

# Communications Daily

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### No Stone Unturned

## Major Carriers Appear Ready To Go Big in 3.5 GHz Shared Spectrum Band

Wireless carriers are showing real interest in the shared-use 3.5 GHz band, which is the subject of a draft order teed up for a vote by the FCC Friday (see [1503270052](#)), industry and FCC officials said. Industry observers told us that several years ago the major carriers saw the band as too high to be worth a major push, but all that has changed, especially in light of the record prices in the AWS-3 auction, which tallied just more than \$41.3 billion in provisionally winning bids (see [1501300051](#)). Carriers are exploring other avenues for what they view as "capacity" spectrum, officials said.

As one sign of interest, AT&T, T-Mobile and Verizon have all been at the FCC in recent days to make their closing cases on the rules. All of the filings are in docket 12-354. CTIA also met with eighth-floor officials last week on behalf of its members, promoting the use of the band.

The high prices seen in the AWS-3 auction “provided a real incentive for carriers to get serious about spectrum sharing and finding ways to enhance their networks without spending tens of billions of dollars more on exclusively licensed spectrum,” said Michael Calabrese, director of New America Foundation’s Wireless Future Project and a member of the Commerce Spectrum Management Advisory Committee. Carriers are also looking at ways to use technologies like LTE-unlicensed (LTE-U) “to potentially harness unlicensed spectrum as supplemental downlink and aggregate it with their networks,” he said.

“The AWS-3 auction changed everything,” said Harold Feld, senior vice president at Public Knowledge, also a member of the CSMAC. “Even the carriers that won can’t pull \$45 billion out of their pocket every time they need more spectrum.” Carriers like T-Mobile have to ask “how am I going to get into places that are hotly contested and super expensive” to serve with traditional spectrum licenses, he said. “Suddenly, spectrum sharing seems much more attractive.” Feld also said carriers are more willing to experiment than they were in the past. Carriers previously saw spectrum as a binary choice—it was either licensed or unlicensed, he said. They saw themselves like blue whales that in an ocean of choices cared only about eating krill—buying more spectrum licenses. “Now they have been forced to re-evaluate that,” he said.

“The history of spectrum suggests that transmission innovation is often able to make questionable spectrum not only usable but valuable,” said Paul Gallant, analyst at Guggenheim Partners. The 3.5 GHz band “seems poised to be the next example of that.”

When discussions started on the 3.5 GHz band “years and years ago” carriers were interested only in licensed spectrum, said a high-tech company executive. But now all of the chipsets installed by carriers in their devices also support unlicensed, the official said. “With the demand for data, no one is leaving any stone unturned.”

“I think some, if not all, of the carriers are going to go for priority access licenses,” said Roger Entner, analyst at Recon Analytics. “Verizon and T-Mobile have been pretty outspoken about it. The 3.5 GHz [plan] allows operators to utilize the unlicensed spectrum during peak usage. It would be a welcome safety valve that allows customers being served without having to purchase a license, especially in a highly populated, high auction value market.”

Armand Musey, managing director at Goldin Associates, sees a “gradual shift” by industry toward higher band spectrum. “Moving to 3.5 GHz is a logical next step,” he said. “There is also a slowly growing acceptance of spectrum sharing due to improving technologies.”

Verizon representatives discussed the carrier’s interest in becoming a Spectrum Access System provider and using the spectrum as both a Priority Access License licensee and as a General Authorized Access user, said a [filing](#) by Verizon on meetings last week at the FCC. AT&T representatives called for changes in the FCC’s proposal for auction of PALs. The rules should be “less complex, provide greater flexibility and … held more often than every three years,” AT&T [said](#).

Microsoft, meanwhile, was at the FCC last week to argue against allowing LTE-U in the band (see [1504100039](#)). “Microsoft explained that allowing the use of LTE-U and Licensed Assisted Access (LAA) in the [band] would be contrary to what the Commission has stated it wants to accomplish in this proceed-

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ing: a new Citizens Broadband Radio Service that is based on promoting spectrum sharing to enable more efficient use of radio spectrum,” Microsoft [said](#).

The Wi-Fi Alliance said it doesn’t oppose LTE-U in the band, per se, but asked the FCC to scrutinize its use. “We agree with concerns expressed by others that the anchoring of an unlicensed component in the 3550-3650 MHz band to a licensed technology could introduce barriers to entry by allowing the licensed spectrum holder to manage unlicensed spectrum to the detriment of other unlicensed users,” the alliance [said](#). NCTA [said](#) in a filing based on discussions with FCC staff there’s a need for “additional information on the FCC record on exactly how LTE-U sharing mechanisms would work in the 3.5 GHz band.”

NAB also weighed in, raising concerns about the order’s reliance on a dynamic spectrum access system “conceptually similar to,” but more advanced than those used in the TV white spaces. NAB said it demonstrated in March the deep flaws in the TV white spaces database (see [1503190056](#)). “We write only to express our grave concern about the Commission continuing to develop spectrum policy that relies on a database framework that is clearly not sustainable,” NAB [said](#). “Expanding it at this point, prior to making any fundamental changes, is highly problematic.” — **Howard Buskirk**

### Contemplating Stay

## USTelecom Files Another Challenge of Net Neutrality Order

USTelecom filed another appeal of the FCC’s net neutrality order, as expected, Monday, asking the U.S. Court of Appeals for the D.C. Circuit to declare it “unlawful.” The commission’s “overreach is not only legally unsustainable” but “unwise given the enormous success of the commission’s [Communications Act] Title I approach for consumers, businesses and Internet entrepreneurs,” USTelecom President Walter McCormick said in a [statement](#). USTelecom and Alamo Broadband (see [1503230066](#)) filed appeals March 23 in the D.C. and 5th U.S. Circuit Court of Appeals respectively under a theory that a 10-day deadline for appeals to be eligible for a lottery to determine which circuit will hear the cases ended that day.

More appeals from other industry groups could be filed this week, as early as Tuesday. NCTA and CTIA have been seen as potential litigants, but neither organization discussed its plans Monday.

USTelecom had said in the previous filing it believes “the better view” is that the clock begins with the publication of the order in the *Federal Register*, which occurred Monday. USTelecom Senior Vice President-Law and Policy Jonathan Banks told reporters Monday the association filed the earlier appeal in case the courts had a different view, because it “wanted to be sure not to miss a deadlines in an order as important as this.”

Banks declined to speculate whether any more appeals would be filed in other circuits, which would set off another lottery. The D.C. Circuit won the lottery to hear the earlier USTelecom and Alamo Broadband petitions (see [1503300055](#)). The FCC is expected to file a motion to dismiss the initial two appeals as premature, though the agency didn’t say Monday when the motion will be filed.

The order’s publication also spurred predictions from both sides of the net neutrality debate, with Communications Act Title II proponents including the FCC saying the order would survive legal challenges and opponents saying it would fail. “Now, the FCC can start counting down to losing in court for the *third* time,” Tech Freedom President Berin Szoka, said in a statement. “The Commission’s disregard for transpar-

ency, proper procedure, and the Constitution will prove to be its undoing.” Free Press Policy Director Matt Wood said in a [statement](#), the “publication of the rules brings us one step closer to having the enforceable Net Neutrality protections that millions of Americans have called for.”

USTelecom in Monday’s petition for review called the order “arbitrary, capricious, and an abuse of discretion within the meaning of the Administrative Procedure Act” (APA). The order “violates federal law,” including the U.S. Constitution and the Communications Act, and agency regulations and federal notice-and-comment rulemaking requirements, the petition said. Banks said the specifics of the association’s argument will be fleshed out in briefs over the summer, but noted filings on the agency’s record question whether the agency provided adequate notice of reclassifying broadband under Title II.

Opponents have raised the APA issue, including Szoka on Monday. The agency should have opened a new rulemaking “after scrapping its initial, more modest proposal, in favor of [President Barack Obama’s] Title II plan,” Szoka said referring to the agency shifting gears from the so-called Section 706 fast-lane approach floated in last year’s NPRM. But rather than striking down the order entirely, Szoka said the court “may simply remand the case to the FCC without addressing any of the other legal questions—and the agency will have to start over again from scratch with all the same substantive legal problems as today.” The order’s attempt to modernize the Communications Act by reclassifying broadband but “arbitrarily forbearing from most of Title II” may have violated separation of powers provisions of the Constitution by effectively rewriting the 1934 law, Szoka said.

Banks said USTelecom is also “thinking through” the possibility of seeking a stay, and noted a decision would have to be made before the order takes effect in 60 days. The agency said Friday the order will take effect June 12 (see [1504100046](#)). Banks also said appeals could be decided more quickly than those challenging the agency’s 2010 order. Appeals can’t be filed until publication in the *Federal Register*, which occurred more quickly this time. The 2010 rules were published on Sept. 23, 2011—more than nine months after they were adopted on Dec. 12, 2010, the agency said. The FCC approved this year’s order less than two months ago, on Feb. 26.

McCormick also called this year’s order “unnecessary” because ISPs already are operating “in conformance with the open Internet standards” advanced by Obama, and he supported Congress’ adopting net neutrality regulations under Section 706. Challenging the order didn’t reflect disagreement with Open Internet rules, McCormick also said, “but instead the unjustifiable shift backward to common carrier regulation after more than a decade of significantly expanded broadband access and services for consumers under light-touch regulation.”

Congressional Republicans have discussed creating net neutrality rules without reclassifying broadband. Some on Monday pushed the idea that the legal challenges may spur congressional action. “Congressional Democrats may feel strong pressure to negotiate a legislative compromise,” Szoka observed in a statement.

“Instead of relying on the uncertain future of public utility regulation soon to be imposed on the Internet, we encourage Congress to use this window of opportunity [during the appeals process] to craft legislation that sets forth permanent rules to advance Internet openness, and continued investment and innovation in the nation’s vibrant 21st Century digital broadband economy,” the Internet Innovation Alliance said in a [statement](#).

“The irony of the decision to reclassify the Internet as the telephone network is that it dramatically weakened the legal case for regulations to protect the open Internet,” said Fred Campbell, director of the Center for Boundless Innovation in Technology, in a statement. “The FCC’s rationale for reclassification is a tour de force of fallacious reasoning and novel theories that will have judges scratching their heads,” Campbell’s statement said.

The agency, however, said in a statement, it's "confident the FCC's new Open Internet rules will be upheld by the courts, ensuring enforceable protections for consumers and innovators online." Public Knowledge Senior Vice President Harold Feld said the appeal was expected given the earlier appeal. Wood said that despite what he called widespread and bipartisan support for the order, "phone and cable companies are still scheming to overturn these freedoms. These companies and their lawyers and lobbyists have been trying to scare lawmakers away from the restoration of these common-sense rules with misinformation about alleged harms to investment and innovation."

"They have threatened all along to sue over the FCC's decision, even though that decision is supported by millions of people and is absolutely essential for our economy," Wood said. "While Internet service providers will spend buckets of money to woo Congress and file lawsuits, people everywhere will continue fighting for the open Internet protections they won." — **Kery Murakami**

### **Conditions Uncertain**

## **Programmer Lawsuit May Slow Down AT&T/DirecTV Time Frame**

The FCC isn't likely to release a decision on the AT&T/DirecTV acquisition before the court decision on the ongoing programmer lawsuit (see [1503130061](#)), analysts said. Conditions on the deal remain "anyone's guess," MoffettNathanson Senior Research Analyst Craig Moffett said.

The commission is on Day 170 of the informal 180-day shot clock for the AT&T/DirecTV acquisition, but the clock is stopped, an FCC spokesman said. The commission works against an informal timeline of 180 days to reach a decision on most applications, but it's a guideline, not a requirement, an FCC spokesman said. "We continue to look forward to closing our deal in the first half of the year," an AT&T spokesman said. He noted that on March 26 AT&T CEO Randall Stephenson asked the FCC to restart the clock once issues involving the programmers are resolved, AT&T said in an ex parte notice posted March 31 in docket 14-90. The commission declined to comment on the acquisition because it's under review.

The best-case scenario would be a clear answer from the U.S. Court of Appeals for the D.C. Circuit, Moffett said. "The worst case scenario, but unfortunately perhaps the most likely, is the court finds fault in the process rather than substance, and commands the case back to the FCC for procedural reasons." This could lead to even longer delays because of refiling and issuing another public notice, he said. The court could issue a decision within the next month on a petition by content companies about the release of contract information, a telecom lawyer following the case said. He's not sure that will restart the shot clock for the AT&T/DirecTV deal, he said. "Once the [court's] decision is reached, it could take at least a few weeks for the FCC to figure out what steps are next, whether or not the contracts are going to be available," American Cable Association Senior Vice President-Government Affairs Ross Lieberman said. The programmer case is more central to the Comcast/TWC merger, Public Knowledge Senior Staff Attorney John Bergmayer said.

Public Knowledge recognizes that some potential harms of the AT&T/DirecTV deal could be alleviated through conditions, unlike Comcast/TWC, Bergmayer said. AT&T and DirecTV are both multichannel video programming distributors (MVPDs) and owners of programming content, Lieberman said. The commission has found when a distributor of cable programming owns cable programming, the distributor has an incentive to charge higher prices, he said. The typical conditions for these types of deals are ones that mitigate harm from the vertical integration, including the program access rule to prohibit discriminatory pricing and baseball-style arbitration, which avoids charging rates above fair market value, he said.

DirecTV was subject to those conditions when [Liberty](#) bought it, he said. ACA suggested improvements on conditions, including switching the burden off the complainants and onto the parties to show what they charge isn't unfair, according to ACA [comments](#) posted at the commission March 23. The programming contracts are under nondisclosure agreements, so the parties at risk of being harmed lack information to determine if they're being treated in an anticompetitive way, Lieberman said.

[The Department of Justice is well suited to address the antitrust harm by requiring benchmarking of prices in markets that lose a competitor](#), Bergmayer said, noting a Public Knowledge [ex parte notice](#) posted April 1. "By purchasing DirecTV, AT&T becomes more of a video competitor," he said. "The buying power would give them the ability to launch an online video service. That leads to an obvious issue of if you're going to be an ISP [Internet service provider] and video provider, you have more incentive to take advantage of others." The net neutrality rules might take care of that, so there could be a condition designed to hold AT&T-DirecTV to the net neutrality principles for a certain period of time, Bergmayer said. There's speculation of a condition for approving both AT&T/DirecTV and Comcast/TWC, whereby the commission would require the petitioners to abide by net neutrality rules "irrespective of what the courts ultimately decide," Moffett said. "But there's no reason to suggest the FCC is considering that or whether AT&T would agree to it," he said.

"[Everybody expects this to be resolved soon, in mere weeks, but no one seems to know](#)," former FCC Chairman Reed Hundt said. "The normal time period would be about now." These mergers involve a two-step process, he said. First the Department of Justice approves, approves with conditions or sues to stop a deal and takes it to court, then it heads to the FCC, he said. "The Department of Justice goes first typically," he said. There are a lot of rumors swirling around for the Comcast/Time Warner Cable merger (see [1504060021](#)), but not for AT&T/DirecTV, he said. "The odds are in favor of this deal being approved," Guggenheim Partners analyst Paul Gallant said. The timing remains "up in the air" due to the ongoing court case, he said. AT&T's upfront concessions "look pretty solid," Gallant said. "Inevitably in any approval there's likely to be some additional negotiation."

"[It's hard to imagine the FCC and Department of Justice haven't made up their minds](#) by this point," Moffett said. "All indications suggest the deal is going to be approved. It's a far less controversial case than Comcast. It's a more traditional type of antitrust issue." The commission might be delaying the announcement of the decision, he said. "They may not be finished with the Comcast transaction and they may want to issue both announcements relatively close together," he said. — *Marlena Chertock*

## **'Do More With Less'**

### **NAB President Urges Shift to Next-Gen ATSC 3.0 in Opening Keynote**

LAS VEGAS—[Broadcasters need to move to the next-generation ATSC 3.0 in order to succeed after the incentive auction](#), NAB President Gordon Smith said in his keynote at NAB Show Monday. Since a successful incentive auction will leave 80 percent of current full-power stations and only 60 percent of the current broadcast spectrum, TV broadcasters have to learn to "do more with less," Smith said. A move to ATSC 3.0 would allow them to do so, he told us after the speech. "There's no question broadcasting will survive after the auction," but moving to ATSC 3.0 "will allow it to thrive," Smith told us.

[A new next-generation standard is expected to be ready](#) for FCC adoption by the fall, hopefully in time to be incorporated into the post-auction repack, said One Media Executive Vice President Jerry Fritz

on a panel at the show. That time frame is “a tall order,” Media Bureau Chief Bill Lake said on a panel on low-power TV. “It’s one thing to have a standard, but you also need equipment that operates on the standard,” Lake said. ATSC 3.0’s framers have said they’re on schedule to complete a candidate standard by the end of 2015, and they repeated that again Sunday at the NAB Show (see [1504130030](#)).

Adopting a next-generation standard would allow broadcasting to control its own future rather than have it “defined and imposed upon us by others,” Smith said. A next-generation standard would open up more revenue streams to broadcasters and allow them to make use of new tech such as 4K TV, datacasting and targeted advertising. “This is a crucial time for those in the industry to work together” to extend broadcasting to “emerging platforms,” he said. The industry hasn’t implemented a new standard yet because of the difficulty of the undertaking, Smith said. “It’s something the whole industry has to do together.”

It’s bad public policy for the FCC to require broadcasters to change their antennas and other infrastructure to accommodate the repacking and then ask them to do so again for ATSC 3.0, Fritz said. The Widelity Report analysis of repacking costs said 85 percent of the cost of alterations to stations from the repacking would be unaffected by a shift to a new standard. Only 15 percent of those costs would come from work that would need to be redone if the next-generation standard were adopted after the repacking is complete, he said. The Media Bureau supports a shift to a new standard, Lake said.

The FCC should stay out of “the price-setting business” and simplify the incentive auction, Smith said. “If the commission can stay out of the way, I believe we can have a very successful auction,” he said. He also cited increasing broadcaster interest in auction participation. NAB’s planned 2018 move to new headquarters closer to Congress will allow the trade association to lobby on new royalty rates, “common-sense ownership rules” and preventing pay TV from “dismantling” retransmission consent, he said. — **Monty Tayloe**

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**GOP Lawmakers Introduce CRA****Nelson Hammers Home Openness to Bipartisan Net Neutrality Legislation, Possible New Statute**

Senate Commerce Committee ranking member Bill Nelson, D-Fla., touted his concept of a “Title X” addition to the Communications Act in Florida Monday before Comptel members. He defended bipartisan negotiation on net neutrality legislation just as House Republicans introduced what is widely seen as an aggressive and partisan resolution to trample the FCC’s net neutrality order, a move that some have said runs counter to any potential bipartisan net neutrality legislative negotiating in the Commerce committees. When considering net neutrality and any rewrite of the act, Nelson has invoked the concept of this hypothetical section of telecom law since November.

“I have spoken about the possibility of Congress considering a new title to the Communications Act—what I call ‘Title X,’” Nelson said at Comptel’s meeting in Orlando, according to his prepared remarks. “I use that term as a way to think beyond the rhetoric surrounding Title II and Section 706 that has seemed to consume this entire debate. Congress has the luxury of looking at this issue anew without being constrained by the limits of the current statute. I am not yet sure exactly what Title X might contain.”

Rep. Doug Collins, R-Ga., introduced his one-page Congressional Review Act resolution of disapproval, as expected this week (see [1504020053](#)), which, if approved, would nullify the FCC’s February net neutrality order and prevent the agency from reinstating similar rules. The resolution could advance through Congress in an expedited process but still faces a possible White House veto. “Resources that could go to broadband deployment will go to federal taxes and fees,” Collins said in a statement. “We’ll all be paying more for less.”

House Judiciary Committee Chairman Bob Goodlatte, R-Va., is among the 13 original GOP co-sponsors of the Collins CRA resolution. Another co-sponsor is, as expected, Communications Subcommittee Vice Chairman Bob Latta, R-Ohio. Other backers include Reps. Rick Allen of Georgia; Vern Buchanan of Florida; Buddy Carter of Georgia; Steve Chabot of Ohio; Glenn Grothman of Wisconsin; Sam Johnson of Texas; Barry Loudermilk of Georgia; Bill Posey of Florida; Dennis Ross of Florida; Lynn Westmoreland of Georgia; and Ryan Zinke of Montana.

The backers include three members of Judiciary, including Collins, with Latta as the one Commerce member. In February, Goodlatte joined with 20 colleagues including Collins to write a letter to the FCC favoring the CRA approach. Rep. Tom Marino, R-Pa., a Judiciary member who signed the letter, didn’t back the resolution but told us last week he believes it’s an appropriate approach. An earlier failed CRA resolution attacking the FCC’s 2010 net neutrality order was introduced with more co-sponsors—23 upon introduction, and with 58 GOP backers by the time it passed the House. House Communications Subcommittee Chairman Greg Walden, R-Ore., introduced that CRA resolution. This year Walden has said he wants to work with Senate Commerce Committee Chairman John Thune, R-S.D., and Commerce Democrats on bipartisan legislation. Spokespeople for Collins, Walden and Goodlatte didn’t comment by our deadline Monday on whether the CRA resolution was referred to Commerce or Judiciary but Marino told us he believes it won’t pass through Judiciary. “As highlighted in the Committee’s recent hearing, the FCC’s net neutrality rule is a burden on the American people, and antithetical to a free and open internet,” Goodlatte told us in a statement. “I urge my colleagues to support and pass this important Congressional Review Act resolution, and restore the Internet to a free, competitive, and dynamic marketplace unfettered by needless government intervention.”

Net neutrality legislation must lay “the foundation for strong net neutrality protections like those in the FCC’s recent order,” Nelson said, criticizing blocking, discrimination and paid prioritization deals. The legislation can’t leave a regulator “frozen in time,” Nelson said: “The FCC must have authority that is flexible enough that it can respond to a changing world,” he told Comptel. “If we put a straightjacket on the commission, we may very well miss the future and leave the agency powerless—and American consumers defenseless—to deal with emerging problems.”

Nelson praised Thune, calling him “very responsible” when speaking with Comptel CEO Chip Pickering, a former Republican lawmaker from Mississippi. Nelson and Thune have discussed possible net neutrality legislation for months, both have said. “I’m trying to keep things bipartisan, and in this highly charged partisan ideological atmosphere that we have in Washington, that’s a lot more difficult to do but I think if it can be done, it can be done in a partnership with John Thune and me,” Nelson told Pickering. He again mentioned Title X: “Now the question is, on the issue of net neutrality, that there’s this big divide over Title II, will we be able to get to what I call a ‘Title X,’ which is a yet-to-be-defined part of keeping the FCC involved, and be able to protect consumers?”

In his speech, Nelson defended the need for giving the FCC “flexible, forward-looking authority to respond to changes in the dynamic broadband marketplace,” as he said. “The key question policymakers must ask now is how to take what the FCC has done and provide the certainty, predictability, and permanency that only legislation can provide.” Nelson hasn’t backed Thune’s draft net neutrality bill, which would limit FCC authority while codifying net neutrality protections. Nelson and Thune partnered last month for a symbolic net neutrality budget resolution, which passed the Senate (see [1503260050](#)).

The FCC defended its order in submitting the rules to Congress last week. The order “incorporates the continuation of longstanding open Internet principles that are generally in line with current industry practices,” the FCC told Congress in a two-page document it submitted. “In so doing, it ensures that the Internet remains fast, fair and open today and into the future.” The agency cited the “economic growth and investment unleashed by the open Internet to date” in arguing the order “is likely to result in growth to the economy of \$100,000,000 or more annually.” It attributes this growth to “the virtuous circle, whereby an open Internet fosters innovations at the edges of the network, driving increased consumer demand for broadband, which, in turn, fuels broadband investment.”

Free Press slammed the latest House CRA resolution. “Once again, some members of Congress have sided with the phone and cable lobby and against Internet users,” said Free Press Policy Director Matt Wood. “But their campaign against the open Internet is all bluster.” Wood said their arguments are “recycled” and “thoroughly debunked,” pointing to broad public support for net neutrality rules. Free Press is emailing supporters to voice opposition to the resolution and donate money to Free Press. Public Knowledge also opposes the resolution and asked people to share concerns with Congress. — **John Hendel**

### **'Whipped Puppy'**

## **FCC May Not Prioritize Displaced Services After Auction, Lake Says**

LAS VEGAS—The FCC may not prioritize low-power television or TV translators in the post-auction repacking process, Media Bureau Chief Bill Lake said during an LPTV panel at NAB Show. The commission can’t prioritize everything, and “maybe the best answer is not to prioritize any of them,” Lake

said. The panel dealt with several plans for helping soften the impact of the incentive auction on LPTV and translators. The FCC very clearly recognizes the value of LPTV and translators,” Lake said, but the commission is bound to consider them secondary services. One LPTV broadcaster summed up the FCC’s view as “tough luck.”

Those suggesting that no service receive priority after the auction are “reveling” in the confusion caused by the lack of clarity, Fletcher Heald LPTV attorney Peter Tannenwald said. LPTVs and translators face a host of problems after the auction, Tannenwald said, and the commission’s efforts to mitigate them have left him “not too comfortable” with LPTV’s status, he said. Tannenwald and Gray Television Executive Vice President Robert Folliard urged LPTV licensees to lobby their congressional representatives to act to address LPTV issues with the repacking. “It may take an act of Congress” to get those issues addressed, he said.

The inability of TV stations to complete their transition to a new repacked channel before the FCC’s 39-month deadline may be one such issue, Folliard said. Congressional leaders who face the prospect of multiple channels in their districts going dark are likely to act, he said.

A proposal by Gray Television and others to allow LPTV stations that survive the repacking and meet some other requirements should be an “after-auction issue,” Lake said. The many uncertainties created by the incentive auction make it very unlikely that the FCC would examine that concept before the auction, he said. The policy would allow such stations some certainty after years of being moved around in industry transitions, Tannenwald said. “We feel like a whipped puppy,” National Translator Association President Jim McDonald said: “We’ve walked this walk before and sadly it feels like we’re going to do it again.” — **Monty Tayloe**

## **May 21 Earliest Vote**

### **Proposed CPUC Rejection of Comcast/TWC Adds Wrinkle to California’s Review of Deal**

California Public Utilities Commissioner Mike Florio’s filing Friday suggesting the CPUC reject the Comcast/Time Warner Cable (TWC) deal further unsettles the commission’s review of the merger, industry observers in the state told us. Florio said in his alternate proposed decision rejecting the deal (see [1504100049](#)) that Administrative Law Judge Karl Bemesderfer’s proposed decision approving Comcast/TWC with 25 conditions (see [1502170059](#)) can’t effectively mitigate “adverse consequences” posed by the merger. Comcast “does not have a good record of abiding” by CPUC-imposed conditions and the company has contested all 25 conditions in the Bemesderfer draft, Florio said.

Florio’s proposed Comcast/TWC rejection delays a CPUC vote on the Bemesderfer proposal until at least May 21, a commission spokesman said. The CPUC earlier had delayed a vote on the Bemesderfer document until May 7, but CPUC rules dictate that the commission can’t vote on any proposed decision until at least 30 days have passed since the decision was filed, the spokesman said. It’s traditional for the commission to vote on all proposed decisions related to a particular proceeding during the same meeting, said Media Alliance Executive Director Tracy Rosenberg. Florio’s proposed decision also warrants a new comment period on the proceeding, with opening comments on the Florio proposal due April 30, the CPUC said. Reply comments are due May 5.

The new proposed decision likely is to affect the tenor of an already-scheduled all-party CPUC meeting on Comcast/TWC set for Tuesday in Los Angeles, Rosenberg said. The meeting is likely to still

focus on the Bemesderfer proposed decision and Comcast/TWC's potential effects on L.A.-area consumers, but it will be interesting to see how Comcast addresses the Florio proposed decision, Rosenberg said. Comcast said in a statement that "we continue to believe [Bemesderfer's] decision, reached after months of briefings, analysis, and careful consideration, has properly recommended approval of the Comcast-Time Warner Cable-Charter transaction." The company said it's still "confident this process will ultimately lead to approval of the transaction."

The Media Alliance and a coalition of other public interest groups that have consistently opposed Comcast/TWC will endorse the Florio proposed decision, but a "third camp" consisting of CalTel and other groups that have taken a neutral or less negative stance to the deal could be a wild card, Rosenberg said. The Writers Guild of America, West said in a statement that Florio's proposed decision "correctly recognizes that the merger would cause too much harm to Californians, and no conditions can effectively mitigate these harms." CalTel is still "not taking a position" on whether the CPUC should approve or reject Comcast/TWC but continues to believe that any CPUC approval of the deal should include conditions "that protect the wholesale market, said Executive Director Sarah DeYoung.

Tuesday's meeting will be important for all parties to "bring undecided commissioners on board" for or against Comcast/TWC, Rosenberg said. Commissioner Catherine Sandoval is likely to join Florio in voting against Comcast/TWC, while Commissioner Liane Randolph "may be less decided" on the deal than earlier believed, said an industry lawyer who has followed the CPUC's Comcast/TWC review. CPUC President Michael Picker and Commissioner Carla Peterman remain likely to vote in favor of Comcast/TWC but may have "softened" on the deal since a Feb. 25 all-party meeting (see [1502260060](#)), the industry lawyer said. The meeting is set to begin at 1 p.m. PDT. — **Jimm Phillips**

### **'Very Good Cross Talk'**

## **Questions Abound in DTS Withdrawal of Its ATSC 3.0 Audio Proposal**

LAS VEGAS—Questions abounded Monday about the DTS decision to abruptly withdraw its DTS:X object-based surround technology from the competition to pick the audio codec for the next-gen ATSC 3.0 broadcast system, despite assurances in a DTS statement that it wishes the ATSC 3.0 process well and will remain involved in its audio standards-setting activities.

"DTS believes strongly in the ATSC's vision for a next generation broadcast system to provide a new level of immersion, interactivity and personalization for broadcasters and consumers," spokesman Jordan Miller emailed us Sunday. "Based on this belief, we proposed the DTS:X solution for ATSC 3.0. We designed DTS:X to provide the highest quality consumer experience for today and into the future across a wide range of media delivery platforms. While we are confident DTS:X represents a complete technology package that would meet the broadcast needs of the ATSC and its constituents, we have made the decision to respectfully withdraw from consideration at this time to focus on opportunities in global markets and other forward-looking standards."

DTS looks forward "to remaining an active participant" in ATSC's S34-2 ad hoc group on ATSC 3.0 audio, "and ATSC as a whole, to ensure ATSC 3.0 achieves its vision of a high quality, forward-looking broadcast framework that supports choice and innovation for all," Miller said. "Respecting the confidentiality of the ATSC 3.0 process, we will provide no further comment."

Despite withdrawing DTS:X from ATSC 3.0 audio contention, DTS is still showcasing the immersive and personalized audio attributes of the DTS:X codec at its NAB Show booth on the upper floor of the Las Vegas Convention Center's South Hall. Though "it's unfortunate we had to withdraw" DTS:X from ATSC 3.0 consideration, the DTS:X display at the NAB Show is to trumpet the technology as well suited to a range of broadcast business models, David McIntyre, DTS vice president-corporate strategy and development, told us Monday at the booth. But he cited the "confidentiality" of ATSC proceedings in declining to answer all of our questions about the company's withdrawal of DTS:X, even simple questions, such as the date DTS informed ATSC management of its decision. McIntyre echoed the DTS corporate line when he said the company remains very supportive of the ATSC 3.0 process and will remain an active participant in its standards-making.

In Q&A during an ATSC 3.0 "tutorial" session Sunday at the NAB Show's Broadcast Engineering Conference, we asked Madeleine Noland, the LG consultant who chairs the S34 specialist group to which S34-2 reports, if she could explain DTS' withdrawal, which now leaves Dolby Labs and the MPEG-H audio consortium of Fraunhofer, Qualcomm and Technicolor as the only contestants. Onstage, she deferred to Rich Chernock, the Triveni Digital chief science officer who chairs the ATSC 3.0 effort, for an answer. With a smirk, Chernock, also onstage, replied with a polite "no."

Though it's characteristic of any standards-setting process that proponents will drop out along the way or merge their systems with those of other proponents, the DTS withdrawal is stranger than most. As recently as last month, all three ATSC 3.0 audio system proponents, including DTS, delivered their detailed system proposals on time by the March 9 deadline, marking the formal beginning of S34-2's review (see [1503100018](#)).

Late January, DTS broke its silence on DTS:X by confirming to us that the new object-based surround technology would be a "core component" of its ATSC 3.0 audio submission (see [1501220023](#)). But its statement then said DTS believes that ATSC 3.0 audio "should be a multi-codec choice and not a single mandatory solution." That's because "choice, innovation and competition are important to ATSC and broadcasters, and a framework for multiple audio codecs will be key to allowing broadcasters to choose the solution that best matches their needs," DTS said then. "This will ensure that ATSC can remain at the forefront of technology in the face of competing systems, and ensure consumer-electronics manufacturers are not beholden to a single, mandatory technology provider." It's anyone's guess whether DTS' advocacy for a multi-codec choice on ATSC 3.0 audio played any role in its decision to withdraw the DTS:X proposal.

ATSC 3.0, when it becomes a candidate standard by year-end 2015, will comprise "a number of documents," Chernock said in Sunday's tutorial session. ATSC's various specialist groups decided this would be preferable to releasing "a monolithic, very large document that will become impossible to maintain and revise and upgrade as time goes on," he said. "Expect probably four or five actual standards and parts." The first component of ATSC 3.0's physical layer, a "system discovery and signaling" document, went out for balloting April 8, Chernock said. Other documents, including separate ones for the physical layer's down-link and uplink components, which are in draft form, "will be coming along in their time, and all going through this process," he said.

ATSC 3.0's "next steps" besides "obviously completing the standard" will include developing "practical transition scenarios" and working on "business plans," Chernock said. "There's going to be a lot of new business opportunities. There's also a regulatory piece we're hoping will be small. But that's outside ATSC. It's not technical. It's being looked at by a lot of other people."

Chernock thinks there's "very good cross talk and cooperation between ATSC and CEA," he said.  
"There are a lot of CE manufacturers who are involved in actually writing the standards, and there's groups at CEA with close liaisons. So we're not fighting each other, we're working together." — **Paul Gluckman**

### 'They Call the Shots'

## Apple Biggest Nut To Crack in Landing FM Activations in Smartphones, NAB Says

LAS VEGAS—Apple is the biggest challenge in broadcasters' efforts to win more activations of FM chips in smartphones, said Skip Pizzi, NAB senior director-new media technologies, Sunday at the NAB Show.

A just-completed NAB analysis showed 19 percent of the smartphones sold in the U.S. in 2014 were "fully FM-enabled" and activated, most of them sold through Sprint, Pizzi said. But roughly two-thirds of the smartphones sold with FM chips embedded weren't activated, and of those, 75 percent were iPhones, Pizzi said in a Broadcast Engineering Conference session called "FM Radio in Smartphones: A Look Under the Hood." With the popularity of the iPhone 6, "those numbers keep going up," he said.

Apple's "a special case" in broadcasters' uphill struggle to win more FM activations in smartphones, Pizzi said. That's "because in the case of Apple, even when the carrier wants to enable the phone for FM, Apple doesn't make the hardware that way," he said. "They call the shots." For example, the iPhone that Sprint offers "is the one phone they sell that still doesn't have the FM on it," Pizzi said of the only major carrier that has signed on for FM activations and the NextRadio smartphone app that empowers them. "Sprint has enabled across their line the FM capability on pretty much all the phones they can get that to happen in." In all major brands of handsets offered by Sprint, "all their big sellers do have it, except for their iPhone," he said.

Emmis Communications, the prime mover behind NextRadio, has had direct contact with Apple executives trying to convince them to activate the FM chips in their iPhones and to buy into the NextRadio program, but to no avail, Pizzi told us later in an interview. "They play it pretty close to their chests with their cards," he said of Apple. "We have a lot of good contacts there, and they've worked with us on a number of things, but they're focused mostly on that iTunes model. For television, it's a different story. They're quite engaged with ATSC 3.0."

Emmis Chief Technology Officer Paul Brenner confirmed by email Sunday that "we have had some dialog throughout the last couple of years with people at various levels of upper management" at Apple. He said "other communication" with Apple "has been through our carrier partners at the implementation level and initiation of discussion through contacts in iTunes and Beats."

NextRadio's "efforts with consumer advocacy are interesting" in trying to drum up consumer support for FM activations in smartphones, Brenner told us. Nearly 40 percent of the 350,000-plus visitors to FreeRadioOnMyPhone.org are coming from owners of Apple devices and "taking action to notify Apple" that they want the FM chips in their iPhones to be activated, Brenner said. FreeRadioOnMyPhone.org is the website consumers are directed to in a series of 30- and 60-second commercial spots launched in February as part of a NextRadio "awareness campaign" with NAB support (see [150320031](#)). The website is run as a "collaborative effort" by American Public Media, the Educational Media Foundation, NextRadio and NPR. Apple representatives didn't comment. — **Paul Gluckman**

**'New Under the Sun'**

## Futurecast Now 'Complete, End-to-End' System for ATSC 3.0, Its Backers Say at NAB Show

LAS VEGAS—LG, GatesAir and Zenith are using the NAB Show this week to showcase how their year-old Futurecast physical layer proposal for ATSC 3.0 has been expanded to encompass a “complete, end-to-end sort of a system,” said Wayne Luplow, vice president at LG’s Zenith research and development Lab in Lincolnshire, Illinois, Monday in a media briefing at the GatesAir booth. “We’ve gone beyond where we’ve been before,” Luplow said.

As a measure of its progress, Futurecast is using an “off-the-shelf” LG 65-inch Ultra HD TV fitted with field-programmable gate array chips to do the video decoding inside the TV, Luplow said. “It shows you that we’ve moved forward in terms of getting stuff into TVs. It’s not quite product, but it shows you it can be done.” LG Vice President John Taylor said the new features of Futurecast leverage the WebOS 2.0 smart TV protocol built into the company’s consumer TVs to enable demonstrations of such features as emergency alerting.

Futurecast “is all about a robust delivery system, whether it is delivering to the home or to mobile devices or portable devices in the field,” said Jay Adrick, GatesAir technology adviser. “So we have the ability through coding that can be tailored to an individual application. The advanced coding is very flexible. You can code for high-bandwidth delivery, such as Ultra HD. You can code for narrower-bandwidth delivery to mobile devices, where you’re trying to run with much lower signal-to-noise levels.”

Following night-time field tests last fall in Madison, Wisconsin, that helped mold the “optimized system” being shown at the NAB Show, Futurecast will be field-tested starting next month in Cleveland, Adrick said. “We have a unique arrangement” with Tribune Broadcasting, which owns an interim 600-kilowatt station on Channel 31, he said. Tribune in Cleveland “moved back to Channel 8 at the end of the dual-carriage period in 2009, but the facility remained intact,” he said. “It’s been mothballed.” So GatesAir applied for a six-month special temporary authorization at the FCC, which was granted about three weeks ago, he said. “It will allow us to do 24/7 testing without having to worry about just overnight availability.”

The newly expanded Futurecast includes emergency alerting that triggers activation of the Advanced Warning and Response Network, the industry’s next-gen alerting system announced earlier in 2015 that’s “something new under the sun,” said John Lawson, a senior adviser to AWARN. The current U.S. emergency alert system is “out of date, it’s fragile and it’s insecure,” said Lawson, former president of the Association of Public TV Stations. It dates “to the beginning of the Cold War,” he said. “It’s been extremely important for the country, but it’s showing its age. It’s still based on an AM radio daisy chain. It’s a blunt instrument.” More-recently introduced wireless emergency alerts are based on 90-character text messages that “don’t prompt people to take action” during a crisis, he said.

AWARN solves many of the problems of the current systems and “can reach all kinds of devices,” Lawson said. “With AWARN, we can reach devices indoors, mobile, in-car devices—a whole range. It is capable of providing very robust, rich media content.” AWARN will feature alerting capability that’s “geographically targetable,” he said. “Consumers will have a lot of say over what levels of alerts they want to receive. So it’s really a big leap forward for the U.S. in terms of public alert and warning. We have attracted a lot of interest from public safety agencies at the federal and state level and expect to be working with them going forward. So we’re very excited that with ATSC 3.0, we’ve got all these robust capabilities.” — **Paul Gluckman**

**'We Do Not See 16K, 32K'**

## NHK Plans 8K Test Next Month of Whole 'Broadcast Chain' on 'Actual Satellite'

LAS VEGAS—NHK plans a Super Hi-Vision 8K broadcast test using “an actual satellite” during its annual Open House event May 28-31 in Tokyo, said Masayuki Sugawara, executive research engineer in NHK’s Science and Technology Research Labs, at the NAB Show’s Broadcast Engineering Conference Sunday.

The test next month is “an important step” in NHK’s “road map” to launch 8K transmissions in 2018 as a prelude to bringing wide-scale 8K commercial broadcasts to Japanese consumers in time for the 2020 Tokyo Olympics, Sugawara said. The test will encompass the whole “broadcast chain, from production to home receivers,” he said.

There have been “milestones every two years” in NHK’s quest to make commercial 8K broadcasts a reality by the end of the decade, Sugawara said. Each milestone has included “a large-scale sporting event,” such as the London Olympics in 2012 and the World Cup in Brazil in 2014, he said. The Olympics in particular long have been “a showcase for broadcasting technology,” he said.

Cable, satellite and IP-based transport systems will be the transmission formats NHK will use for experimental 8K broadcasts in 2016, “but it is desirable to introduce terrestrial in the future,” he said. “R&D on large-capacity transmission technologies for terrestrial broadcasting is ongoing,” Sugawara said. NHK successfully conducted a “long-distance transmission test” of terrestrial 8K last year using a “4096-QAM” modulation scheme, he said. In Q&A, Sugawara said 4096-QAM modulation is “quite different” from that of the current DTV system but is needed to achieve the comparable coverage area of existing DTV. “So that means we may have to change the network” to suit the new modulation scheme, he said. “But there is a strong desire not to change the current network, so we need more investigation.”

NHK sees 8K as “the ultimate format” for two-dimensional TV broadcast, “based on our own research on the human factors,” Sugawara also said in Q&A when asked if 8K represents the uppermost goal in NHK’s future road map. “So we do not see 16K, 32K,” he said, drawing laughter from the audience of engineers.

The Super Hi-Vision 8K platform will be built upon a structure that trumpets “more,” “better” and “faster” pixels, Sugawara said. From its commercial launch, its 7680 x 4320 resolution will support 120 Hz frame rates and 12-bit-based wider color gamut. Sugawara stopped short of saying whether NHK out of the gate will support full BT.2020 colorimetry, but said that under Super Hi-Vision 8K, color gamut will be “expanded so that almost all surface colors can be reproducible.”

High dynamic range “is a hot topic,” Sugawara said, but one he apparently wanted to steer clear of during his NAB Show presentation. “There are various points of view in the discussion,” but there was no “time” available during the talk to cover them all, he said. “So I would like to say simply that NHK is considering” how to include HDR in the future and “has a desire to introduce” HDR for Super Hi-Vision 8K broadcasts, he said.

For broadcasters reluctant to embrace new distribution technologies, “fear, uncertainty and doubt are dead-end roads,” said NAB Chief Technology Officer Sam Matheny in a conference keynote speech in which he spoke to the audience of engineers as if he were giving a motivational sermon. Those negative emotions “don’t get us anywhere, at least nowhere productive,” he said. “We need to believe in the virtuous cycle.”

Adopting new distribution strategies, “via website, mobile applications and social media, all serve to build” audiences for “our core broadcast services,” Matheny said. “These platforms feed and support one another. And with our core service, we need to embrace our strengths. We are wireless. We are locally targeted. We have nationwide coverage. And we have a one-to-many architecture. We need to take these strengths and combine them with new technologies like IP distribution, greater connectivity and big data, and leverage them to make us even stronger.”

Matheny is confident there’s “a very important and sustainable role for broadcasters to play in IP video distribution,” he said. “It is probably the one thing that has me the most excited” about ATSC 3.0, in that the next-gen system will use “IP-based transport that will set us up for success in so many ways, from how we can integrate with new distribution partners to the types of devices that will choose to build in broadcast receivers,” he said. — **Paul Gluckman**

## Capitol Hill

The Senate Commerce Committee must redouble its policy efforts involving spectrum and the IP transition, Commerce Committee ranking member Bill Nelson, D-Fla., told Comptel Monday. He spoke on net neutrality (see [1504130053](#)) and other topics at the group’s meeting in Orlando. Nelson praised the FCC’s recent AWS-3 auction and planning for the broadcast TV incentive auction. “Yet we cannot rest on our laurels when it comes to spectrum. Continued public and private technological development will continue to put strains on our spectrum resources going forward,” Nelson said, according to his prepared remarks. “Congress, the FCC, and the rest of the federal government must work together to develop a smart, forward-looking spectrum policy for the nation.” The IP transition “must not jeopardize consumers, both residential and business, and it must preserve room for competitive players to continue to serve customers,” Nelson also cautioned. He urged Congress and the FCC “to promote competition in communications services and applications,” and in any Communications Act “rewrite” Congress “must make sure to continue to foster a competitive market for communications services, much as we did when Congress developed the Telecommunications Act of 1996,” he said.

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Sen. Marco Rubio, R-Fla., wants to be the GOP nominee for president in the 2016 election, he announced Monday. He [told](#) ABC News Monday he would be able to lead the U.S. as president and is the most qualified candidate for president. He was scheduled to deliver a speech in Miami Monday night, widely believed to be a formal announcement that he’s running. Rubio is a member of the Commerce Committee and repeatedly has expressed intentions to deal with wireless issues through legislation, such as reallocation of government spectrum and the inquiry into sharing in the upper 5 GHz band. He has also slammed the FCC’s net neutrality order, as have other GOP candidates. Hillary Clinton, a former secretary of state, senator from New York and first lady, will seek the Democratic nomination, she said Sunday.

## Wireline

The FCC’s letter-of-credit requirement for rural broadband experiment funding recipients shouldn’t be implemented for CAF, Phase II funding, NTCA said in [comments](#) posted Monday in docket 10-90. The organization had filed an emergency petition seeking a waiver of the RBE requirement for an LOC from a

“‘top 100 bank,’” NTCA said. Those responding to the proposal have unanimously agreed the requirement should be changed and “should not be ported over” to CAF bidding, “if these programs are to have any chance for success,” NTCA said. The requirement is “overly burdensome and impractical, if not impossible—particularly for smaller entities obtaining relatively smaller awards,” the group said. A “deeper look at the specific track records of individual would-be CAF recipients is just as (if not more) important [as] any LoC obligations,” and a preference for funding should be given to those with a “demonstrated history of actual performance in or near the areas they propose to serve,” the group said.

## Wireless

The FCC Wireless Bureau Monday denied a request for a waiver by Spectrum Networks Group (SNG) so subsidiary M2M Spectrum Networks can offer a third-party service providing machine-to-machine communications using 900 MHz Business/Industrial/Land Transportation channels. When the bureau sought comment last summer, the Enterprise Wireless Alliance (EWA), Motorola Solutions and the Utilities Telecom Council raised concerns, (see [1408130033](#)). SNG responded, arguing that “the record provides clear evidence that M2M is able and ready to deploy its network with dispatch.” SNG’s applications request a total of more than 2,000 channels in approximately 150 of the 186 basic economic areas, “including the last remaining 900 MHz B/ILT channels in most of the top-ten markets where channels are still available,” the bureau said. “It also intends to seek additional 900 MHz B/ILT channels after it satisfies the loading requirements on its initial channels. Grant of the waiver request could thus have a significant effect on the nature of the 900 MHz B/ILT band. We are reluctant to grant waiver requests that effectively circumvent the Commission’s rulemaking function.”

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Local governments don’t generally do a good job regulating small cells and distributed antenna systems (DAS), said Jonathan Kramer, principal attorney-Telecom Law Firm, Monday during a webinar hosted by NATOA. “We don’t regulate buzzwords and we don’t regulate technology,” he said. “We’re not allowed to regulate technologies under federal law, but we are, and should, be regulating community aesthetics.” As wireless companies move away from using cell towers, they will need to install tens of thousands of small cells and DAS in communities to continue to have good coverage, which gives those companies and municipalities a chance to work together, said Gabriel Garcia, director and senior counsel-CPS Energy. The carriers will need citywide installation sites, access to poles, electricity connections, fiber backhaul, predictable city procedures and right-of-way permitting, he said. Wireless carriers will want cities to have rights of way throughout the city, their own traffic light poles, fiber lines along rights of way and control of rights of way outside the zoning process, Garcia said. A license agreement needs to benefit both parties, he said. “The general bargain is that the local government would grant a master license for the provider to install small cells or DAS anywhere in the city,” Garcia said.

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The FCC Wireless Bureau posed questions Monday to both Cellular Network Partnership (CNP) and KanOkla Telephone Association, which have asked for the FCC’s blessing on a deal in which KanOkla would sell three lower 700 MHz C block licenses in Oklahoma to CNP. The letter to CNP asks for details on the company’s plans, “including the timeline, to provide fixed broadband or any other service using the spectrum that it would acquire under the Proposed Transaction.” The CNP letter notes that in two of the license areas CNP already has 47-59 MHz of below-1-GHz spectrum and the deal would increase its concentration to 51-71 MHz. “Provide a detailed explanation of why this additional concentration of below-1-GHz

spectrum, specifically, would not preclude rival service providers and potential new entrants from expanding or entering into these two markets, and how its acquisition is necessary to enhance or expand services to the Company's customers," the letter said.

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The American Gas Association and Edison Electric Institute's Feb. 12 [petition](#) for expedited declaratory relief from the Telephone Consumer Protection Act (TCPA) is "overly broad," said NARUC in [comments](#) posted Monday in docket 02-278. AGA and EEI's petition asks the agency to confirm that when a customer provides a telephone number to an energy utility, it constitutes "'prior express consent'" to receive autodialed or recorded nontelemarketing informational calls. NARUC agreed utilities should be allowed to send notifications about outages and restoration of service, and with "summer storms on the horizon," the agency should immediately declare that those calls are exempted from TCPA as calls made for emergency purposes. But an exemption should be limited to those calls, the filing said. Wireless customers "should not have to pay for other communications from utilities that they may not wish to receive," according to NARUC.

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The FCC Public Safety Bureau released a public notice offering what it said was further clarity on the process by which it will accept applications for expanded coverage or additional channels from public safety licensees that decide to remain in the 800 MHz Expansion Band, at 815-816/860-861 MHz. The applications will be "subject to pre-coordination" and will be accepted only on or after a filing date established by the Public Safety Bureau and the Wireless Bureau, upon completion of band reconfiguration in each National Public Safety Planning Advisory Committee region, the bureau [said](#).

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The FCC released the agenda for its workshop with NTIA on a model city program on spectrum sharing technologies. The [workshop](#) kicks off Wednesday at 1 p.m. at FCC headquarters. It continues the next day with remarks scheduled by FCC Chairman Tom Wheeler. The workshop will "explore different aspects of the Model City including the concept, scope, governance, process, technical considerations and funding alternatives," the FCC said Monday. The program was recommended in a report by the President's Council of Advisors on Science and Technology (see [1404070044](#)) and would pick one or more cities that agree to streamline regulations to allow for more ready testing of innovative uses of spectrum. City officials in Chicago and Washington, D.C., told the FCC last year they would be interested in taking part in the program (see [1409030034](#)).

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The FCC Wireless Bureau sought comment on an April 1 request by AT&T for permission to use Power Spectral Density (PSD) measurements in complying with the commission's radiated power limits for 800 MHz cellular operations in parts of Missouri. "AT&T specifically proposes a PSD limit of 250 watts/MHz in non-rural areas and 500 watts/MHz in rural areas, and includes a study that purports to show that implementing PSD-based power limits in the Cellular Service would not cause harmful interference to public safety deployments," the bureau [said](#). The bureau asked for comment "particularly with respect to any potential adverse impact on public safety operations in the adjacent bands and neighboring Cellular licensees." Comments are due April 30, replies May 11. The FCC asked similar questions in a November [further NPRM](#) focused on further streamlining cellular service rules.

## Intellectual Property

House Judiciary IP Subcommittee ranking member Jerrold Nadler, D-N.Y., and Rep. Marsha Blackburn, R-Tenn., said Monday that they were filing the Fair Play Fair Pay Act, as expected (see [1504100044](#)). The bill would require most terrestrial radio stations to begin paying performance royalties and would require digital broadcasters to begin paying royalties for pre-1972 sound recordings. The bill would also require satellite broadcasters to pay royalties at market rates. “The current system is antiquated and broken,” Nadler said during a news conference in New York to announce the bill. “It pits technologies against each other and allows certain services to get away with paying little or even nothing to artists.” The bill contains carve-outs for college radio stations and radio stations that report revenue of less than \$1 million per year. Stations with less than \$1 million annual revenue would pay a maximum of \$500 per year in royalties, while college radio stations would pay a maximum of \$100. The carve-outs are meant to prevent major broadcasting companies from using small radio stations as a reason for members of Congress to vote against the bill. MusicFIRST Executive Director Ted Kalo praised the bill’s introduction, saying in a statement that “fair market value for music will encourage creativity by music creators.” The bill will also “promote innovation among music services,” he said. The NAB and the Digital Media Association said Friday that they would oppose the bill.

## Broadcast

The FCC should provide immediate, short-term help for AM broadcasters for AM revitalization, Commissioner Ajit Pai said in a [statement](#) Monday. Pai applauded Chairman Tom Wheeler’s announcement that he will circulate an item addressing AM revitalization (see [1412040059](#)) in the next few weeks, he said. “There is nearly unanimous support in the record for the ideas put forward by the Commission under Acting Chairwoman [Mignon] Clyburn’s leadership,” Pai said. The commission should work on these proposals in the next months, he said.

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SES is partnering with broadcast and TV “technology innovators,” including Sony, at this week’s NAB Show to build a “full end-to-end” Ultra HD transmission system and deliver three days of “live and linear” Ultra HD broadcasts to a cable system on the floor of the show, it said in a Monday [announcement](#). Sony is contributing content and Bravia 4K TVs to the project, SES said. Other partners include Harmonic, PacSat, Sinclair, Superior Satellite Systems and TelVue, it said. PacSat is providing uplink services from a truck parked next to an SES Ultra HD studio at the front entrance of the Las Vegas Convention Center’s South Hall, it said. “A mix of pre-produced content, feature coverage of events throughout Las Vegas, and live interviews with Hollywood and television celebrities and executives will be broadcast in Ultra HD to a fully operational cable system in the SES NAB booth” in South Hall, it said. NAB attendees “will be able to watch the live Ultra HD broadcasts” when they visit the SES, Harmonic and Sony booths, it said.

## Communications Personals

**Andre Fernandez**, ex-Journal Communications, named president of CBS Radio, succeeding **Dan Mason**, who announced his retirement ... Frontier Communications promoted **Kevin Wallick** to senior vice president-general manager, West Virginia market ... **Matt Mandel**, ex-Glover Park Group and House Communications Subcommittee, becomes PCIA head of legislative affairs, effective immediately ... **Anthony Molae** was promoted to director-digital programming and operations, iHeartMedia New York ... Lobbyist registrations: the **Data Transparency Coalition**, registering on behalf of itself, effective April 1 ... MicroLink Devices, **Strategic Marketing Innovations**, effective Jan. 1 ... Millennium Films, **Heather Podesta + Partners**, effective March 16 ... Motorola Solutions, **The Glover Park Group**, effective March 2.