," he said. "That's always a possibility, so we'll have to see."

The cable franchise for the City Channel in Milwaukee is handled by a statewide cable franchising law, said Dennis Geraghty, the station manager at the channel. "We've lost a number of PEG channels in Wisconsin because there wasn't a good funding mechanism in the state law. ... I don't anticipate that would get any better with the merger because it's out of our control."

Riedel said she would like Comcast to make stronger commitments to PEG channels compared to provisions agreed to in the Comcast-NBCUniversal order. The conditions pertaining to PEG channels in that order turned out to be "anemic," Riedel said. "There was no real teeth in their commitment to PEG the last time ... I'm hopeful that we can have an honest conversation on what's needed." — *Kamala Lane* (klane@warren-news.com)

HR-3696 'Good Step Forward'

Private Sector Partnerships 'Crucial' to DHS Cybersecurity Mission, Department Secretary Says

Continued DHS work to build its relationships with private sector stakeholders is "crucial" to its continued mission to address cybersecurity in the private sector and on government networks, Secretary of Homeland Security Jeh Johnson told the House Homeland Security Committee Wednesday. Johnson, who took office in December, outlined his vision for DHS and addressed concerns about the department's programs. DHS's private sector outreach on cybersecurity has been most public on the department's role in implementing President Barack Obama's cybersecurity executive order, Johnson said.

DHS is responsible for implementing many of the order's provisions, including encouraging voluntary industry adoption of the Cybersecurity Framework, which the National Institute of Standards and Technology has collaborated on with industry stakeholders. DHS unveiled its voluntary program for framework adoption — the Critical Infrastructure Cyber Community (C3) — earlier this month in conjunction with NIST's release of the "Version 1.0" framework. Cybersecurity experts have said they believe the C3 program as currently structured is inadequate to encourage initial implementation of the framework (CD Feb 20 p7). Johnson said Wednesday that the C3 program will give companies implementing the framework "direct access to cybersecurity experts within DHS who have knowledge of the threats we face," but acknowledged "there is more to do." The government should also "recruit the next generation of cybersecurity talent" to aid in its cyber efforts, Johnson said, saying he's visiting college campuses — including Georgia Tech — as part of a "personal recruitment campaign" for DHS.

The committee had said DHS's cybersecurity role was one of several issues it wanted to address, but members of the committee barely mentioned the issue during the hearing. Committee Chairman Michael McCaul, R-Texas, said he believed the National Cybersecurity and Critical Infrastructure Protection Act (HR-3696) would be important to DHS's mission because it would codify DHS's current cybersecurity mission. The committee approved HR-3696 earlier this month, moving it to the full House for further consideration. The committee "would like to see a greater emphasis on building an experienced and streamlined cyber workforce and increasing the security and resiliency of federal networks," McCaul said. Johnson told the committee he believes HR-3696 is "a good step forward."

Ranking Member Bennie Thompson, D-Miss., said he believes "more needs to be done" to make DHS "the agency that Congress envisioned" and to make DHS more effective in addressing cybersecurity and other issues. Johnson said he intends to "inject a new energy" into DHS by improving the department staffers' morale, in part by continuing to reduce the department's leadership vacancies. The department has filled several top DHS cybersecurity posts, but the Senate still needs to confirm Suzanne Spaulding as DHS undersecretary-National Protection and Programs Directorate. Spaulding is currently acting head of NPPD, which is in charge of many DHS cybersecurity programs. McCaul said DHS has a 38 percent vacancy rate among its top leadership positions. — *Jimm Phillips* (jphillips@warren-news.com)

Comm Daily® Notebook

The Comcast-Netflix paid peering agreement (CD Feb 25 p2) deserves "a hard look" at the FCC and Justice Department, said Consumers Union, which opposes Comcast's plan to buy Time Warner Cable for about \$45 billion, in a Wednesday news release (<http://xrl.us/bqn6bt>). Comcast broadband subscribers with problems streaming Netflix had sought faster connections from the operator at higher prices, after the operator possibly violated FCC net neutrality rules on ISPs' transparency about network management practices, wrote CU to the commission (<http://xrl.us/bqn6bn>) and DOJ (<http://xrl.us/bqn6bp>). Such traffic "degradation" may have violated the DOJ consent decree and FCC order letting Comcast buy control of NBCUniversal, wrote CU Policy Counsel Delara Derakhshani Tuesday to FCC Chairman Tom Wheeler and Attorney General Eric Holder. The peering deal with Netflix "raises serious concerns about the clout of Comcast," amid reports Verizon may strike a similar Netflix deal, she wrote. Comcast and Netflix representatives had no comment.

Correction: Janet Nickloy's job title at Harris Corp. is vice president-strategy and business development, national programs (CD Feb 19 p10).

The FCC's H-block auction was racing to a conclusion Wednesday. Starting Wednesday, the FCC was holding 16 bidding rounds per day. As of round 156, the auction had brought in bids of \$1.54 billion and all 176 licenses up for sale had a provisionally winning bidder. Dish Network has committed to bid at least \$1.564 billion in the auction (CD Feb 24 p12). Consultant firm Spectrum Financial Partners posted an analysis of bids through round 155 Wednesday (<http://bit.ly/1dAIMNZ>), saying the top bid was \$1.07 MHz/POP in the Tampa-St. Petersburg market followed by Los Angeles at 84 cents per MHz/POP. The lowest bid was in American Samoa at 2 cents per MHz/POP.

Capitol Hill

The House passed HR-1123, the Unlocking Consumer Choice and Wireless Competition Act, by a vote of 295-114, despite last-minute revolt from a few members. The latest version of the bill was different from the one passed by committee, and it no longer addressed bulk unlocking, prompting active resistance from some members and the loss of support from Public Knowledge and the Electronic Frontier Foundation. The bill “protects consumer choice by allowing consumers flexibility when it comes to choosing a wireless carrier,” said bill author House Judiciary Committee Chairman Bob Goodlatte, R-Va., in a statement following the bill’s passage. “This is something that Americans have been asking for and I am pleased that the House of Representatives acted to restore the exemption that will allow consumers to unlock their cell phones.” Public Knowledge is happy consumers would be able to unlock their phones but “language recently added to the bill could be interpreted to make future unlocking efforts more difficult,” said Vice President-Legal Affairs Sherwin Siy, saying the group is “hopeful” the legislation can be changed in the Senate. Of the 295 members voting for the bill, 200 were Republicans and 95 were Democrats, and of those voting against it, 20 were Republicans and 94 were Democrats.

The House Communications Subcommittee scheduled a hearing on the Satellite Television Extension and Localism Act for Wednesday at 10 a.m. in 2123 Rayburn, it said in a notice. The current law will expire at the end of 2014. “We remain on track to release a draft of the legislation by the end of March,” said Subcommittee Chairman Greg Walden, R-Ore., in a statement. The subcommittee did not announce witnesses. Meanwhile, Senate Commerce Committee leaders sought input from industry on STELA in a letter released Tuesday night (<http://1.usa.gov/1c8CZ7y>). “The pending STELA reauthorization offers the Committee a chance to consider whether present law appropriately protects and promotes a video market that is responsive to consumer demands and expectations,” said the letter, signed by Committee Chairman Jay Rockefeller, D-W.Va., ranking member John Thune, R-S.D., Communications Subcommittee Chairman Mark Pryor, D-Ark., and subcommittee ranking member Roger Wicker, R-Miss. “Various stakeholders already have identified a number of issues that the Committee could consider as part of the reauthorization of the Communications Act elements of STELA. These issues implicate both traditional entities that provide video services, as well as possible future entrants into the video marketplace.” They ask a wide range of questions, some specific to STELA and some on video policy broadly. Under the STELA questions, they asked, “Should the Congress modify this obligation or otherwise clarify what it means to negotiate retransmission consent in good faith? If so, how?” Walden has stressed STELA should not address retrans. The senators sent the letter to “a diverse array of stakeholders, including satellite TV, broadcasters, cable television, online video, broadband, public interest groups, and free market think tanks,” said a press release. The letter mentions Rockefeller’s video bill introduced last fall. “The Consumer Choice in Online Video Act, S.1680, is one approach to fostering a consumer-centric online video marketplace,” it said. “Are there elements of that bill that should be considered in conjunction with the STELA reauthorization?”

Advertising tax deductibility is again at issue, among many other provisions, in a House proposal to revamp U.S. tax code. House Ways and Means Committee Chairman Dave Camp, R-Mich., issued the discussion draft Wednesday. “Under the provision, 50 percent of certain advertising expenses would be currently deductible and 50 percent would be amortized ratably over a ten-year period,” said the Ways and Means explanatory analysis of the draft (<http://1.usa.gov/1hpq8wG>). “This rule would phase in for tax years beginning before 2018 as follows: for tax years beginning in 2015, 80 percent of advertising costs would be deductible and 20 percent amortized; in 2016, 70 percent of advertising costs would be deducti-

ble and 30 percent amortized; and in 2017, 60 percent of advertising costs would be deductible and 40 percent amortized.” Advertising expenses are treated as business expenses now, it said. In November, NAB issued a statement saying it strongly opposes “limits that would be placed on the ability of businesses to annually deduct costs for advertising.” The Camp analysis said the provision would “increase revenues by \$169.0 billion over 2014-2023.” NAB slammed the provision in Camp's draft. “NAB strongly opposes any job-killing proposal that would limit the ability of thousands of large and small businesses from fully deducting their annual advertising expenses,” NAB Executive Vice President Dennis Wharton said in a statement. “Advertising on local radio and television stations is a key driver of the American economy — indeed, a recent study found local broadcast advertising generates \$1.05 trillion in GDP and supports 1.48 million jobs.” The association will lobby “to ensure the advertising tax deduction continues to create economic prosperity and well-paying jobs,” Wharton said. USTelecom President Walter McCormick called the overall draft “a critical first step” and mentioned that it included “lowering the corporate tax rate to make U.S. companies more competitive in the world economy.”

Rep. Hakeem Jeffries, D-N.Y., is an “original co-sponsor” of the Songwriter Equity Act, (H.R. 4079) legislation that was announced Tuesday (CD Feb 26 p13) by sponsor Rep. Doug Collins, R-Ga., said a Jeffries press release Wednesday (<http://1.usa.gov/1pupoun>). Jeffries initially withdrew his support for the bill at the “11th hour,” but reaffirmed his commitment by close of business Tuesday, said his spokeswoman. “The Songwriter Equity Act endeavors to modernize the music licensing system by updating provisions in the Copyright Act of 1976 to ensure songwriters are fairly compensated for their creative work,” said Jeffries in the release.

To improve copyright protections for the intellectual property of visual artists, the American Royalties, Too Act was introduced by Sens. Tammy Baldwin, D-Wis., and Ed Markey, D-Mass., and House IP Subcommittee ranking member Jerrold Nadler, D-N.Y., said a Nadler news release Wednesday (<http://1.usa.gov/1fUCZDj>). The ART Act provides a “competitive resale royalty” of 5 percent of the sales price — up to \$35,000 — for all visual art work “sold at auction for \$5,000 or more,” it said.

The Songwriter Equity Act (SEA) is opposed by NAB and backed by RIAA, said the associations' spokesmen in news releases Tuesday. Earlier that day, the SEA, which seeks to update sections 114(i) and 115 of the Copyright Act, was disclosed by Doug Collins, R-Ga. (CD Feb 26 p13). “NAB objects to changes in law that would deal with the financial imbalance between songwriters and artists by subjecting free broadcast radio stations to new fees,” said its spokesman (<http://bit.ly/1c8ekjA>). RIAA welcomes “Congress’ review of the laws governing music licensing, and whether those laws written long ago still work in the context of today’s dynamic music market,” said its spokesman Tuesday (<http://bit.ly/1cQ26tv>). “The bill introduced deals with some of the interconnected pieces of music licensing reform, and other issues are also important, such as ensuring that all creators are paid fair market value for their music, regardless of platform; payment for pre-1972 works [which do not fall under federal law]; performance rights for airplay; and improvements in the system for mechanical licensing.”

The “inconsistent patchwork” of state telehealth laws “hinders the natural deployment of telehealth,” said Rep. Doris Matsui, D-Calif., at an Information Technology and Innovation Foundation event Wednesday. Matsui and Rep. Bill Johnson, R-Ohio, introduced the Telehealth Modernization Act in December (<http://1.usa.gov/1mCyJy4>) in the hopes of bringing clarity by creating a federal definition of telehealth. “By establishing a workable federal definition of federal health, I’m hopeful states will look to this legislation for guidance in developing clear and consistent telehealth principles that benefit the nation as a whole,” Johnson said. Telehealth has received increased attention, with consumer advocates expressing

concern about the practice's privacy protections and about what they call a lack of government oversight. Matsui and Johnson's bill would not address either issue, but Johnson stressed "privacy needs to be central" to any telehealth policy that states develop. "We've got hackers who hack into our databases; what's to keep intruders from hacking into a telehealth session?" he said. But the first step is laying out a telehealth definition and principles "using a highest common denominator approach," Matsui said. In the last year, more than 40 states have considered varying types of telehealth legislation, she said, creating market confusion that hinders telehealth for minorities, seniors and the disabled, which telehealth benefits. "Telehealth is, and will continue to be, invaluable in helping to resolve some of our nation's most pressing health disparities," she said. — **CB**

Wireline

The FCC can encourage smart and efficient use of bandwidth in schools and libraries by modernizing the eligible services list, said representatives from Microsoft and its law firm at a Feb. 20 meeting with commission staff. The representatives said the FCC could better protect student privacy in the digital age, and promote the deployment and use of low-cost, high-quality connections. The positions are described in a Microsoft policy paper, "Empowering America's Students" (<http://bit.ly/1bMeEnE>). FCC officials at the meeting were from the Wireline Bureau and Office of Strategic Planning, said a Microsoft ex parte filing posted to docket 13-184 Tuesday (<http://bit.ly/1hgHKLA>).

Wireless

While there are competing analyses from Globalstar and NCTA, "there is no serious dispute that harmful interference to Globalstar will occur at high usage levels" of outdoor unlicensed national information infrastructure (U-NII) devices, Globalstar said in an ex parte filing in docket 13-49 (<http://bit.ly/1ewRfBr>). At such high usage levels, "outdoor U-NII-1 operations will cause harmful interference by reducing capacity on Globalstar's network," it said. The FCC can't rush ahead with its proposed rule changes without additional steps determining thresholds for and risks of harmful interference with more certainty, it said. The filing recounts details of a meeting with staff from the FCC Office of Engineering and Technology and Jonathan Sallet, acting FCC general counsel. Globalstar also filed a white paper explaining its position that the commission can't legally permit the unlimited deployment of outdoor unlicensed devices in the U-NII-1 band, it said. The mobile satellite services company said it showed that unrestricted outdoor operations in the U-NII-1 band "would threaten substantial harmful interference to Globalstar's feeder uplink operations at 5.096-5.25 GHz," the white paper said (<http://bit.ly/1bMuPBo>). Although the FCC originally adopted the restriction on outdoor use at a time when unlicensed use was in its infancy, "today it is beyond reasonable dispute that removing that restriction will lead to massive, imminent outdoor use of the U-NII-1 band," it said. A spectrum licensee has vested property and reliance interests that further ensure protection from harmful interference, it said. "Both the commission and the courts have also recognized that these reliance interests must be given careful consideration before changing rules."

Public Knowledge released a video designed to explain to the public the importance of unlicensed spectrum in daily life, from garage door openers to baby monitors to Wi-Fi. But the group warned that

unlicensed spectrum is threatened by the TV incentive auction. “The FCC has historically reserved a small amount of shared unlicensed spectrum, while auctioning off the rest for privately licensed use,” PK said. “Now we're faced with an upcoming auction in early 2015 and the FCC hopes to reclaim the TV white spaces and sell them to private telecom companies. Tell the FCC to protect our airwaves during the upcoming spectrum auction and save some spectrum for the public good.”

FCC Chairman Tom Wheeler “hit the nail on the head” in comments on the importance of infrastructure deployment at the GSMA Mobile World Congress, said PCIA President Jonathan Adelstein Wednesday. “PCIA has long promoted just the policies the Chairman suggested, to enable wireless networks to be built quickly, efficiently and cost effectively,” Adelstein said in a news release. “He has teed these issues up, and his statement indicates he is prepared to take decisive action. As Chairman Wheeler put so succinctly, ‘We can’t have high-speed broadband without high-speed deployment.’ PCIA couldn’t agree more, and we look forward to working with him and the entire Commission to ensure U.S. wireless networks can continue to support ... all of the growing needs of consumers, businesses, public safety, schools, hospitals and others who rely on wireless broadband.” Adelstein is a former FCC commissioner.

Android will remain the top smartphone operating system and iOS second through 2018, IDC projected Wednesday. About 950.5 million Android smartphones will ship globally this year, for a 78.9 percent market share, the research company predicted. Android's smartphone shipments will grow to 1.3 billion in 2018, but its share will dip to 76 percent, IDC projected. Shipments for iOS will increase from 179.9 million to 249.6 million during the same time frame, but the iOS share will dip from 14.9 percent to 14.4 percent, IDC estimated. Global smartphone shipments across all platforms will slow to 8.3 percent annual growth in 2017 and 6.2 percent in 2018, IDC predicted. Annual smartphone shipment volume in 2013 passed 1 billion units for the first time, a 39.2 percent growth over 2012, it said. But in the coming year, IDC expects mature markets including North America and Europe will drop to single-digit growth and Japan might “contract slightly,” it said. Despite the high growth expected in many emerging markets, 2014 will be the year smartphone growth falls more significantly than ever before, it said. Shipment volume is expected to increase to 1.2 billion this year, growth of 19.3 percent from 2013, it said. More than 200 million smartphones are in active use in North America, said Ryan Reith, IDC program director-Worldwide Quarterly Mobile Phone Tracker, in a news release. But this year will be an “enormous transition year” for the smartphone market, he said. “New markets for growth bring different rules to play by and ‘premium’ will not be a major factor in the regions driving overall market growth,” he said. As mature markets become “saturated and worldwide growth slows, service providers and device manufacturers are seeking opportunities to move hardware wherever they can,” said IDC. The result will be “rapidly declining price points, creating challenging environments in which to turn a profit,” it said. The global smartphone average selling price (ASP) was \$335 in 2013, and that's expected to drop to \$260 by 2018, it said. To reach the “untapped demand within emerging markets, carriers and OEMs will need to work together to bring prices down,” said Ramon Llamas, IDC research manager-mobile phone. Last year, 322.5 million smartphone units shipped at under \$150 and that number will continue to grow, he said. Several smartphone announcements already have targeted that price level this year, with some as low as \$25, he said. IOS will have the highest ASPs among the leading platforms through 2018, IDC predicted. Apple has “maintained a tight focus on the high end of the market with its most current devices,” a trend IDC expects will continue but “could keep iOS from realizing greater volumes within emerging markets,” said the research company. But sales in mature markets will “offset much of the difference,” it said. Windows Phone is expected to grow the fastest among the leading smartphone operating systems through 2018, helped by nine new Windows Phone partners, said IDC. Most of the new vendors come from emerging markets, it said. Windows Phone's shipments will grow from 47 million to 121.8 million and its share will

grow from 3.9 percent to 7 percent between this year and 2018, predicted IDC. BlackBerry's higher-than-average prices "could inhibit its growth potential," said IDC, predicting shipments will tumble from 11.9 million to 5.3 million with that operating system's share slipping from 1 percent to 0.3 percent.

The FCC released a speed test for iPhones available in the iTunes App Store, said an agency news release (<http://bit.ly/1fif5yL>). The commission released an app for Android phones in November. "Unlike the Android app, the iOS app cannot run periodically in the background," the FCC said. "However, volunteers can test their cellular and Wi-Fi network performance manually to receive an on-demand view of upload and download speed, latency, and packet loss. No personal or uniquely identifiable information is collected. The data collected by the app is useful in informing users regarding their own performance and also supports the Commission's open broadband data program, contributing to the information made freely available to the public on the nation's mobile broadband performance in reports, maps, datasets and other forms."

Internet

Google's request to seal documents in a civil suit accusing Google of violating wiretap laws by scanning Gmail messages "demonstrate[s] hypocrisy at the company's core," said Consumer Watchdog Privacy Project Director John Simpson in a Tuesday blog post (<http://bit.ly/1hgF3dd>). "Google is in the business of gathering data and making it public, often when people want to keep it private," Simpson said. Google has argued information in the case might reveal trade secrets, and thus certain documents should be sealed, he said. "I think the reason is just Google's reflexive secrecy about everything it does," he said. A number of media organizations have filed an amicus brief with U.S. District Judge Lucy Koh, arguing First Amendment rights should require the disclosure of all legal proceedings in the case. Oral arguments will be held Thursday at the U.S. District Court in San Jose, Calif.

European Parliament approval of an investment package for pan-European digital projects and high-speed broadband networks "will help transform everything from movie theatres to operating theatres; from our transport to our tourism industry," said Digital Agenda Commissioner Neelie Kroes in a statement Wednesday. The European Commission proposed the Connecting Europe Facility (CEF) in 2011 as part of a multiyear funding program to support transport, energy and digital infrastructure projects, setting aside 9.2 billion euros (\$12.6 billion) for CEF digital, of which 7 billion euros would support investment in high-speed broadband, the EC said. Last year, however, the Council reduced the CEF digital amount to 1 billion euros, forcing the EC to "fundamentally reorient its plans," the EC said. The vote comes on top of political agreement on an EC-proposed e-identification regulation as well as a plan to cut the cost of broadband rollout, making it a "great week for the digital agenda, said Kroes.

State Telecom Activities

Broadband services should be required to begin contributing to the USF, a NARUC official told the FCC. Vermont Commissioner and past NARUC Telecom Committee Chairman John Burke told aides to FCC Chairman Tom Wheeler and Commissioner Jessica Rosenworcel that a NARUC resolution (<http://bit.ly/1hTQPNr>) passed at its winter meetings calls for expanding the USF contribution base (CD Feb 12

p9). The expansion would include “all communications services, including services such as broadband that are required to be offered in order to receive federal support,” wrote Burke in an ex parte filing posted Tuesday to docket 09-191 (<http://bit.ly/1lm0U6j>). NARUC didn't take a position on whether the size of the fund should be increased.

The FCC should set a firm date for second-tier carriers to provide text-to-911 services, the Vermont Enhanced 911 Board told the FCC in a letter (<http://bit.ly/1ewSDUz>) Tuesday. Board Executive David Tucker wrote that the office has had discussions with some of those carriers, “and in at least one case, we were informed that the carrier has no plans to implement text to 911 services until it becomes a requirement set by the Commission.” Second-tier carriers are a small part of the state’s wireless market but, Tucker wrote, “we need them all to provide the service in order to reach the goal of ubiquitous Text to 911 services in Vermont.”

AT&T Michigan and Sprint filed with the Michigan Public Service Commission Tuesday a proposed agreement partially resolving their IP interconnection dispute. It still leaves in question the answer to the central argument between the companies: Sprint’s ability to get IP interconnection with AT&T. Under the agreement, all traffic Sprint exchanges with AT&T will be delivered in TDM format. The sides agreed they may, on or around July 15, amend the agreement to include IP interconnection. Spokesmen for both companies declined comment. The agreement comes after the MPSC ruled (<http://bit.ly/1k7xkBc>) in Sprint’s favor (CD Dec 10 p12) and ordered AT&T to reach an IP interconnection agreement with the company. The MPSC has 30 days to act on the agreement. It's scheduled to meet again March 6. The companies faced a deadline Tuesday to submit the agreement.

Any attempt by the FCC to preempt state laws that make it harder for municipalities to create broadband networks (CD Feb 24 p1) “would undermine local government accountability to state governments and to taxpayers” and be illegal, said the Free State Foundation Wednesday (<http://bit.ly/1dzYdG4>). FSF Scholar Seth Cooper said stripping states’ control over their cities and counties would violate constitutional federalism principles. Nearly 20 states laws limit municipal-backed broadband networks, and “prevent local government conflicts of interest with the private sector marketplace competitors who invest tens of millions of dollars in localities to build out their broadband networks,” wrote Cooper. “They also protect local taxpayers from potentially devastating financial losses from poorly-run municipal broadband projects.”

Greensboro and Guilford County, N.C., are working with Motorola Solutions to design a comprehensive management program to help the municipalities' public safety technology planning. Motorola’s Migration Assurance Program (<http://bit.ly/1dzQsjx>) is intended to help the communities manage and control spending on the technology, while maintaining performance and interoperability, and adapt to changing technologies, said a company news release Wednesday (<http://bit.ly/1dzQsjx>).

Telecom Notes

Dell will provide up to \$22 billion worth of information technology services to the Department of Homeland Security and the General Services Administration, the company said in a Wednesday news release (<http://bit.ly/1ptYe6R>).

Broadcast

If the FCC attributes Joint Sales Agreements, the commission should grandfather in all existing such agreements, the Nevada Broadcaster's Association said in an ex parte filing Wednesday. "Forced termination" of JSAs would "substantially" increase costs for affected stations and undercut their ability to compete, "leading to reduced programming and diversity, and potentially to total loss of broadcast service from those stations," NBA said. Attributing JSAs would "effectively ban them outright in most markets despite their public benefits," NBA said. The FCC should "utilize a triage approach" to evaluating ways to revitalize AM radio, NBA said. The commission should "act as soon as viable options are identified, rather than delay until all of the numerous options have been assessed in order to release a single Report and Order addressing all proposals," NBA said.

Cable

A letter from the Department of Justice asking the FCC to decide joint sales agreements are attributable also condemns joint retransmission consent negotiations, said the American Cable Association in an ex parte filing. DOJ said joint retransmission consent negotiations by separately owned broadcasters in the same market should be deemed illegal unless "reasonably necessary for some other efficiency-enhancing combination of the station's operations," ACA said. DOJ also expressed skepticism that circumstances making joint retrans negotiations necessary could arise, ACA said. In the wake of the DOJ letter, the commission should "deem the coordination of retransmission consent negotiations as per se attributable under the media ownership rules," ACA said.

Satellite

Inmarsat agreed RacoWireless will distribute Inmarsat's IsatData Pro machine to machine (M2M) service. IsatData Pro will be one of RacoWireless' primary network solutions for Latin America's growing fleet-management market, said Inmarsat in a Tuesday news release (<http://bit.ly/NxmaYc>). The solution will enable M2M users "to enhance the efficiency and ensure the safety and security of their fixed and mobile assets in regions not covered by terrestrial telecommunications infrastructure," it said. RacoWireless will integrate the solution into its Omega Management Suite, which serves as a cloud-based dashboard for global device management, Inmarsat said.

Communications Personals

FCC Commissioner Ajit Pai hires **Brendan Carr**, ex-Office of General Counsel, as legal adviser on wireless, public safety, and international issues, replacing **Jeffrey Neumann**, who had been acting legal adviser to Pai while detailed from Media Bureau Engineering Division, returning to division as senior engineer ... Intellectual property law firm Hamilton Brook hires **Ronald Demsher**, ex-WilmerHale, as associate ... Sinclair promotes Executive Vice President **David Amy** to also be chief operating officer; he's replaced as chief financial officer by **Christopher Ripley**, ex-Canor and before that UBS, effective April 2 ... Telemundo Media hires **Michael Guariglia**, ex-Univision Communications, as vice president-network sales.