

# Communications Daily

The authoritative news source for communications regulation



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### In This Issue

Today’s *Communications Daily* features a comprehensive Special Report, “Telecom M&A: Competition and the Consumer,” exploring the effects — both positive and negative — of industry mergers and acquisitions and technological change both in the U.S. and Europe. (See page 4.)

**Beyond What STELAR Required****Draft Retrans NPRM Eyes Blocking of Broadcast Programming Streams, Including Online**

A lengthy list of retransmission consent practices, from broadcasters ceding negotiating rights to tying arrangements, could be up for examination if FCC commissioners sign off on a draft NPRM circulated last week (see [1508120051](#)), an informed person said.

While Congress directed the agency to review its totality of circumstances test for good-faith negotiations as part of the Satellite Television Extension and Localism Act Reauthorization (STELAR) Act, the rulemaking would go further, asking whether those practices also constitute a per se violation of “good-faith” negotiating, said the person. If a practice is found to be a per se violation, any individual action by itself would be a violation, while under the totality of circumstances test, the FCC would look at that action and others to see whether they add up to a good-faith violation, said the person. “Congress gave the FCC a limited directive and it appears that the chairman is intent on taking it much further, as he did just recently by declaring the entire nation effectively competitive, enabling big cable operators to raise prices without consequence,” NAB said in a statement. “It’s disappointing, but we are confident that the Commission will see that the pay TV industry is using the commission as its next stop in trying to increase its bottom lines with no discernable benefit to consumers.”

Practices being questioned include blocking the online streaming of broadcast programming, network involvement in retrans negotiations, bundling practices, tying arrangements and ceding retrans negotiation rights to a third party, said the source. The list of practices was culled from a variety of sources, such as petitions made to the FCC and ex parte meetings with industry representatives, the informed person said.

Such an NPRM is likely to be voted on favorably by all five commissioners, because the totality of circumstances proceeding was mandated by Congress, and dissent from NPRMs is relatively rare, said one cable attorney.

Almost since STELAR passage, multichannel video programming distributors and broadcasters have squabbled over questions of bad faith through numerous filings in docket 10-71. MVPDs have pushed the FCC to declare such actions as blacking out marquee events, stopping import of an out-of-market signal and charging for subscribers who don’t receive a broadcaster’s service as per se bad faith (see [1507170048](#)). In an ex parte filing posted Friday, the American Cable Association [said](#) ACA President Matt Polka, in a meeting with Jessica Commissioner Rosenworcel, urged the review “be wide ranging and that rules be adopted expeditiously.”

In its own ex parte filing posted Friday, the Independent Telephone & Telecommunications Alliance [said](#) President Genny Morelli, in a meeting with Maria Kirby, legal adviser to Chairman Tom Wheeler, urged that the agency tentatively conclude a failure to negotiate in good faith includes such actions as failure to make an initial contract proposal at least 90 days before the existing contract expires; prevention of an MVPD from disclosing to the FCC or other pertinent public entity the rates and terms, and conditions of

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a contract proposal or agreement in connection with a retrans consent complaint; and price discrimination among MVPDs in a market unless legitimate economic benefits can be demonstrated. When asked Friday about the draft NPRM, NCTA declined to comment.

The FCC typically hasn't involved itself much in good-faith negotiations “beyond using its bully pulpit” to urge the sides to reach a deal, Wilkinson Barker broadcast attorney David Oxenford [said](#) in a blog post Thursday. While only cable operators have been found guilty of bad-faith negotiating in the past, pay TV “has long sought to alter the traditional meaning of ‘good faith’ in an effort to limit certain negotiating tactics,” he said. — *Matt Daneman*

### 'Another Critical Step'

## **US Reaches Agreement With Canada on 600 MHz Band Plan After TV Incentive Auction**

The U.S. and Canada finalized a Statement of Intent (SOI) establishing both a framework and timeline for repurposing TV spectrum for mobile broadband on both sides of the border, [said](#) Gary Epstein, chairman of the FCC Incentive Auction Task Force, Friday in a blog post. Industry officials said last month Canada had released a Consultation on Repurposing the 600 MHz Band last year and was on its way to addressing a post-incentive auction world (see [1507220071](#)).

The FCC already has worked out a similar agreement with Mexico and has exchanged technical letters (see [1507240051](#)), but hasn't released the details. The Mexico details are expected to be released shortly, an FCC official said Friday.

“Today we are pleased to announce that we concluded another critical step in our efforts to harmonize our TV and wireless spectrum bands with Canada in preparation for the 2016 Incentive Auction,” Epstein said. “This follows the similar results we reached with Mexico last month.”

The process of reaching an agreement is slightly different with Canada than it is with Mexico, FCC officials said, and includes an SOI rather than an exchange of letters. The statement sets forth a framework and timeline on repurposing TV spectrum for mobile broadband “on both sides of the border,” Epstein said. He said the U.S. and Canada worked out a similar SOI before the start of the DTV transition.

“As part of the Decision, Industry Canada will adopt the same 600 MHz Band Plan that the FCC adopted last year,” Epstein said. “Industry Canada and the FCC will jointly repack TV stations on the same timetable. Joint repacking will produce significantly increased benefits and a better result for both countries, making more broadband spectrum available than if each country proceeded independently.” Mutual cooperation also “significantly reduces potential interference to future wireless operations in the border region,” he said.

“This will allow FCC to reduce interference from Canadian broadcast stations in the border region,” said Scott Bergmann, vice president-regulatory affairs at CTIA. “We continue to encourage the FCC to minimize domestic impairments whenever possible as well because more ‘clean’ spectrum is important at the border and throughout the country to meet growing consumer demand for mobile broadband.” — *Howard Buskirk*

*(continued on page 32)*

A **Communications Daily** Special Report

# Telecom M&A: Competition and the Consumer

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## Effects in Europe, US

### Communications Daily Special Report Finds Risks and Rewards of M&A, Tech Change

Higher prices. Lower customer satisfaction. Risk of disclosure of personal information that consumers thought would be kept private. Those are just some of the negative outcomes of years of mergers and acquisitions in the media, telecom and Internet sectors.

Articles in the following *Communications Daily* Special Report explore those and other side effects—both positive and negative—of industry M&A and technological change in the U.S. and Europe. Some of the trends clearly have been bad for consumers. RadioShack, which filed for bankruptcy and transferred some assets to Sprint, is among the companies that faced customer upset on privacy policies over its now-aborted plan to sell customer information. Katie Rucke reports that other companies may be in the same bind if they are acquired, unless they make changes now (see [1508060009](#)). Sprint didn't buy any information about customers from RadioShack, said a spokesman for the carrier.

And in Europe, some wireless-service prices have been rising and Dugie Standeford reports that some fear they will increase more with further consolidation, (see [1508030002](#)). That has led to more regulatory scrutiny. In the U.S., customer satisfaction for pay-TV and broadband services is lower than for any other U.S. industry, experts tell Jonathan Make. They partly blame M&A (see [1507220074](#)). Amid concern about broadband concentration, the FCC and Justice Department signaled that they would try to block Comcast from buying Time Warner Cable, scuttling that deal worth about \$66 billion but then spurring Charter Communications to agree to buy TWC.

In Charter's deals, broadband likely will play a key role in regulatory reviews, Matt Daneman reports (see [1508140001](#)). But Charter took the teeth out of some complaints made on other deals from the

likes of Netflix by agreeing to certain Internet conditions before seeking government approval. Among telcos, mid-sized carrier acquisitions are credited by some with boosting broadband deployment and bringing greater wireline focus to the benefit of customers, David Kaut reports (see [1508140026](#)).

Consolidation has affected others besides consumers. For law firms, M&A and technological change have transformed their practices, Howard Buskirk reports (see [1508140023](#)): It's more competitive, clients are fewer and it can be harder for young attorneys to establish their practices. On Capitol Hill, M&A has kept lawmakers busy scrutinizing deals, John Hendel reports (see [1508140030](#)). And consolidation coupled with other changes also has affected state regulators. Samantha Madison reports that their role is shrinking when it comes to reviewing telecom deals and in some states it never was great to begin with (see [1508140026](#)).

The broadcast TV industry is facing a unique force for consolidation in the incentive auction, Monty Tayloe reports (see [1508140029](#)). Some of those that will remain will see opportunity after the spectrum is sold to the FCC by broadcasters and then bought by wireless carriers, while others fear a loss of the little diversity remaining in broadcast TV. Meanwhile, as other companies combine, Jimm Phillips reports, cybersecurity increasingly is a consideration because merging companies want to avoid cyberattacks and the hit their reputations will take in consumers' minds (see [1508140033](#)).

M&A isn't all bad, though. Some believe that the U.S. should allow more wireless consolidation and that the Obama administration's preventing AT&T from buying T-Mobile and Sprint from joining with T-Mobile was a mistake, reports Howard Buskirk (see [1508130027](#)). But still others, including those representing the likes of Sprint and T-Mobile, said wireless consolidation has hurt consumers and carriers alike.

## **'Extraordinarily Busy'**

### **As Consolidation Continues, Law Firms Find They Must Adapt to Changing World**

Industry consolidation has been underway for decades and its challenges for the communications bar are nothing new, communications industry lawyers said. Law firms face steady pressure to keep the rates they charge low and, as companies expand, many take routine matters "in-house," the attorneys said. But the attorneys also said technological evolution, including the explosion of wireless, has meant new areas of practice and new clients seeking representation.

"There's a lot of new people coming into the field, a lot of new technologies," said Richard Wiley, head of the communications practice at Wiley Rein, which he founded after he was FCC chairman. "We've been busy. When consolidation occurs and you lose a client as a result, it's always going to have an impact on you. ... Sometimes you're lucky and your client is the acquirer." Major FCC spectrum auctions—especially the pending TV incentive auction—have provided work for many law firms, Wiley said. The FCC has been busy in a lot of areas, he said. "Some you might like and some you might not like, but there's a lot of action."

Getting established at a law firm is difficult for young lawyers in all areas of practice, not just communications, Wiley said. "A lot of clients don't want to see first-year people working on their matters. Firms have to work hard to develop their younger people." In general, "it's been more difficult for a lot of firms in recent years," Wiley said. Many companies have taken work inside, he said. Clients are "tougher on rates,"

he said. “There [are] a lot of billable hour questions, whether you want to go to alternative fee arrangements.” Law firms have to be “nimble,” he said. “You do see clients expecting law firms to run as they do as businesses, watching the dollar and making sure they’re getting value for the money they’re spending.”

The business is “episodic,” said Steven Lerman, managing partner at Lerman Senter. “When you look at radio, in the old days before [the FCC] changed the multiple ownership rules there were dozens and dozens of owners if not hundreds of owners, and they were more local too,” he said. “Then we saw consolidation, massive consolidation.” Television has seen a little less consolidation because of the national cap. “Overall, there are fewer clients on the broadcast side for sure,” he said. “For law firms, there is some luck involved. It can be who your client merges with.” Other areas have seen growth, Lerman said. The firm represents ISPs and utilities, for example, and both are a “vibrant” arena with lots of regulatory work they need done, he said. “It’s all billable hours,” he said.

“When I started practicing in 1972, it was what they called common carrier and broadcast, that’s all there was,” Lerman said. “Now there is wireless and a host of other disciplines.” There are different and “bigger issues” like net neutrality or the incentive auction and the reallocation of spectrum, he said. “We didn’t have that in the old days,” he said.

“Of course, consolidation within an industry can mean more competition for fewer clients, but consolidation in the communications industry has been coupled with disruptive entrants, new business models that dismantle old silos, more regulatory scrutiny, players with the power and resources to fund significant new technologies and innovation, and an explosion of new, complex and very interesting business,” said Davis Wright cable attorney Paul Glist. “Maybe we don’t have 100 [sizable] cable companies anymore, but now we have 165 lawyers working on Internet, privacy, wireless, mobile payments, online infringement, tech licensing, compliance, and litigation and working with a host of other clients who thought they were just bricks and mortar but now realize they need communications/media/intellectual property assistance from firms that have spent decades in the field.”

The practice of law has gotten more complex for communications lawyers, Glist said. “We always needed to understand the technology, business and policy around companies to provide value-added legal service, but now we have to assemble and apply an even wider set of expertise, and an entrepreneurial spirit of innovation, as technologies and businesses converge,” he said. “And of course, more work is done in-house in large companies, so outside legal counsel has to consistently deliver extraordinary value.”

### **In-House Counsel**

As companies grow and consolidate, they tend to rely more on their own legal staff rather than outside firms, said John Hane, attorney at Pillsbury. “That means less ‘commodity’ day-to-day compliance work to be done by relatively younger associates,” Hane said. “There is a lot of competition for that commodity work, because several firms can do it.” As communications law has gotten more complex, a bigger premium is placed on experienced attorneys who can work across multiple areas of communications law, he said. “Both the deals and the policy work are much more complicated,” he said. “That work isn’t commodity and there’s far less competition for it. Clients look for specific experience or lawyers they trust, when specific experience doesn’t exist. That happens more and more often. Very little of my work is routine these days. I feel like I’m breaking new ground almost every day.” The trade-off is that it’s difficult for new lawyers to break into the field, Hane said. “Like many other areas of law practice, the ratio of associates to partners has declined.”

“Looking back over 20 years, one major change has been the expansion of in-house regulatory departments as telecommunications companies have grown in size,” said Carl Northrop, founding partner of Telecommunications Law Professionals, a boutique law firm. “One result has been that much of the routine regulatory work that used to be done by outside communications firms now is done in-house,” he said, citing such areas as routine FCC applications, comments in rulemaking proceedings and annual reports. “This has been both a curse and blessing for telecommunications law firms,” Northrop said. “On the downside, there is less regular recurring ‘bread and butter’ work,” he said. “On the upside, the work that outside firms get asked to do is more interesting and important to the client.”

Consolidation certainly has had an impact on the communications bar, Northrop said. “One major motivation for mergers is to achieve cost synergies and there are synergies to be gained in legal budgets when two law firms can be replaced by one, or when work that used to be done by outside firms can be done in-house,” he said. “One way that communications law firms have adapted is to broaden the base of companies they represent. Instead of focusing solely on regulated companies as clients, the practice expanded to include companies that provide goods and services to telecom companies.” Technological change has also had a major effect, he said. “Not that long ago, the wireline telephone business, over-the-air broadcasting, paging service and CLEC services were flying high,” he said. “The advent of wireless broadband, cable and satellite services changed the landscape dramatically and, along with it, lawyers and law firms aligned with old technology companies needed to adapt. One major form of adaptation has been to broaden the range of services provided. In addition to traditional regulatory work before the FCC, communications attorneys now handle transactional work, federal, state and local litigation involving telecom companies and lobbying work.”

Michele Farquhar, leader of the communications practice at Hogan Lovells, said the size of the firm’s communications group has tripled in just two years. “There are more opportunities to work for new and existing technology, media and telecom companies focused on delivering cutting-edge and converging services, especially for global firms that can handle questions involving several markets at the same time,” she said. “These companies expect outside practitioners to be their partners—we need to understand their businesses and technologies in addition to bringing regulatory, legal and strategic insights to handle increasingly complex issues.” The critical infrastructure, healthcare and transportation industries, plus utilities, seek communications counsel, Farquhar said. “The FCC is moving faster, companies expect rapid responses and outside counsel are problem solvers, and the problems are far more challenging.”

“Our firm is busier than at any time since it was founded almost 20 years ago,” said Scott Harris, chairman of Harris Wiltshire. “While there has certainly been industry consolidation, the new technologies and services that have been developed in that time have brought many new companies into the communications sector. In fact, many of our largest clients didn’t exist 20 years ago. In addition, these new entrants tend to use outside counsel more than some of the legacy telecom companies did. Finally, because we see so many new companies developing new technologies and services, the nature of the practice has changed. It is less rote, and requires far more creativity and strategic thought than it once did.”

“The current FCC continues to be extraordinarily busy, and that keeps the entire communications bar busy,” said Natalie Roisman, partner at Wilkinson Barker. “The commission’s high level of engagement includes an expanded regulatory reach. As a result, more types of clients are touched by the work of the FCC, and this creates an increase in demand for communications-related legal services, which presents increased opportunities for all communications practices. We have found this to be especially true for boutique firms, which are ideally suited to attract both cost-conscious clients and lateral talent.”

Robert McDowell has been back in the practice of law for just under a year after seven years as a member of the FCC. “New companies and ideas are springing up every day,” said McDowell, at Wiley Rein since last September. “The expansion of this economic sector is sparking [merger and acquisition] activity as well as capital formation and legal work. While the market’s evolution can be disruptive to old business models, it offers terrific opportunities for professionals advising this space—be that law, investment banking, venture capital, private equity, economic consulting or engineering. Opportunities abound for those who are willing to adapt on a daily basis.” —*Howard Buskirk*

## Good State Reviews

### **Frontier Leads Midsized Telco Charge To Bulk Up, Sharpen Wireline Focus**

Midsized telco wireline system acquisitions have produced broadband deployment and sharpened the landline consumer focus in affected states, telcos and interested parties said. Frontier Communications’ takeover of Verizon (and AT&T) systems and CenturyLink’s takeover of Qwest generally receive good marks from state regulators, consumer advocates and others for completing difficult transitions and fulfilling most service obligations. But it’s not clear if FairPoint has recovered after choking on Verizon New England systems that increased its size sixfold; there is concern about Frontier’s pending acquisition of Verizon systems in California, Florida and Texas; and the sustainability of wireline telco business plans is in question.

There’s a consumer rationale to the midsized telco acquisitions, despite AT&T and Verizon scoring higher than CenturyLink and Frontier in most customer rankings issued by the American Customer Satisfaction Index, *Consumer Reports* and J.D. Power. It makes sense for CenturyLink and Frontier to be “specialists serving rural America” because “the Bells didn’t do a very good job,” said Mark Cooper, Consumer Federation of America research director. While Verizon and AT&T pursue wireless growth, Frontier remains committed to upgrading wireline networks and operations. In buying Qwest, CenturyLink has brought renewed emphasis to serving consumers, CenturyLink Senior Vice President John Jones said. (For more on the CenturyLink and FairPoint takeovers, see separate story [1508140028](#)).

By approving midsized telco acquisitions, the FCC and state regulators seem to accept the wireline-focus thesis. But they often have imposed conditions intended to protect consumers and promote competition through broadband expansion, retail and wholesale performance standards, and other duties. The FCC also required AT&T to extend fiber to 12.5 million customer locations in its DirecTV buy (see [1507280043](#)).

When it bought Verizon systems in 14 states in 2010, Frontier was required to meet FCC metrics for broadband deployment and operating support system (OSS) functions, and honor interconnection and wholesale arrangements. Frontier was required to offer 4/1 Mbps to 85 percent of in-region housing units by 2015. “That was an aggressive commitment because 38% of the households lacked any broadband access and 50% ... did not have speeds greater than 3 Mbps,” Frontier CEO Daniel McCarthy [told](#) the FCC Tuesday. “We met that commitment, continued investing and today 83% of our customers across all of our markets have speeds of 6 Mbps or greater and we have extended broadband to over 1.2 million households.” He committed Frontier to providing 25/2-3 Mbps broadband to 750,000 households across its footprint by 2020, including in California, Florida and Texas, if the current deal is approved. This would be coordinated with Frontier’s drive to deliver 10/1 Mbps to 650,000 households and businesses by 2020, backed by \$283 million in annual FCC Connect America Fund (CAF) subsidies, McCarthy said.

## Progress in States

Officials in the 14 states where Frontier bought systems welcomed its wireline commitment, though some acknowledged they initially had concerns. “We were concerned they were biting off too much in tripling the size of their company,” said Brian Thomas, acting policy director of the Washington Utilities and Transportation Commission. But Frontier was “scrappy” and Verizon wanted out, he said. “It’s gone pretty darn well since Frontier took over.” He said Frontier had met WUTC investment and broadband deployment conditions and made OSS changes—without “marked changes in outages or service quality” and with fewer complaints (dropping from 188 in 2009 to 83 last year). “Consumers have been better off under Frontier,” he said. “They’re not milking it. They’ve competed aggressively.”

The Illinois Commerce Commission removed conditions July 28 after finding Frontier had offered good service quality, converted billing OSS “virtually seamlessly” and invested over \$211 million through 2013 (above a \$40 million requirement) in delivering broadband to at least 155,000 consumers.

The Public Utilities Commission of Ohio (PUCO) imposed conditions on Frontier for broadband deployment, capital investment, basic phone rates, and wholesale performance and interconnection. Since then, other than Frontier’s failure to meet a customer service repair metric (one of four Ohio performance standards), there have been no significant problems, a PUCO spokesman said.

In West Virginia, Frontier said it had made some form of broadband available to 188,000 additional households since July 2010, pushing broadband availability to 90 percent in the former Verizon areas. Frontier made \$453 million in capital expenditures (exceeding a \$279 million state requirement), helping reduce network troubles by 41 percent and customer complaints by 70 percent, it [said](#).

When Frontier acquired 12 small Verizon exchanges in California, only 4,200 of 17,700 households had broadband available, but now 14,700 do, Frontier [told](#) the FCC. More broadly, Frontier [detailed](#) its efforts to provide broadband to remote areas in various former Verizon states.

The 14-state Frontier-Verizon deal “turned out to be a positive,” said Debbie Goldman, telecom policy director of the Communications Workers of America, which had opposed the deal at the time and is currently locked in a contract dispute with Verizon. “It appears Frontier is committed to investing in landlines.”

## Dispute, Glitches

But The Utility Rate Network (TURN) in California and two other consumer groups said Frontier was “disinvesting” in its network. “In each of the years 2011-2014, Frontier invested far less in its network than it depreciated,” TURN [said](#) in FCC comments, citing Frontier SEC filings. Frontier and Verizon disputed TURN’s criticism. “It would be irrational for Frontier to ‘disinvest’ in broadband,” they [said](#). “TURN’s theory is premised on a mischaracterization of Frontier’s capital expenditures-to-depreciation ratio that fundamentally misunderstands the evolution of the communications industry, and particularly the [ILEC] business,” they said. “The ratio of capital investment to depreciation is a reflection of a shrinking legacy customer base that can be served more efficiently with more economic, modern equipment.”

Frontier did have problems in Connecticut, where it bought AT&T’s wireline systems in 2014. The transition “was really bumpy,” Connecticut Consumer Counsel Elin Swanson Katz said. “They admitted

they had understaffed call centers and were unprepared,” she said: “It led to a record number” of video, phone and Internet complaints of up to 9,000. Frontier reported about 3,000 customers lost service, she said. Frontier lost customers because people got tired of waiting for service to be restored or being put on hold, she said. The good news is “most of us who dealt with Frontier felt like they were pretty earnest in trying to address the problems quickly,” she said. Things settled down and complaints dropped off by December, “but the ones who were still around were really angry,” she said. Frontier “lost credibility and first impressions are important.”

The Connecticut transition “overall was successful and did not result in prolonged or systemic problem[s],” Frontier told the FCC. “The few issues that did arise were ... largely attributable to the unique aspects of transitioning AT&T U-verse services.”

“Frontier has a strong track record of addressing service quality and reliability, public safety communications and customer satisfaction in the territories it acquired, including the 2010 Verizon territories,” the telco said in a statement to us. “Frontier has been successful in these areas because of its managerial and technical experience combined with the Company’s clear emphasis on and commitment to wireline networks and services.”

### California Fight

Frontier has 4 million customers, including 2.3 million with broadband, and wants to buy Verizon wireline systems in California, Florida and Texas with 3.7 million voice connections, 2.2 million broadband (DSL and FiOS) connections, and 1.2 million FiOS video connections, the companies [said](#) in their FCC application. Frontier believes the transaction will “achieve substantial efficiencies, promote competition, and benefit customers.” Frontier projects about \$700 million in annual cost savings by the third year after closing, mostly from administrative consolidation. The companies said the three-state transition from Verizon “is far simpler” than the previous 14-state transition. Not only are there fewer states, but Frontier now has much experience with “similar OSS and billing systems,” the telcos said. If the deal is approved before Dec. 31, Frontier [expects](#) to tap new CAF support in at least California and Texas.

The CWA believes the FCC should approve Frontier’s takeover because it “serves the public interest in good jobs, quality services, and broadband expansion,” Goldman [told](#) the FCC Aug. 4. “Frontier is also interested in taking CAF money, where one suspects Verizon is not. So that’s a positive for rural areas,” she told us.

There’s a major state review in California, where Frontier will be taking over systems with 2 million customers, dwarfing its previous buy of Verizon systems in the state, said Ana Maria Johnson, a program supervisor in the California Public Utilities Commission’s Office of Ratepayer Advocates. Under California law, ratepayers must receive at least half of the transaction’s benefits there, she told us.

Frontier is likely to be a better provider than Verizon, but the existing network is in bad shape, said Regina Costa, TURN telecom policy director. “We’re not comfortable that Frontier knows what they’re acquiring,” she said, noting she had seen Verizon lines on the ground, lines tied together with rope and remote terminals with bags over them to keep out rain. “They let the network deteriorate,” she said. “The FCC just addressed de facto retirement—that’s what this is.” But she said “California has lots of jurisdiction” to hold Verizon accountable: “You make them clean up their mess before they leave town.” She said Frontier also bears responsibility: “You can’t just buy the facilities and leave them in a sorry state.”

Costa cited broader ramifications if Frontier has to invest a lot in California: “What does that mean for the other states Frontier serves?” CAF support “is a drop in the bucket,” she said. TURN and others are concerned “Frontier continues to spread itself thinner and thinner” with its acquisitions, their comments said. “The [FCC] should carefully examine the proposed financing for this transaction, to provide assurances that Frontier’s aggressive acquisition strategy does not become part of a purchasing spree that ultimately runs out of ILEC operations to acquire, and leads to a dead-end in Frontier’s strategy for increasing cash flow.”

Frontier and Verizon dispute the criticisms. They said Verizon’s monthly trouble reports in California ranged from 0.8 to 1.7 per 100 lines, below a state standard of 6 per 100. “Verizon has also made, and continues to make, significant capital investments in its ILEC networks in California, Texas, and Florida,” they told the FCC. “Any claim that Verizon has failed to invest in its network in recent years is wrong in addition to being outside the scope of this proceeding. What is relevant—and undisputed—is that Frontier is committed to investing and providing high-quality wireline service in the areas it is acquiring.”

“The Verizon network in California is in very good condition,” a Verizon spokesman said in an emailed statement. “The items described by TURN, have been reviewed and proven to be aesthetic rather than service-affecting, as the monthly trouble report data indicates. Some cases involved incidents beyond Verizon’s control, including vehicle collisions with utility poles and vandalism which are addressed by the company in a timely manner. We do use temporary wraps (not bags) which are replaced with permanent enclosures. The temporary wraps that were seen on our tours of the network have been/are being replaced with permanent enclosures and for the most part were not service-affecting.”

Frontier also denied its future would be at risk. The deal would “strengthen Frontier’s already strong financial profile so that it can better provide high-quality services to consumers for the long term,” it told the FCC. Frontier said it’s also tapping savings from the 2010 Verizon deal that exceeded the \$500 million in operating savings it expected, and is on track to meet its operating savings of \$200 million from the 2014 AT&T deal.

The ORA has proposed the CPUC impose conditions to require Verizon to pay for upgrading the network. It has also proposed Frontier be required to provide 25/3 Mbps broadband to 98 percent of its households and furnish VoIP customers with battery backup power at no charge, among other conditions. Johnson said the PUC could vote Dec. 3.

### **Business Plan Sustainability**

Longer term, there are questions about the ability of Frontier and other wireline telcos to thrive. “Basically, their model is to pay high-dividends, and they’re buying cash flows,” CWA’s Goldman said. “But now that they’re in more competitive markets, is their business model sustainable?”

Wired broadband is important but is increasingly becoming “an adjunct to wireless broadband,” CFA’s Cooper said. “The future is mobile broadband.” Fiber deployment costs are high and the economics don’t work in many areas, he said. “The notion of bringing fiber to all those homes doesn’t make any sense. You’re going to get the fiber as close as you can, and then provision broadband as best you can, but you’re not going to pull fiber to the farmhouse.”

The problem for Frontier and CenturyLink is “they serve the empty quarter” with low population density, Cooper said. If they develop some sort of wireless play, they’ll stay major retailers, he said, but if not, they will increasingly become wholesalers in much of the market. —*David Kaut*

'American Dream'**Consolidation Seen as Key Factor in How Wireless Industry is Regulated**

Industry consolidation has been a dominant factor overhanging how the wireless industry is regulated, especially on transactions policy. The FCC under President Barack Obama's appointees repeatedly has drawn a clear line at four national wireless carriers—AT&T, Sprint, T-Mobile and Verizon. Industry observers disagree whether that makes sense in the current market.

In 2011, AT&T's proposed buy of T-Mobile went down in flames, in part because of FCC and Department of Justice concerns that it would have reduced from four to three the number of national carriers (see [1112200094](#)). In 2014, Sprint and T-Mobile flirted with a combination but didn't proceed after federal regulators made clear their preference for four national carriers (see [1408070044](#)). The consolidation continued last week with Shentel's proposed buy of nTelos (see [1508110067](#)). There hasn't been a merger of major national carriers since 2005, when Sprint joined with Nextel. Nonetheless, other major deals have taken place in recent years—including T-Mobile/MetroPCS and AT&T/Leap Wireless, which involved two of the U.S.'s largest low-cost carriers.

The FCC 2014 wireless competition report noted that at the end of 2013, the weighted average Herfindahl-Hirschman Index for the wireless industry, a measure of market concentration, was 3,027, up from 2,966 at the end of 2012. "As in previous years, the most recent increases in the weighted average of HHIs reflect continued industry consolidation, such as the 2013 merger of T-Mobile and MetroPCS," the report said.

The scarcity of spectrum makes the wireless industry unique among industries the FCC regulates, said Harold Feld, senior vice president at Public Knowledge. "There's no substitute" for spectrum, and "it's a government-controlled monopoly in that the government controls when and how they're auctioning licenses and under what conditions," he said. The government also sets regulation on roaming policies, an alternative to spectrum caps, he said.

Companies like Leap and MetroPCS found they had to merge with a larger player, Feld said. "They couldn't get the spectrum they needed to provide reliable national service." They couldn't get the handsets at the right prices to remain competitive, he said. "What used to be the avenues by which competitors grow, find alternative business models, have been blocked, and we have not developed any policy solutions." The FCC also hasn't completely overhauled the data roaming regime or made sure smaller carriers can buy handsets at competitive prices, he said.

"Industry consolidation has been and will continue to be a real problem if the largest national carriers are allowed opportunities to buy competitors without addressing ways for smaller carriers to access an open ecosystem," said Steve Berry, president of the Competitive Carriers Association. "Today more than ever, competitive carriers need effective data roaming obligations, timely access to similar devices, reasonably priced backhaul, and access to spectrum, whether through auction or on the secondary market. The exploding demand for mobile data services coupled with limited spectrum availability drives further consolidation of wireless carriers."

The TV incentive auction is critical to competition in the wireless industry, Berry said. "The largest carriers want to maintain their dominant position and already have the ability use the 'power of the purse' to foreclose smaller competitors," he said. "The incentive auction is an opportunity for the FCC to say

‘enough is enough’ by ensuring a competitive marketplace all consumers can enjoy. There is lots of data showing that more than two carriers could create effective competition. The key question is, ‘How much consumer choice is necessary to capture the benefits of a competitive marketplace without artificially regulating competition?’”

“The administration’s insistence on four has been a bit puzzling, especially when Sprint and T-Mobile would clearly be more effective together than alone,” said Doug Brake, telecom policy analyst at the Information Technology and Innovation Foundation. With Deutsche Telekom wanting to sell T-Mobile US and Sprint parent SoftBank wanting to buy the company “and those dynamics unlikely to change in the short-term, I would think a deal would be very possible under a more open-minded administration,” Brake said.

The long-term movement in the wireless industry has been toward consolidation, Brake said. “That consolidation has been a useful tool to find the right structure as the young industry got off the ground,” he said. “Easier to start with too many competitors and work down than start with too few. So government has to put its foot down at some point. Saying no to AT&T/T-Mobile was probably a good decision, but that doesn’t mean four is a magic number. In the end, four is fine, but three may well be better.”

“The Obama administration has made it clear that its philosophical conviction is to maintain four national carriers,” said former FCC Commissioner Robert McDowell, now at Wiley Rein. “Mountains of data illustrating how having three carriers has helped consumers in Europe and Japan don’t seem to move the opinion needle at the White House, DOJ or FCC. Big companies looking to combine are going to have to wait to see whether the next presidency will be more sympathetic to their public interest arguments about the need for an economic and regulatory environment that will foster increased capital expenditures and innovation.”

Generally, Democratic administrations allow industries to be consolidated to four competitors and Republican administrations to three, said Roger Entner, analyst at Recon Analytics. The FCC under Obama has been determined to increase the number of nationwide providers, he said. “The generous accommodations made to traditional satellite providers to enter the terrestrial wireless business are a testament to that effort, sometimes disregarding physics to further that goal,” Entner said. “It is difficult to see how this would change under another Democratic administration.”

But, Entner said, the consolidation of small carriers has been ongoing since the first FCC spectrum auction. “With all other things equal, wireless consumers prefer nationwide coverage,” he said. “This highlights the need for non-nationwide providers to offer a differentiated service. In the vast majority of countries, this consumer preference of nationwide coverage led the regulator to issue nationwide licenses. In some countries, there are regional licenses.” The FCC has divided the U.S. into as many as 734 geographical licenses, the smallest licenses traditionally offered in spectrum auctions, he said. “That these licenses reassemble into a near-nationwide patchwork is inevitable and should... have been completely foreseeable.” There are other good reasons the wireless industry has consolidated, he said. “The very small wireless operators that have been consolidated are very often family-owned businesses,” Entner said. “The owners are generally in their 60s and 70s often without a suitable successor in-house that has the same passion to compete and succeed as the current generation. These owners are living the American dream by selling the business that they created and deservedly retire comfortably and often provide enough wealth for generations. Who wants to deny American entrepreneurs [the ability] to retire in comfort by selling to the highest bidder?”

“The reality is the current FCC takes an overly stingy view of market competition, including the wireless marketplace, most likely to maintain a justification for regulation,” said Randolph May, president

of the Free State Foundation. “There is no sound reason, in the face of the evident price competition, for the FCC to view the current four national wireless carriers as some sort of sacrosanct competitive marker. And the commission doesn’t, and is unlikely to, take account of competition from various messaging services provided by Google, Facebook, and others who offer substitutable services. The notion that any ‘consolidation’ is inherently bad for consumers is just plain wrong.” —*Howard Buskirk*

### ‘Thin the Herd’

## **Broadcasters Don’t Have To Guess About Consolidation**

The broadcast TV industry doesn’t have to guess whether it’s moving toward consolidation. With last week’s [release](#) of the FCC incentive auction procedures public notice, TV licensees even have a firm timeline for how it’s going to happen. While it’s not clear where participation will fall on the continuum between the FCC’s largest Greenhill auction book projections and the most gloomy broadcaster predictions, most industry observers said some stations will be going dark and selling their spectrum and some portion of existing low-power TV (LPTV) and translators could be displaced. Some said that may hurt diversity—and consumers’ choice of programming available for free for those owning a TV and over-air antenna.

The auction will “thin the herd,” allowing surviving broadcasters to reap big rewards, said Expanding Opportunities for Broadcasters Coalition Executive Director Preston Padden in a July webinar. Broadcast industry officials in both the low-power and full-power TV industry have said they believe the auction will mainly wipe out the smallest broadcasters, lessening the diversity of voices in broadcasting. Nearly everyone interviewed conceded that any guess on what TV broadcasting looks like after the auction hinges on one thing. “It all depends on who participates,” said broadcast attorney Jack Goodman.

Even longtime critics of the incentive auction such as Sinclair have joined other large companies such as CBS in publicly declaring interest in participating. With some of the largest broadcasters throwing their hats in, the auction still may not make enough of a dent in the broadcast TV industry to make an appreciable difference in its level of consolidation, BIA/Kelsey Chief Economist Mark Fratrick told us. “I don’t think the industry will be materially different,” said Fratrick, who has been consulted by many broadcasters considering auction participation. “Many of the volunteer stations will be the lesser performing full powers and class A’s,” Fratrick said. The exit of those stations won’t affect industry concentration, he said, and neither will participation by large broadcasters, since they will continue broadcasting through channel sharing, Fratrick said. Since the most well-situated stations are unlikely to be exiting the business, there won’t be many more attractive targets for merger and acquisition or expansion after the auction than there were before it, Fratrick said.

Business opportunities in a smaller—even if only slightly—broadcast industry don’t have to come from M&A and expansion, industry officials said. “There is going to be programming that will need to find a new home,” said Gray Television Senior Vice President Kevin Latek. When some stations sell their spectrum, it’s likely to leave some markets minus a network affiliate, creating an opportunity for one of the remaining stations in those markets to pick up the slack, possibly on a subchannel, some said. Because of this possibility, LPTV Spectrum Rights Coalition Director Mike Gravino believes it may be better for LPTV stations if there’s “a heavy taking” of stations in the auction. If a lot of full powers exit the business, it will leave many of the lower tier networks looking for host stations, Gravino said. That could present an opportunity for LPTV stations, he said. “MeTV needs to be somewhere, the CW needs to be somewhere.”

With smaller stations more likely to sell their spectrum, it's viewed as a near certainty that the auction will decrease the number of minority-owned stations and stations that serve minorities, said National Association of Black Owned Broadcasters President Jim Winston and National Hispanic Media Coalition Vice President-Policy Michael Scurato in separate interviews. "The owners of large stations are far less likely to be people of color," Scurato said. He and Winston said it wouldn't be right to tell minority broadcasters to leave the incentive auction money on the table. "We aren't asking anyone to not participate," Scurato said. Since the incentive auction will disproportionately incentivize minority broadcasters to leave the business, Winston said he wishes the FCC would also enact rules encouraging minorities to enter it.

The incentive auction also could indirectly create M&A opportunities, executives said. Broadcasters that incorrectly expected their competition to exit the industry, may find themselves in a mood to sell once the dust settles, Gray's Latek said. Broadcasters expecting to get the higher estimates from the Greenhill book may also become interested in selling if those figures don't materialize, another broadcast official suggested. Though some of the larger broadcasters would need the FCC to relax ownership rules to pursue M&A after the incentive auction, they're likely to try, said an executive.

Channel sharing after the auction is also seen as a way for surviving broadcasters to enhance earnings, said Goodman. A station that's operating on another's spectrum doesn't create as much overhead as an entirely separate station, Goodman said. That means certain lower costs for broadcasters that sell the spectrum of stations where they have duopolies, and likely lower costs for other stations that share, though it's likely many channel sharing agreements will involve deals for sharing partners to chip in on facilities costs, broadcast industry officials have said. Channel sharing could also be a solution for LPTV stations, but it's difficult to gauge, because there are "no guideposts" for value in channel sharing, Gravino said. Channel sharing may be the best chance for broadcasting to maintain some diversity after the auction, said Wilkinson Barker broadcast attorney Rosemary Harold. "The more licensees you have at the end of the day, channel sharing and controlling their own programming," the more opportunities there are for minority ownership, she said.

Broadcasters left after the auction also will have the opportunity to take advantage of next-generation broadcasting standards, some broadcasters said. ATSC 3.0's adoption may or may not sync up with the re-packing, but only broadcasters that remain in the business will be able to take advantage of the new technological options it offers, an industry official said. A new standard may represent a chance for LPTV, Gravino said, since it will expand the capabilities of the remaining stations. "We do know some things, but the best we can do is base it on the simulations," Gravino said. "Nobody knows how it will go," —*Monty Tayloe*

## **Committee Balance**

### **Hill Antitrust Oversight Believed Often To Come Down to Personality**

As telecom consolidation proposals abound, one constant presence is lawmakers on Capitol Hill ready to scrutinize proposed mergers and acquisitions, despite lacking authority to approve or deny. One House member and former antitrust staffer told us of the balance between Judiciary committee members taking the lead in reviewing deals and those on Commerce, who sometimes also have an interest in proposed deals. Personality of individual lawmakers was seen as one highly influential factor in this relatively bipartisan oversight environment where little has changed institutionally, despite much M&A activity in recent years.

“That is where the thoroughness and preparation comes in,” House Judiciary Antitrust Subcommittee Chairman Tom Marino, R-Pa., told us in a statement about the intense amount of consolidation proposed in the telecom space. “An increase in proposals necessitates how the committee researches, processes and conducts business related to each proposal. There is no template per se but we certainly have a good collaborative process down and it works. Some say work in Congress is always intensely partisan and volatile. This is one space where we stick to the facts and keep things strictly professional. I hope to keep it that way.”

“I don’t think that’s really changed,” said Seth Bloom, a Democrat who spent years as the Senate Judiciary Antitrust Subcommittee general counsel, of the balance between Judiciary and Commerce and the overall role of Congress. Within the Judiciary Antitrust Subcommittee, “it’s a great tradition” of bipartisanship, he recalled: “That’s a hallmark of the Antitrust Subcommittee.” Bloom left Capitol Hill in 2013 and started his own lobbying firm, which counted Comcast among clients during its unsuccessful bid to buy Time Warner Cable (see [1412230028](#)).

That bipartisan tradition continues this year. Republican and Democratic staffers for the Senate and House subcommittees have come together for bipartisan briefings on the Charter Communications/TWC/BHN deals, they told us. No hearings have been announced in either chamber on the deal, though the Senate Antitrust Subcommittee is expected to decide in September whether to hold one.

“On the antitrust subcommittee, corporate relationships matter as much as political party,” said New America Foundation Open Technology Institute Policy Counsel Josh Stager, a former Democratic staffer who assisted Sen. Al Franken, D-Minn., on Judiciary and focused on antitrust issues. “You usually don’t see an antitrust issue rise to level of a hearing if there isn’t an aggrieved third party using its lobbying power.”

Marino chaired the subcommittee for 2015 and is optimistic about the politics of his subcommittee and the balance with the House Commerce Committee, he said. “A lot has changed with this new Congress but one thing I can be sure of is that my colleagues and I are interested in collaboration and implementing solutions, not being competitive with one another,” Marino said. “I see so much collaboration and open communication in this space. That is the internal viewpoint but from a higher altitude I think the politics of antitrust is not unlike the politics of anything else around here. Economic factors spark the political factors and the bureaucratic struggles. From there the balancing act begins.”

Congressional hearings on deals occur far more frequently before the Judiciary Antitrust subcommittees in both the House and Senate. Last year, Judiciary lawmakers in both chambers held hearings on Comcast/TWC, which failed to come together, and AT&T/DirecTV, which federal regulators approved. The Comcast/TWC deal earned a rare hearing before the full Senate Judiciary Committee, rather than subcommittee consideration. Lawmakers in the Commerce committees held no hearings on either deal, though Democrats on House Commerce pressured the Republican leadership to do so (see [1406120047](#)). Both Commerce committees held hearings on Comcast’s purchase of NBCUniversal in 2010, when Democrats controlled both chambers. These bigger proposals tend to drive intense lobbying of congressional offices. Bloom, chalking up the Commerce decisions to personalities of the committee leadership, said Commerce leaders didn’t hold a hearing on AT&T’s 2011 proposed buy of T-Mobile, a high-profile proposal that ultimately never went forward.

Lawmakers on the Commerce Committee sometimes get involved for “bigger and more high-profile” deals, Bloom said. In Commerce, it depends more on the chair at hand, Bloom said: “I think a lot of it’s personality-driven.” Commerce is “more a regulatory type of committee” inclined to hold “general

survey hearings” whereas Judiciary focuses on the antitrust components, he said. Reviews for big transactions begin early and companies “are smart” and typically “are trying to be cooperative” to ensure a smooth review, he said, noting no great change over time amid different consolidation proposals. Personality matters in Judiciary in addition to Commerce, former staffers said, as does political party. If the party of the administration reviewing the transaction syncs up with the party in the congressional majority, that may have influence, Bloom said.

“As with most things, leadership matters,” Stager said, noting Senate Judiciary Antitrust “underwent a pretty significant transition in 2013” when the top Democrat on the subcommittee, Sen. Herb Kohl of Wisconsin, retired. “Kohl was a steadfast overseer of antitrust issues, even getting into the weeds on overlooked matters such as” the Department of Justice’s “closure of a bunch of Antitrust Division field offices,” Stager said. —*John Hendel*

### Already-Low Ratings

## **Record MVPD M&A May Spell Trouble for Consumers**

Service glitches, billing errors and product changes are all but assured as multichannel video programming distributors (MVPDs) digest a record spree of mergers and acquisitions, many experts said. Some said already-low customer satisfaction for broadband and pay-TV service will worsen during integration of M&A worth about \$166 billion. That includes AT&T’s now-completed (see [1507240055](#)) takeover of DirecTV, Charter Communications’ planned [buys](#) of Time Warner Cable and of Bright House Networks, and Altice [buying](#) control of Suddenlink. At stake for broadband and video subscribers of these and other ISPs and MVPDs is whether their experiences ever improve from levels that some research finds are lower than any other U.S. industry.

If history is any guide, customer frustrations will mount in the next few years and providers will find their reputations almost impossible to improve. A series of articles last year said the megadeals will improve customer satisfaction only if the companies account for customer hassles before changing programming packages, product prices, technology and equipment (see [1411030031](#) and [1408080059](#)). Now, Google’s fiber, carriers’ wireless broadband and other products increasingly threaten to eat some of cable’s dominant market share, just as rising pay-TV bills frustrate customers, who have more options than ever for video entertainment.

Cable could become a technological relic if it doesn’t quickly adapt to the digital age and customers’ ever-increasing expectations, consumer satisfaction experts said. With wireless carriers offering faster data speeds and Google Fiber entering more markets, they said it’s conceivable that unless the cable industry changes its customer-alienating ways, it could lose broadband market share. Cable boosters said they don’t think that will happen because this time, unlike with past bouts of M&A-induced disruption, operators are serious about addressing customer frustration.

Providers’ “flaws are very apparent to their customers if in any way they bungle the integration” of companies post-merger, “and these are very complex systems, so it is not uncommon for them to do so,” said Dorie Clark, who teaches at Duke University and consults on marketing, strategy and crisis communications to clients that have included tech companies. For customers, “it is going to get worse before it is going to get better,” she predicted. Rather than focusing on improving service, operators “are prioritizing

relationships with legislators and making sure they're not angering legislators. They are maximizing the value of their assets," Clark added, "and trying to squeeze out the last dollar like AOL did with dial up."

Cable operators increasingly rely on broadband for profit amid high programming costs and reductions in video customers due to cord cutting, experts said. They said that unless the operators address reputation problems with subscribers—the American Customer Satisfaction Index (ACSI) continues to find that ISPs and MVPDs are bottom rated—broadband momentum could eventually suffer. That would be akin to the current trend with video subscribers, which cable operators have been losing for a few years.

"There is no end in sight" of cable operators' video customer defections, SNL Kagan analyst Tony Lenoir said. Since hitting a peak in 2007, cable companies like Comcast and TWC—which aborted their deal to combine amid potential FCC and Justice Department opposition (see [1504240066](#))—have lost about 19 percent of video subscribers, ending 2014 at 53.7 million, SNL Kagan said. By year-end 2015, the researcher expects cable to have lost another 18 percent of video subscribers, to 44.2 million. "If they were to face competition on broadband and if we were to see substitution" of other fast-broadband products for cable Internet service, "we'd be in trouble," said Lenoir.

Charter, buying BHN and TWC, is "focused on continuing to improve customer service," a spokeswoman emailed Friday. It "will leverage the transaction to better our relationships with customers across the New Charter footprint. Over the last three years, Charter has brought back jobs from overseas call centers and hired thousands of people to improve our customer care services." The operator also has gone all-digital, improved products and raised the entry-level broadband service to 60 Mbps, she said. "New Charter will also return TWC call center jobs to the United States and will hire and train thousands of new employees for its customer service call centers and field technician operations."

AT&T, which bought DirecTV, "can now offer a nationwide TV service with a nationwide mobility service, high-speed Internet serving millions of U.S. homes, nationwide retail stores and top-rated customer service," a spokesman for AT&T said. Other companies taking part in the M&A spree had no comment.

### Competition

Google Fiber and wireless broadband are among newer competitors experts said threaten cable's broadband market share, as Netflix and other online video distributors attract former MVPD subscribers. Google Fiber doesn't report the number of its subscriptions, and experts said the service with speeds up to 1 Gbps isn't widely available. But wireless broadband is widely available. Google Fiber declined to comment.

While cable operators are expected to keep adding broadband subscribers, wireless broadband connections are expected by analysts to rise at a much faster pace. Cable ISPs will add 3.7 percent more subscribers this year and 2.8 percent next year to end 2016 at 59.5 million subscribers, SNL Kagan forecast. ABI Research expects U.S. mobile broadband connections to rise 9.3 percent this year and 9.5 percent the next to end 2016 at 433.1 million total. "Wireless broadband subscriptions in the U.S. will continue to grow until 2020," though growth rates have declined, ABI analyst Marina Lu said.

Some said wireless carriers' better customer satisfaction ratings are a reason they're gaining more broadband customers than are wireline ISPs. They said if the customer satisfaction gaps between the industries continue, and wireless becomes a better competitor on speed and data caps, wireline ISPs may lose customers. "We could see a landscape where that wireless technology is what's eventually driving"

technological improvements, ACSI Managing Director David VanAmburg said. “We could see the [cable] industry go the way of Blockbuster. ... It certainly would intensify competition, if you really had a viable wireless [broadband] product.”

Wireless service, though not as beloved by consumers as other high-tech products, isn’t in the customer service ratings basement like MVPDs. Wireless service satisfaction fell 2.8 percent to 70 in 2015, from the record high the year before, with consumers rating the service fifth from lowest among all industries, ACSI said; ISPs and MVPDs were in last place at 63. In absolute terms across industries, 80 or better generally is a good rating, scores in the 70s are average and below 70 is poor, VanAmburg said. The top spot among all services this year again went to TVs and video players, at 86. The next decade could see wireless data substitution for home Internet service, SNL Kagan’s Lenoir said. “We seem to be headed toward a cordless world.”

Wireless carriers are “hyper-focused on consumers,” CTIA Vice President Scott Bergmann said, pointing to the breadth of devices carriers offer, increasing data speeds and lower prices. The “consumer-driven mobile wireless industry” is “meeting the needs of consumers,” Bergmann said. With LTE high-speed wireless broadband subscriptions rising from no more than 1 million to 183 million in the past five years and mobile data usage soaring, “consumers are adopting mobile broadband, and their usage is increasingly flowing there,” he said. NCTA had no comment.

### Recovery in Sight?

With wireline customer frustrations likely to rise as the likes of AT&T and Charter absorb acquisitions, experts said they’re looking a few years ahead to see whether those and other companies can start pleasing consumers after folding in the acquired systems. Some said they’re counting on increasing competition to finally force ISPs and MVPDs to up their competitive game.

“It’s hard to imagine with that landscape a year from now, that things will be better,” said ACSI’s VanAmburg. Whether things eventually get better for users “depends on the emergence of alternatives” and their viability, he said. “There still seem to be some practical limitations to the competition.”

MVPD optimists say the industry is engaged in a sustained push to improve customer service, often using technology to keep subscribers better informed. That should lift customer satisfaction, they said. Those experts pointed to a wide array of self-help and self-installation tools, better technology using newer equipment and increasingly the cloud, tutorials available through VOD and more information about bills. “From a consumer perspective, I think we’re seeing for the first time in a long time that value-added services” like Comcast’s X1 services and Xfinity brand “are going to help reshape some of the mindset that may be out there,” said Vice President-Product Management Chad Dunavant of CSG, which provides customer service, billing and other services to MVPDs. “You’ve got to do a better job in allowing customers to interact with you on their terms” as opposed to only being open during business hours and scheduling technician visits in four-hour blocks of time, he said.

With a lot of CSG’s big customers combining, they are increasingly planning ahead by notifying subscribers months before changes, trying to minimize glitches from joining systems, and standardizing products, Dunavant said: “I’m seeing a more concentrated effort” among MVPDs to minimize customer disruption “way ahead of these deals closing, and before it was more of an afterthought.” MVPDs are giving customer service representatives access to more information so they can better attend to subscriber

requests, he said. With MVPDs increasingly offering a wider array of more complicated services, including home automation and security, plus households connecting more devices to broadband, he said, some operators are helping set up home networks. “It’s almost like a Geek Squad for the MVPDs,” Dunavant said, referring to Best Buy’s tech support service.

Some MVPDs don’t frustrate customers to begin with. *Consumer Reports* found a sector-leading 79 percent customer satisfaction rating for broadband and a 76 for video at Armstrong, a cable operator with less than a million subscribers in five states in the eastern half of the U.S. The family-owned company credits those scores to its long focus on customers’ experience, which Vice President-Cable Marketing Dave Wittmann said can be harder to achieve at big companies. He said Armstrong technicians have for years worn booties on their feet when entering homes, something many MVPDs started only recently. For some types of requests, such as installing broadband service or a product with TiVo that allows better searching for programming, Wittmann said Armstrong has always sent technicians to homes and not required self-installation. “We would go the extra mile to try to help you,” such as by taking queries on how Microsoft’s new Windows 10 affects customers instead of deferring to the software maker, Wittmann said. “A lot of ISPs will not have that stance.” —*Jonathan Make*

### Rate Hikes 'Embarrassing'

## **Charter Deal Conditions Could Run Gamut From MFN Clauses to Rate Hike Caps**

Charter Communications likely has headed off many broadband-related merger conditions by addressing them early on, experts said. But multiple broadband and cable matters likely will be brought up by and before regulators as Charter seeks approval to buy Bright House Networks and Time Warner Cable, they said. Charter agreed “from the get-go” to some of the most obvious potential conditions—net neutrality and discounted broadband offerings to low-income populations—said Barry Orton, telecom professor at the University of Wisconsin-Madison. That, plus that Charter, TWC and BHN don’t share a “bully” reputation with Comcast based on complaints about strong-arm tactics, indicates the deals could have a relatively easy time winning approval, especially compared with Comcast’s aborted attempt to buy TWC, industry officials said.

The timing for applying big, industry-influencing conditions may be over, as such a move would have made more sense earlier this year, when two major deals—Comcast/TWC and AT&T/DirecTV—were pending, said CEO Stan Hubbard of the ReelzChannel, an independent movie network. “If they wanted to have an impact on the whole industry—the FCC, the Justice Department, politicians—and put conditions that have impact industrywide, they had their chance to do it when they had two major mergers before them. [Now] probably is not an opportunity.”

Charter’s assertion in its FCC public interest statement that it is committed to such broadband policies as settlement-free peering and no usage-based broadband pricing or bandwidth capping was seen by many as a move to pre-emptively defuse some potential criticism (see [1506250039](#)). Those policies “are very welcome,” said John Bergmayer, Public Knowledge senior staff attorney. Issues on the cable side of the business that may come up include video bundles—though since much of that is the result of programming contracts, the FCC might be limited in what it can require, Bergmayer said. Those broadband policies named by Charter—particularly interconnection—stand in stark contrast to how Comcast was seen when it was trying to buy TWC, said CEO David Schaeffer of Internet backbone provider Cogent. “Comcast should

have—and chose not to—said ‘we will abide by the rules of the Internet, we will not create fast lanes,’ and buy interconnectivity or build out a global network,” he said. “Instead they said ‘we demand a free ride from all the backbones.’” If Comcast had been successful in buying TWC, a legal showdown based on the net neutrality order or the Clayton Antitrust Act was almost sure to follow, Schaeffer said.

Programmers and smaller cable companies likely will bring up video programming costs, which also fits into FCC Chairman Tom Wheeler’s agenda of competition and further build-out of those smaller operators, said a communications attorney who previously represented parties in Comcast/TWC. Most-favored-nation contract provisions likely also will come up, as they did in Comcast/TWC, the lawyer said. Along with programming costs, special access purchasing arrangements also could be raised, a broadband attorney said.

Netflix, a major foe of the Comcast deal, was most interested in one particular concession: free peering—which Charter also has committed to, Netflix CEO Reed Hastings said on a conference call last month. “We’re really excited about it and what it does is it frees us up from worrying about getting taxed by an ISP.”

While federal regulators generally have been uncomfortable with price regulation, there has been some push from lawmakers (see [1507100045](#)) that could see exploration of some kind of voluntary concession to cap cable rate increases for a couple of years so the costs of the Charter deal don’t automatically mean higher monthly bills, said Executive Director Tracy Rosenberg of the nonprofit Media Alliance, which opposes or seeks curbs on some mergers and acquisitions. “To get this merger and then prices go sky high, that’s something everybody has been paying attention to and could be embarrassing for Wheeler.”

The three-year guarantees Charter made on many broadband commitments may have to be stretched out—perhaps to seven years, which was also the length of the Comcast/NBCUniversal Justice Department consent decree—to satisfy regulators, BTIG analyst Richard Greenfield wrote investors last month. “I am sure Charter would say net neutrality rules will be resolved by 2018,” Rosenberg said. “That may be true, that may not be true.”

Charter/TWC/BHN likely doesn’t carry with it any material regulatory issue, said Liberty Media Chairman John Malone—who has a seat on Charter’s board — earlier this summer during a shareholder meeting. “We would not have done [Charter/TWC/BHN], honestly” if it appeared otherwise, he said of the deal that Liberty is partly funding. “Charter is an entirely different situation than the Time Warner deal with Comcast” in terms of such key issues as company magnitude or market domination, Malone said.

Charter’s broadband moves stand in contrast to what Charter CEO Tom Rutledge and Malone had expressed about settlement-free peering not being likely forever due to network costs. A Charter spokeswoman declined to comment except to say the company “has a very pro-broadband, pro-customer approach.” BTIG’s Rosenberg said of Malone, “Like any businessman, he looked at what happened [with Comcast]: Don’t do what they did, do something different.” Those past public statements are “part of the Charter team’s challenge, to walk back from some of that,” Bergmayer said. Some of Malone’s talk—about greater use of bandwidth caps, for example, seem more like musings and not particular business plans, Bergmayer said.

For consumers, the big problem is not whatever concessions or promises Charter makes but the follow-through on the government enforcing them, Orton said. “You can promise a lot—do you have to deliver a lot in the real world? And who watches?” he said. “If I’m Charter, I’m going to promise a lot. The

real question is who keeps track of whether those are all kept. [Actions like broadband-speed throttling] are going to be difficult to monitor and prove those conditions have not been met.” —*Matt Daneman*

## **NIST Framework Prominent**

### **Companies Increasing Cybersecurity Due Diligence After Increase in Incidents, Lawyers Say**

Recent cyberattacks and data breaches against federal agencies and the private sector have prompted the communications sector and other industries to significantly increase their focus on cybersecurity as a factor when considering buying another company, industry lawyers and consultants said in interviews. The push to give the private sector the leading role in driving sectorwide improvements in cybersecurity, as evidenced in the development of the National Institute of Standards and Technology’s Cybersecurity Framework, means federal agencies are not closely monitoring cybersecurity as a main factor in deal reviews, stakeholders said.

Companies considering a merger or other acquisition invariably are more likely to give much more prominence to an assessment of cybersecurity practices at the acquired company than would have been the case as little as a year ago, said Norma Krayem, Holland & Knight senior cybersecurity policy adviser. “There’s now a greater focus on trying to do cybersecurity assessments of these deals, particularly in relation to what the pre- and post-merger system connectivity will be.” Multinational corporations are even more likely to place cybersecurity and privacy issues “front and center” in the due diligence process because of the potential for stricter cybersecurity rules in EU nations, Krayem said.

Communications and Internet companies have always made cybersecurity a factor in M&A reviews, but that interest is spreading into every industry, said Venable cybersecurity and telecom lawyer Jamie Barnett, former FCC Homeland Security Bureau chief. AT&T and Charter Communications didn’t comment on the extent to which they evaluated cybersecurity in their respective AT&T/DirecTV and Charter/Time Warner Cable/Bright House Networks deals. Cybersecurity due diligence has become particularly important in the context of M&A because of the decreasing likelihood that a company is able to self-detect advanced persistent threats (APTs), Barnett said. Cybersecurity firm Mandiant [said](#) in a February report that only 31 percent of companies affected by APTs were able to detect those cyberattacks themselves. External entities like cybersecurity firms or the federal government were responsible for alerting the other 69 percent of affected companies to the attacks, Mandiant said. “It’s dangerous to buy a company and not really know what might be lurking in those systems,” Barnett said.

Effective cybersecurity due diligence needs to include thorough tests like penetration testing of a company’s network, along with more general assessments of a company’s cyber practices, Barnett said. Those assessments should include examining whether a company is using multifactor authentication, application whitelisting and other practices, he said. Many companies are putting together checklists that amount to a more comprehensive cybersecurity assessment in due diligence, including an examination of a company’s risk management regime and compliance with technical standards, Krayem said. Those types of assessments are becoming more of a focus on the front end of the merger process, though it’s unclear the extent to which companies are specifically delaying reaching a deal until they can do those assessments, she said.

The NIST framework has become a prominent tool for companies to evaluate cyber practices as part of due diligence, particularly if the deal involves companies in a critical infrastructure sector or com-

panies that have contracts within the federal government, he said. The NIST framework is probably going to have the widest effect on due diligence evaluations, but more specific cybersecurity standards will also play a more specialized role depending on the industry, Barnett and others said. The ISO/IEC Information Security Management Systems 27000 (ISO/IEC 27000) standard is also prominent as a due diligence tool, said former Qwest Chief Information Security Officer Mel Gates, Squire Patton cybersecurity and privacy lawyer. “There’s not one single accepted standard,” as the prominence of any particular standard can vary by sector and organization, she said.

Companies that have already dealt with a data breach may engender more cybersecurity scrutiny from a prospective buyer or merger partner, but the focus remains on what the company’s cybersecurity practices are at the time of due diligence, Gates said. “There are a number of scenarios one can envision where an organization may have been subject to a data breach but may be better positioned today because all too often cyber is an investment that organizations make on a reactive basis,” she said. “That an organization has had a breach isn’t as important as having a plan in place. Companies want to know what a company has in place now, what kinds of tools and techniques they’ve invested in.” —*Jimm Phillips*

### FairPoint Buy Was Different

## **In CenturyLink Takeover of Qwest, Consumer Focus Seen in Mostly Positive Light**

CenturyLink’s takeover of Qwest, with a smaller telco buying the Bell serving much of the western U.S., worked out fairly well for consumers, we found. The same was true with broadband deployment after other deals (see [1508140026](#)). But FairPoint’s purchase of Verizon’s wireline systems in three New England states bedeviled consumers, and the company still seems to be struggling.

In approving the 2011 takeover of Qwest, the FCC required CenturyLink to meet broadband deployment metrics in Qwest’s 14 legacy states, encourage broadband adoption, preserve business customer rates and uphold wholesale performance. As of December, CenturyLink [said](#) it had surpassed every five-year FCC broadband deployment milestone, extending 1.5 Mbps service (downloads) to 90.6 percent of in-region living units, 5 Mbps to 70.5 percent, 12 Mbps to 59.3 percent and 40 Mbps to 37.1 percent. CenturyLink also [said](#) 72,082 low-income customers had taken broadband service and 3,113 customers had bought computers under its Internet Basics discount program, which also included outreach and digital training efforts, including in various languages. And CenturyLink recently [reported](#) on its progress in consolidation of its ordering and billing systems.

Service quality has been a frequent issue because Qwest targeted enterprise customers more than residential customers, said CenturyLink Senior Vice President John Jones. “We put more people on the ground” to increase “local presence,” he said. The company also brought more of a “competitive spirit and strong consumer play” through its broadband expansion and Prism IPTV service, he said, though there are still many extremely high-cost, low-density markets that create broadband challenges. “People want it sooner and faster and ask ‘why don’t you have it here,’” he said. “But we think we do a good job overall.”

State officials offer mostly positive assessments or at least cite few problems. Brian Thomas, Washington Utilities and Transportation Commission acting policy director, said CenturyLink’s takeover of Qwest “hasn’t gone badly,” though he can’t “give it as glowing a report” as Frontier’s buy of Verizon systems, “which needed more attention.” He said CenturyLink had met state requirements to deploy broadband

and invest \$80 million over four years. Consumer complaints haven't grown, he said, though after going down, returned to almost the same levels as pre-deal in 2010. He said there were a couple of service-quality issues, including a 911 outage in 2014 involving a vendor to CenturyLink that's "being resolved."

The CenturyLink takeover went reasonably well in Nebraska, said Gene Hand, Public Service Commission telecom director. "It's been good. No big fires that I know of," he said. "I think they've been a little quicker to respond to concerns," he said, noting CenturyLink's origins as a small rural telco. "What we're hearing about is broadband availability, period," he said, hoping CenturyLink will take FCC Connect America Fund dollars for the state. Cox Communications is taking market share in Omaha and elsewhere, but rural deployment is a challenge for any carrier, including cable, he said.

Arizona Corporation Commission takeover conditions required CenturyLink to invest at least \$70 million in broadband, not recover merger costs through retail rates or wholesale fees, maintain or improve on Qwest's complaint record and uphold wholesale performance, among many conditions. Complaints increased in the second and third years post-merger, exceeding the level of the last year under Qwest, but wholesale performance improved, retail service quality "stayed fairly consistent," and CenturyLink submitted information indicating it met its investment commitment, the ACC found.

The Qwest-CenturyLink transition was "very smooth" in Idaho, PUC Policy Strategist Gene Fadness said, though there was an increase in complaints. The same was true for Verizon-Frontier, he said. The transition went "fairly smoothly" in South Dakota, PUC Counsel Rolayne Wiest said. The Iowa Utilities Board has received some complaints from CenturyLink customers, but not a high volume, said Don Tormey, manager, IUB customer service and communications. "CenturyLink has been responsive to our calls on behalf of customers," said Iowa Consumer Advocate Mark Schuling, who added that his office did not see the merger "as an exacerbating factor in any area."

### **FairPoint Stumbles**

By all accounts, FairPoint stumbled badly in taking over Verizon's systems in Maine, New Hampshire and Vermont. "FairPoint has been a disaster," said Debbie Goldman, Communications Workers of America telecom policy director. The company had problems transitioning customers to its billing and other operational systems and it lost customers; its debt load became unsustainable as the economy went into recession, forcing it to undergo restructuring in bankruptcy; and while it later emerged from Chapter 11 and the crisis eased, it still has struggled, state officials said.

FairPoint served 308,000 access line equivalents when it proposed to take over the Verizon systems with 1.5 million access lines in the three states in 2007, its application [said](#). "This was a very small company taking over a much bigger operation. Financially, logistically, operationally they just weren't prepared for the changeover," Maine Public Advocate Tim Schneider said. "The messy start was a big deal for our customers" who had to deal with billing and other service problems, he said. After bankruptcy, FairPoint negotiated an easing of some regulatory conditions, including for broadband deployment, he said. Since then, FairPoint has only met some service-quality standards that accompanied a phone deregulation act passed by the Maine legislature, and it had to deal with a labor strike, he said.

The "botched" Verizon-FairPoint handoff resulted from "new systems that simply didn't work," said James Porter, Vermont Department of Public Service telecom director. "This was about the time we had a cable company providing voice, so FairPoint didn't get off to a good start," he said. "They certainly had too

much debt.” The company eventually stabilized the situation to some extent, but it still seems to have struggled, he said, noting further customer losses, a 911 outage (see [1508120056](#)) and the union work stoppage. The latter caused the most complaints since the Verizon cutover, he said. “FairPoint has built out a good bit of broadband in a timely manner, so we’ve been pleased with that,” he said. “And except for their difficulties in clearing troubles in a 24-hour period, I want to say they’re on par or better than Verizon was. But that’s not the bar I would aspire to.”

“While we faced some challenges at cutover in 2008, today we prefer to focus on our future,” a FairPoint spokeswoman emailed in response. “We are excited about our current course which includes a stronger-than-ever focus on the customer experience. Recent successes include launching Advanced Digital Services, opening two Data Centers and continuing to enhance and extend our network to offer faster data speeds to both residential and business customers.” —*David Kaut*

## Diminishing Role

### **Loss of State Authority on M&A Seen by Critics**

States, many of which have never been very involved with telecom mergers and acquisitions, are losing what little authority they do have, experts said. They said that’s bad for all stakeholders other than telcos. The state role always has been about documenting issues that could arise from an acquisition, because if the decision is left to only the FCC, harm unknown to federal officials could come to consumers, they said. Even in those states that still have a tough review process—California and New York especially—that authority doesn’t apply to all kinds of transactions, only to those in parts of the industry that the state commissions regulate.

The role of states has diminished due to state laws and M&A lately involving technology platforms outside state authority, said Dave Bergmann, a consumer advocate consultant. States don’t have jurisdiction over the full range of activity when a phone company that also offers broadband and video merges with a video company that also offers broadband, he said. Those issues have meant a lessening of state influence, but some states are still very active, said Bergmann. Nevertheless, because consumer advocates are generally not as well funded as telcos, the latter have far more resources to fight at the legislative level, he said.

State legislators have taken powers of review away from the state commissions because telco lobbyists have convinced elected officials they shouldn’t care about those deals, said Regina Costa, telecom policy director for The Utility Reform Network (TURN). But the FCC relies heavily on state reports in these matters, such as the record that California developed on the unconsummated AT&T/T-Mobile and Comcast/Time Warner Cable deals, she said. Even though just two states have significant review processes, “If a state is concerned about the issues, and they investigate, that work is taken very seriously,” she said. “It’s whether or not the larger carriers have been able to influence the state legislature to take away that ability that affects whether or not a state gets involved. The states that do have authority, when something arises in their state, are glad to have the ability to do something about it.”

Frontier Communications and Verizon are a good example of a state review process helping the public, said Sarah DeYoung, executive director for the California Association of Competitive Telecommunications Companies, which [according](#) to its website has members including Level 3 and XO Communications. Three states are involved with the Verizon/Frontier deal, but two—Florida and Texas—lack the jurisdiction

to review the acquisition, she said. The third, California, requires the state commission and the attorney general to do a comprehensive review of the proposal and look at the impact on safety, rates, competition and quality of service. The state commission is working on that process now, DeYoung said. “It’s really a contrast from California to Texas and Florida, it’s too bad for the retail customers as well as the CLECs that operate there that those commissions don’t have the same statutes in place to do a similar review,” she said. “What we’ve been able to do in California [is] shed some light, especially on the conditions of the Verizon plant, and I can’t believe that that’s not an issue with Florida and Texas.”

New York has among the most rigorous review requirements in the country, said a New York Public Service Commission spokesman. In April 2014, Gov. Andrew Cuomo (D) signed into law changes in the state’s cable franchise law that gave the PSC enhanced regulatory powers to do a thorough and detailed investigation of cable M&A, such as Comcast/TWC, said the spokesman. The new regulatory review power also applies to Charter Communications’ planned buy of TWC and Bright House. In the past, the New York commission was required to grant approval for a deal unless it found the transaction was not in the public interest, said the spokesman. Under the new law—like with gas and electric utility M&A in the state—the burden has shifted to cable companies to demonstrate that the transaction is now in the public interest, he said.

At least 33 states have deregulated completely because telcos convinced legislators that competition will take care of complaints, said Bill Levis, interim executive director for the National Association of State Utility Consumer Advocates. In Colorado, the legislation even took away the state commission’s ability to interfere on all telecom cases, he said. And that issue carries over to other states under the thinking that the federal oversight is enough, Levis said. “The argument that ... occurred here was if there are federal protections, it’s not necessary for the states to get involved in those things,” he said. “There’s the concern that by not having state oversight, that consumers aren’t as well protected as in the past. Obviously, the providers are going to disagree.”

With the loss of jurisdiction has come a “significant diminution of expertise” among state commissioners on telecom issues, said Larry Landis, Indiana Utility Regulatory commissioner emeritus. As staffers retire and commissioners turn over, a lot of states may not even be able to mount an investigation into proposals even if they had the authority, he said. But not much more M&A is likely, Landis said. “There are still three baby Bells, but the landscape has changed dramatically,” he said. “Much of that consolidation has already occurred. What may still lie ahead is cross-platform acquisitions. It’s conceivable that a wireless company without a large terrestrial presence may acquire a terrestrial company be it in telecom or cable. But for the most part, that’s gone.” —*Samantha Madison*

## **Prenup Agreement**

### **Privacy Policies Should Say What Happens in M&A, Experts Say**

A clause about the sale or transfer of data in the event of a merger, acquisition or bankruptcy should be included in every company’s privacy policy, lawyers and other experts said in interviews. Data often is a firm’s most valuable asset, across online and more traditional industries, said International Association of Privacy Professionals (IAPP) Vice President-Research and Education Omer Tene. A privacy policy is a legally binding document and companies need to be aware of what their privacy policy says and how it restricts their business, said CEO Rebecca Herold of privacy consultant The Privacy Professor.

Companies that don't take such steps risk FTC or state scrutiny, and will upset customers, experts said. RadioShack, which filed for bankruptcy and transferred some assets to Sprint, is among the companies that faced such customer upset over privacy policies (see [1505180043](#)). Experts also said Facebook faced FTC scrutiny when it bought WhatsApp last year in a deal worth about \$19 billion.

A company's privacy policy is often written quickly with little thought for the long-term impact of what it says, said Herold, also co-founder of Simbus Information Security & Privacy Services and Solutions. No one goes into a business thinking about the demise of the company, so a privacy policy may not address what would happen to assets like data if there's M&A or bankruptcy, said TRUSTe Senior Consultant and Product Manager Debra Farber. Privacy policies are similar to prenuptial agreements in that it's good to plan for the unexpected to protect the company, Farber said.

Newer companies often don't have a huge legal budget and don't know what will ultimately happen to data, privacy lawyers said. To avoid FTC attention and consumer discontent, companies should be careful not to make vague, meaningless or sweeping statements in a privacy policy, said King & Spalding lawyer Daniel Ray, who advises clients in technology M&A.

It's easier to insert a clause in a privacy policy early than once a company has interested acquirers, Ray said. If a privacy policy is too vague, a company runs the risk that the disclosure that its data could be sold or transferred isn't "sufficiently clear," and the deal could fall through, said Morse Barnes-Brown attorney Faith Kasparian, who focuses on technology M&A, privacy and security. A dating company in Texas wanted to sell its list of users but the privacy policy was so ambiguous the transaction was called off, she said.

If a company interested in buying another notices the seller doesn't have a strong privacy policy, the acquirer may use that to try to significantly knock down the price, Farber said. Privacy policies aren't required federally for online companies, but because a California statute requires a published privacy policy if so much as an email address is collected many companies post a policy, Kasparian said. Companies need to think about privacy at every stage and aspect of the business and adequately prepare for various circumstances, she said.

### **Recommendations**

Experts recommended steps companies of many sizes and in many industries can take to enact privacy policies now, before potential M&A and before state or federal regulatory scrutiny. They said many of the steps are relatively easy, certainly easier than dealing with problems after they arise, and many aren't particularly costly to implement at an early stage.

The easiest way to ensure a deal is completed is to include a clause in a privacy policy that says an operator can share information with affiliates, a condition that would have allowed that dating company in Texas to share its data with the new owner or parent company, Kasparian said. Clauses referring to what happens to the data in the event of M&A typically constitute one to two lines in a privacy policy, Farber said.

A privacy policy should be broad enough to avoid contradictions and to prevent the company from having to update it every three months, but should be specific enough to educate customers, other consumers and employees, Farber said. Companies should review their privacy policy at least once yearly to ensure the policy is accurate following any significant changes to business practices, new technologies or new laws, Herold said. Companies should ensure that if data travels across borders, the policy follows regula-

tions and laws that restrict cross-border data flows, she said. Companies should give consumers the ability to opt out of having their data shared or sold, Farber said.

When it comes time for takeover talks, a company should do right by the users, because the last thing a company wants is to make the acquisition seem like it's a cash grab and that upholding the commitments made to consumers isn't important, Ray said. He recommends that companies anticipate how a privacy policy may change since the company was founded and determine which customers agreed to the newer privacy policy that's likely more permissive than those who didn't, Ray said. Keep an audit trail, he said.

Who owns the data makes a difference to consumers, Tene said: It's very different to provide data to a company owned by Mother Teresa than it is to a company owned by the Russian mafia. Consumers need to be alerted to changes in ownership and perhaps be given an opportunity to opt out if they aren't comfortable with their data being held by the new owner, he said.

### **Regulatory Concerns**

The FTC and state attorneys general have been active in examining privacy policies, which gives companies all the more reason to address in their privacy policies conditions in which information can be transferred, Kasparian said. Companies continue to get caught trying to sell data even though their privacy policies say they won't, Herold said. The FTC goes after unfair and deceptive practices, Kasparian said. The easiest way to ensure it doesn't come after a firm is to read the privacy policy and make sure everyone complies with it, she said. "Keep true to what you disclosed."

After the FTC alleged that Toysmart engaged in unfair and deceptive practices by not stating in its privacy policy that it might sell data (see [1504020032](#)), companies began to include a provision that they wouldn't sell data unless they declared bankruptcy or were acquired or merged, Tene said. When Facebook purchased WhatsApp, the FTC wrote a letter saying regardless of what the privacy policy stated, the agency expected Facebook to notify consumers and obtain consent if it wanted to do anything with the data that consumers wouldn't have expected, Tene said. The FTC had no comment for this report.

The FTC is watching and aware of significant M&A activity and it's an issue the agency is definitely going to focus on, Tene said. The FTC has given attention in recent years to companies that failed to follow through on promises made in privacy policies, but in the future it may look at the kinds of privacy commitments, or lack thereof, a company makes, Ray said. The commission may examine whether data sold in M&A will be used in a way similar to how and why it was originally collected, Tene predicted. —*Katie Rucke*

### **Cross-Border Consolidation Coming?**

## **Wave of European Telecom M&A Raises Competition, Investment, Regulatory Issues**

A wave of mergers and acquisitions in the European telecom market is raising concerns about competition and service prices, analysts, regulators and attorneys said. Questions include how many mobile operators are needed for a competitive national market; whether M&A is necessary to spur investment; and whether European Commission antitrust decisions are undermining national regulators, they said. Some see the EC as moving to crack down on M&A through conditions, possibly benefiting consumers by averting

price increases that consolidation often brings. Others contend deals eventually benefit customers by boosting companies' network investments.

Global telecom M&A had some resurgence in 2014 and 2015, analysts said. M&A activity rose last year amid Hutchison Whampoa's takeover of O2 Ireland in May 2014, Ovum analyst Mai Barakat [said](#) July 22. The U.K. was "the anchor of European deal making" in the first half of this year due to the \$15.3 billion takeover proposal by Hutchison Whampoa, which owns mobile operator Three, of Telefónica UK's O2, Mergermarket said in a [report](#). And in February, BT proposed to buy EE, owned by Orange and Deutsche Telecom (DT), for 12.5 billion pounds (\$19.5 billion). The companies are, respectively, the largest suppliers of fixed communications services and mobile communications services in the U.K., the Competition and Markets Authority (CMA), which will investigate the takeover, said in July. O2/Three is relevant to the inquiry because the mobile operators are major players in the U.K., the CMA said. That acquisition, which would join two of the four mobile network operators (MNOs), falls within the jurisdiction of EU merger control rules and is being handled by the European Commission, it said.

The EC is investigating Denmark's TeliaSonera's planned combination with Telenor. The EC [said](#) it's concerned that the combined entity would "face insufficient competitive constraints from the only two remaining players" in the country, leading to higher prices and less innovation. A decision is due Wednesday. Earlier this year, the EC [OK'd](#) the 7.4-billion-euro acquisition by multinational cable and telecom company Altice of PT Portugal, subject to divesting Altice's Portuguese businesses. In the U.S., Altice is buying control of cable operator Suddenlink (see [1507220074](#)). And the EC let Orange buy Jazztel in a 3.4-billion-euro deal subject to Jazztel divesting an independent fiber-to-the-home network.

Europe's communications market has had "two distinct waves of consolidation," Cable Europe Managing Director Caroline van Weede said. In the first, cable operators in markets dominated by incumbent telcos with national networks joined together to challenge and compete, she said. Cable, nevertheless, remains fragmented, especially in Germany and Eastern Europe markets, she said.

The second wave of M&A began with the "marriage of cable and mobile networks," van Weede said. It started with mobile operators acquiring domestic cable operators in Finland, Germany, Portugal and Spain, and shifted gear when France's Numericable cable network bought mobile operator SFR and Belgium's Telenet acquired Belgian wireless carrier Base, she said. Base since was bought by U.S.-based Liberty Global, whose chairman is John Malone, who through his Liberty Media is backing Charter Communications' planned takeover of Time Warner Cable and Bright House Networks.

### Higher Prices?

The U.K. Office of Communications recently saw two broad types of mobile consolidation, some in national markets and others across different international markets, it said in a July discussion paper on its strategic review of digital communications. Examples of fixed/mobile consolidation include Liberty Global/Base, Ofcom said. There is also horizontal mobile consolidation, including Three/O2 Ireland and O2/E-Plus in Germany, both of which cut the number of mobile wholesale network operators from four to three, it said. BT/EE would establish a converged player with significant fixed and mobile network infrastructures, while Three/O2 could create a more concentrated mobile market, it said.

Consumers are likely to get better services at lower prices if there are a "reasonable number of effective competitors," Ofcom said. It defined reasonable as having at least four credible national wholesalers

of mobile services but said its approach is being challenged by the recent wave of four-to-three mobile mergers in Europe. Austrian and Irish M&A produced evidence of some significant price increases, Ofcom said. Three Ireland recently hiked prices for its Bill Pay SIM-only customers 25 percent, and the Austrian telecom regulator found that user prices rose more than 30 percent between late 2013 and the end of 2014, it said.

“Price is a critical parameter of competition,” Competition Commissioner Margrethe Vestager said June 15. The EC will continue to analyze likely price effects in its enforcement work, but will also examine what happens to innovation, she said. The EC [seeks](#) bids for a study on competition and market outcomes in the telecom sector.

### **Boosting Investment?**

“The focus of future policies has to shift towards the promotion of innovation and investment in network infrastructure,” European Telecommunications Network Operators’ Association Chairman Steven Tas said at a February workshop of the Body of European Regulators of Electronic Communications. “Less fragmented and more efficient markets will drive better value for consumers and will help bridge Europe’s investment gap.” A 2013 [study](#) for ETNO said more M&A in the highly fragmented mobile sector could “benefit the consumer,” considering not just short-term price ramifications but also the longer-term value of additional investment. Some disagree.

“There is no evidence that massively large operators invest more or become more profitable” from consolidation, European Competitive Telecommunications Association Director Erzsébet Fitori said. Large-scale consolidation driven by regulatory policy that forces viable competitors to disappear would make a lot of existing investment redundant, she said. “Europe needs small and agile Davids, who have better ideas, invest more efficiently than yesterday’s Goliaths and innovate to genuinely deliver what end-users want.” There might not be a magical number of operators, she emailed, “but 2 is definitely not enough!”

Vestager said she has seen no evidence that incumbents will be able to invest more if they’re allowed to combine with rivals in the same country. She said June 15 that there’s ample evidence that excessive consolidation may lead to less competition and higher bills for consumers and to lower incentives to innovate.

### **EC Shift Seen**

Another major issue in European M&A is the growing debate over whether certain transactions should be vetted by the EC or national competition authorities. If each of the firms involved derives more than two-thirds of its EU-wide revenue within the same member country, rules say there’s no EU dimension, said Antonios Drossos, managing partner of Finnish telecom consultancy Rewheel. BT/EE is subject to national review, he said. There’s a referral mechanism by which a national competition authority can ask the EC to send a case back, but there’s no recourse if the EC refuses, he said.

It’s an “obvious paradox,” Drossos said. The EC argues that M&A mostly affects national markets, while operators want to define the telecom market as international, he said. EC transaction decisions narrowing the number of mobile operators from four to three are not popular with national authorities, he said. Despite that, national regulators, even those publicly opposed to EC decisions (such as German competition authority Bundeskartellamt) haven’t challenged them in the European Court of Justice, Drossos said. That

would be a politically “toxic development” given EC close cooperation with national competition authorities, he said. Before it arrives at an antitrust decision, the EC meets with all 28 national regulators, who take a nonbinding vote, he said. In the Austrian and Irish cases, a minority of EU governments opposed the EC; in the German E-Plus/O2, only two nations backed the EC, he said.

Vestager has hinted she will deviate from the approach of her predecessor, Joaquín Almunia, Drossos said. Almunia’s model in approving M&A was to try to dress up mobile virtual network operators to work as MNOs, but that didn’t work, he said. Vestager indicated she’ll be tougher on telecom M&A by making clear that price increases must be avoided, Drossos said. In her first telecom decision, Spain’s Jazztel/Orange, Vestager mandated a new fourth infrastructure player buy a divested fiber network in Spain’s five largest cities and offer national services by securing wholesale access to Jazztel’s national ADSL network, he said. If the EC does the equivalent in mobile deals, that points to it saying there must be four national mobile operators, he said. Vestager’s recent comments on mobile M&A signaled a “distinct possibility” that the EU might block one or more pending combinations, Brussels telecom lawyer David Cantor said.

These deals are national, but DT’s pending acquisition of a substantial minority of BT as a consequence of BT’s planned purchase of EE “could have a tectonic impact on cross-border consolidation in the European telco space,” Cantor said. But “we first need to see the upshot of” the BT/EE and Three/O2 reviews, he said. “I can’t think of another instance wherein two factually interrelated merger cases were subject to simultaneous review at (respectively) national and EU level,” he emailed.

But Baker & McKenzie M&A attorney Peter Strivens predicted continued national consolidation of mobile operators trapped in the low-value end of the market that provide telephony services but not content. There may also be a trend toward more network- and cost-sharing, which doesn’t involve M&A but rather sales and purchases of “large estates of masts,” or holdings of mobile phone towers, Strivens said. —*Dugie Standeford*

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*(continued from page 3)*

## **'Gin It Up'**

### **Walden Warns LPTV Stakeholders of 'Big Battle' Over Spectrum**

A House Republican warned low-power TV (LPTV) broadcasters and translators that other “powerful” forces are seeking their spectrum and will exert intense lobbying power in Washington to acquire it. House Communications Subcommittee Chairman Greg Walden, R-Ore., listened to multiple stakeholders outlining anxieties about the FCC’s broadcast TV incentive auction, in a discussion lasting more than an hour in his home district.

“You had Google, Facebook, Apple, AT&T, Verizon, every telecommunications company, all these software companies, they are all after your spectrum,” said Walden, a former radio broadcaster, during an Aug. 5 engineering forum hosted by theDove TV, which posted video of the forum last week. “I’m not throwing a rock at them, I’m just telling you the reality. And they come to the table in Washington with an enormous firepower. And broadcasters are broadcasters. You’ve got the NAB, that does a great job, and the [National Religious Broadcasters] NRB, that does a great job. ... It’s a big battle right now over spectrum.”

“The Internet of Things is coming to a place near you, and they need spectrum, and you’ve got it,” Walden adviser Ray Baum, a former Oregon public utility commissioner also attending the forum, told attendees.

“This is the time to really gin it up” and “turn the heat up” at the FCC and before members of Congress, Walden advised. Both Walden and Baum emphasized the importance of the 39-month period for LPTV and translators to vacate their channels following the auction if they would need to. “That was a bigger victory than you might think,” Baum remarked. “This 39-month period is really critical, and actually every day is right now because people are starting to harden in,” Walden said. “There’s a majority on the commission that is probably more pro-unlicensed rather than not and may even be somewhat dismissive of LPTV and the role it plays, and of translators.”

NRB President Jerry Johnson appealed to Walden and read from one of his group’s recent resolutions asking the FCC “not to auction religious TV off the air,” as he put it. “It’s just incredible, it’s like losing a family business, a farm,” Johnson said of the prospect. “Unthinkable, actually, that this could go away. I think the main principle is it’s wrong to give the unlicensed preference over those who are licensed, invested.” He worried over language about the FCC protecting LPTV stakeholders “to the extent possible” and cautioned that he believes the agency “is going to blow that door wide open” in taking advantage of the language.

Perry Atkinson, station manager at KDOV-TV Medford, Oregon, warned of the “incredible land grab” by the FCC in the auction. “We’ve done nothing wrong to have our licenses revoked,” Atkinson said, listing the members of the community that have contributed to KDOV’s operations. “To lose our license now would be devastating. How can I in good conscience continue to improve our television station when the [return on investment] could be zero? How can I go before our audience and ask for support knowing the station could go away? This is a violation of public trust in the highest order, a violation of our moral and ethical code, and destroys our integrity in the marketplace.”

Walden recommended the audience consider the ATSC 3.0 next-generation broadcast standard: “If I were in your shoes, I’d be looking at [it] very hard going forward,” he said, suggesting the technol-

ogy could allow these stakeholders to “create a digital stream” and become like a wireless company with 4D video capabilities. “That pressure’s not going to be gone once this auction is gone,” Walden warned. “They’re going to double down and want more spectrum. And that’s where I lay out there, I’d be looking at ATSC-3. ... If you can figure out a technology that works, all of a sudden you’re a competitor to the wireless companies. The original wireless comes back with a vengeance.”

Walden repeatedly referred to his FCC oversight hearing July 28, where he asked FCC Chairman Tom Wheeler about the auction, and Wheeler affirmed that the agency would help find homes for those that were displaced (see [1507280040](#)). Walden also cited a letter outlining concerns that he wrote with Rep. Joe Barton, R-Texas, who has joined with Walden on this issue in the past (see [1508050018](#)). Walden also repeatedly insisted that the 2012 Spectrum Act authorizing the incentive auction was very intentionally not meant to prioritize unlicensed ahead of licensed spectrum. “We had a big fight over that,” Walden said, saying FCC Commissioner Jessica Rosenworcel was then one of the key Democratic Senate staffers negotiating the legislation. “They were very much pushing unlicensed spectrum. On our side, we were very much pushing back against that.”

Rosenworcel now “is very much pushing for an unlicensed channel,” Walden said. Baum agreed Rosenworcel “wants a designated channel in the gap between a couple full-power stations” in various markets, calling this “common knowledge.” The allies to LPTV and translators are the mobile broadband providers, though for different reasons, Baum said. Walden and Baum emphasized their problems with the FCC’s plans to relocate to the duplex gap and said the FCC is relying on its public interest standard to, in their view, contradict the intent of the authorizing legislation.

“Somebody could file suit,” Walden acknowledged, considering possible objections from NAB or the NRB. He said the FCC is relying on public interest and the law doesn’t favor unlicensed over licensed: “You have a conflict. So it may end up in court.” Walden reassured the crowd that this scenario wouldn’t threaten the stakeholders beyond the incentive auction and said Congress gave the FCC one-time auction authority in this case. He expressed optimism about the auction participation, citing the more than \$40 billion raised from last year’s AWS-3 auction. “I would argue this is even more valuable spectrum, and I think the bidders will be there,” Walden said of the incentive auction.

Walden was hesitant to say legislation was necessary and pointed to the intense grassroots energy required. “I don’t want to overpromise here,” Walden said, anticipating what he suspected would be a “fierce” argument from other lawmakers that LPTV and translators have secondary importance. He’s open to considering the implications of legislation after the auction that would allow upgrades to Class-A stations but doesn’t know the implications yet, he said. The high-tech community “can’t get enough spectrum” and would devote its resources to “working everybody against you,” Walden said. “There is a push that says [broadcasters] just need to go away. That spectrum has a higher value for other purpose[s] than broadcast. Because you can get video over the Internet. I’m not an advocate of that, I don’t agree with that.” — *John Hendel*

### **Logical Corollary**

## **Broadcasters, MVPDs Disagree About Expanding Channel Sharing**

Broadcasters support FCC proposals to allow stations that don’t give up their spectrum in the incentive auction to channel share outside the context of the incentive auction. But AT&T and NCTA believe it will discourage auction participation and unfairly burden pay-TV carriers, according to comments respond-

ing to a channel sharing NPRM posted Thursday and Friday in docket [15-137](#). Allowing channel sharing for stations outside the incentive auction is a “logical corollary” to allowing stations in the auction to share, said NAB, saying the FCC should be as flexible as possible about channel sharing agreements (CSAs).

If stations don’t have to be in the auction to share, they lose a reason to participate, said AT&T and its new subsidiary DirecTV, and NCTA. Congress authorized channel sharing to clear broadcast spectrum, and only broadcasters that submitted winning bids in the auction should be allowed to share, AT&T said.

If the FCC allows channel sharing outside the auction, it should require that the vacated spectrum be relinquished to the FCC and no longer eligible for broadcast use, except to relocate TV stations that were repacked into the wireless band, AT&T and DirecTV said in a joint filing. But NAB said vacated channels “should remain allocated for television use and be available for white spaces devices unless they are occupied by a television station. Maintaining the current allocation of these channels may also assist in any future transition to a new television standard.”

Allowing channel sharing for auction nonparticipants could hurt the auction, NCTA said. The FCC proposal may “have the perverse effect of inducing stations to refrain from participating in the auction, so that the government does not recapture spectrum that might otherwise have been relinquished,” NCTA said. Flexible rules for broadcast channel sharing is a way to encourage auction participation, said the Expanding Opportunities for Broadcasters Coalition. Since the sharing order on reconsideration allows CSAs to have limited terms and be temporary, the commission needs to expand the field of possible sharing partners for broadcasters, the EOBC said. “Broadcasters must know that they will at least have the option to enter into another channel sharing arrangement upon the expiration of the initial term.” CSAs should have a minimum term length of three years to minimize disruption, AT&T said.

Broadcasters and MVPDs are concerned with how channel sharing rules intersect with carriage rights. Broadcasters need to know that sharing won’t affect their carriage rights, NAB said. “Assuring broadcasters that entering into channel sharing agreements will not affect carriage or retransmission rights” will likely increase auction participation, NAB said. Channel sharing shouldn’t create any new carriage obligations around the shared station, AT&T and DirecTV said. If MVPDs incur costs due to shared stations changing transmitters, the costs should be borne by the broadcasters, AT&T said. The Spectrum Act and the Constitution don’t allow “the extension of multiple must-carry rights to stations that choose to share a channel outside the context of the auction,” NCTA said.

Allowing channel sharing after the auction is a way the commission could ease the effects of the auction on low-power TV, said LPTV broadcaster International Communications Network. LPTV stations won’t know until after full-power and Class A stations are repacked what frequencies and sharing options are available to them, ICN said. Broadcasters will need flexible rules around channel sharing to negotiate effective rules, ICN said. — *Monty Tayloe*

### Industry Points to Progress

## **DNT So Porous, Privacy Groups Introduced New Ad Blocking Tools; In Talks With Web Players**

Some privacy advocates said they are so fed up with the porous nature of firms’ ad blocking policies, they introduced their own ad blocker. And they said they are talking with additional Web companies to sign on to support the service.

Citing concerns with the voluntary nature of Do Not Track policies, some privacy advocates like the Electronic Frontier Foundation are creating new DNT policies and related tools (see [1508060043](#)) to help consumers avoid inadvertently sharing information with advertisers and third parties few have heard of. As privacy advocates push back, advertisers point to opt-out programs becoming a widely accepted industry practice to preserve privacy. Advocates said that's not enough.

Advertisers have wrapped the Internet in an elaborate and sneaky web of tracking technologies, but consumers haven't been given practical ways to defend themselves, said EFF Chief Computer Scientist Peter Eckersley, leader of the DNT project (see [1508040019](#)). EFF set out to build a simple tool that can be installed with one click in Firefox and Chrome that would protect users, Eckersley said. "People only get a vague hint of being tracked when the creepy ads" start following them around the Internet, Eckersley said. But the ads are "only the tip of the iceberg," he said. Dozens of companies that users have no relationship with and have never heard of "know everything about you," he said. Advertisers need to "stop prying around in your business," he said.

Data-driven marketing provides consumers with relevant products (see [1504090045](#)), said Peggy Hudson, Direct Marketing Association (DMA) senior vice president-government affairs. "Sometimes questions and studies can lead consumers down a particular path," she said, saying what consumers may find creepy may just be a misunderstanding of how targeted ads work. Consumers can always opt out, she said.

Consumer choice is critical, said Association of National Advertisers' Group Executive Vice President-Government Relations Dan Jaffe. Opt-out programs like one from the Digital Advertising Alliance (DAA) are "highly successful" and allow consumers to opt out not only on Web browsers, but also on mobile, Jaffe said. "We make clear what we're doing." For security and other reasons, people may need to see what people are doing on their sites, he said. "The FTC has strongly stated our program is a good one and is privacy enhancing." The FTC had no comment.

People want relevant ads, Jaffe said. Irrelevant ads are seen as spam and don't benefit the consumer or the seller, he said. It's a mutual interest to make ads more relevant, he said, saying the advertising industry has been as transparent as possible and has spent a "tremendous amount of time educating consumers." Even if an individual allows advertisers to track him, he can choose how his data is used, Jaffe said.

The ad industry has what it likes to call an opt-out, but the reality is it's a "pretend not to track system," Eckersley said. Neither the Network Advertising Initiative nor the DAA's opt-out mechanisms or programs are easy to use or widely known by consumers, said International Association of Privacy Professionals Vice President-Research and Education Omer Tene (see [1504090045](#)). People who opt out of targeted ads aren't opting out of data collection, Tene said. The profiling of those individuals continues, he said.

EFF is trying to create incentives for companies to honor DNT requests by not blocking ads in exchange for not "collecting data so intrusively" with its new DNT policy, Eckersley said. The ad industry as a whole has been "consistently unwilling to respect the principle of consent when it comes to tracking people online," Eckersley said. But some individual advertising companies have been more willing to engage in discussions, he said.

EFF has partnered with a few online organizations including the privacy company Disconnect, publishing site Medium, analytics service Mixpanel, ad- and tracker-blocking extension AdBlock, and search engine DuckDuckGo with its new DNT policy. Eckersley said EFF is in talks with several big companies, but wouldn't name them.

TechFreedom President Berin Szoka said he supports user empowerment tools in principle, but EFF's tool doesn't reflect the standards participants in the World Wide Web Consortium agreed upon during the multistakeholder process. The big question is what happens next, Szoka said. Some will argue in favor of regulations or legislation, others will criticize the multistakeholder process in general, he said. Szoka said W3C's multistakeholder process on DNT was "designed to fail" for a few reasons, namely, the FTC's decision to label "DNT" was "completely misleading phrasing." Every form of online ads involves tracking, Szoka said. If the FTC instead had said it was looking at building interest profiles or retaining data for what people look at on the Internet, there may not have been as much disconnect between privacy advocates and industry. — *Katie Rucke*

## Resolutions OK'd

### **NCSL Supports FCC 2010 Open Internet Principles, Seeks Legislation**

The National Conference of State Legislators (NCSL) supports the FCC's 2010 net neutrality principles to protect an open Internet, including no blocking, no throttling, transparency and no pair prioritization, it said in a resolution adopted at its legislative summit last week. The resolution, introduced by state Reps. Joe Atkins, Democratic-Farmer-Labor-Party-Minn., and Blair Thoreson, R-N.D., both members of NCSL's Communications, Financial Services and Interstate Commerce Committee, urges Congress to enact legislation that would protect consumers without undermining future growth, investment and innovation. It said new federal legislation should give the FCC clear authority to protect consumers, close the digital divide and preserve an open Internet.

NCSL also renewed several telecom resolutions during the summit. NCSL uses resolutions—both new and old—to help guide the organization's advocacy efforts in Congress in the following year, a spokesman said. Included in the renewed resolutions was a call for balanced national spectrum policy, particularly in the 5 GHz band. Another resolution supports public-private partnerships to increase broadband proliferation. Other resolutions oppose the State Video Fairness Act and support intellectual property rights and protections.

The NCSL again urged all levels of government to work with the private sector, nonprofits and academia to create public-private partnerships to develop and implement broadband awareness, adoption and use programs. NCSL said it opposes unnecessary or unwarranted federal legislation or regulation that would impede efforts by states to promote access to the Internet, enhance competition or increase consumer choice, or ensure the security of personal information of consumers conducting e-commerce.

In the spectrum resolution, the organization supported the FCC's move to allocate additional 5 GHz band spectrum for unlicensed use to meet the increased demand for wireless technologies. In opposing the State Video Tax Fairness Act of 2009, or [H.R.1019](#), the group asked Congress to resist the "unjustified interference" into state efforts to create a tax-neutral choice for consumers.

NCSL wants all levels of governments to create, develop and implement pro-IP awareness and enforcement, the resolution said. It also supports efforts to ensure the White House Office of the U.S. Intellectual Property Enforcement Coordinator has sufficient staff, budget and authority to fulfill the obligations and achieve the goals outlined in the Prioritizing Resources and Organization for Intellectual Property Act and the National IP Strategy. It also supports robust IP protection and enforcement provisions in trade agreements and their implementation. — *Samantha Madison*

## Comm Daily® Notebook

Public TV interests want to know if FCC anti-collusion rules prohibit public TV stations from engaging in public fundraising after the short form application deadline for the incentive auction, said a [joint ex parte](#) filing from the CPB, PBS and the Association of Public Television Stations. Representatives of the public TV groups and NAB met with the Incentive Auction Task Force and “raised multiple questions” about the communications prohibitions from the incentive auction’s anti-collusion rules and how they could affect public TV stations’ “routine business and financial operations,” the filing said. FCC officials have told us the rules bar stations from discussing their bids in the auction and other bidding strategy-related information from the deadline for applications to participate in the incentive auction until the auction is complete. Along with questions about fundraising, the public TV representatives asked whether the anti-collusion rules keep stations from stating publicly that they will continue operating after the auction, such as when requesting donations. They also asked if stations are prohibited from releasing Freedom of Information Act-requested information about their post-auction plans, or posting multiyear strategic plans on their websites. The public TV groups also asked if the rules bar them from signing multiyear contracts during the signing period, if their boards’ open meetings are allowed under the rules, and other questions on how deep the anti-collusion rules go.

### Wireline

CenturyLink plans to cut its workforce by about 1,000, the company confirmed Friday in an emailed statement. “After careful consideration, CenturyLink has made the difficult decision to reduce its workforce,” the statement said. “This includes current positions as well as not backfilling open positions.” Affected employees will receive severance packages and assistance to find new jobs, including within the company. “Additional steps will include minimizing the number of contractors we work with, reducing travel expenditures and further reductions of non-employee-related expenses.” CEO Glen Post said on an Aug. 5 analyst call that CenturyLink was planning a “reduction in the number of employees” to cut costs, according to a [transcript](#) of the call. On that call, Chief Financial Officer Stewart Ewing said CenturyLink estimates it will take at least \$300 million of the \$514 million in annual USF support it’s eligible for under the FCC’s Connect America Fund Phase II. CenturyLink is continuing to evaluate whether to take more than that and expects to notify the FCC of its final decision on or before an Aug. 27 deadline for price-cap telcos, the company said in a separate emailed statement. Ewing said the \$300 million would go to about two dozen states where CenturyLink serves high-cost areas and it’s studying whether to take the CAF II subsidies in another 11 states. If the telco doesn’t accept the CAF II support there, Ewing said the company could continue to receive about \$100 million in USF “frozen support.” He said the FCC is unlikely to write rules before late 2016 or maybe 2017 for a reverse auction in areas where price-cap carriers don’t accept CAF II money. —*DK*

### Wireless

A group of wireless carriers objected to a provision in the June FCC Lifeline order (see [1506180029](#)) establishing “a uniform snapshot date for Lifeline reimbursements going forward.” The eligible telecom carriers (ETCs) said under the rule they would sometimes have to provide service to Lifeline customers but not

get compensated. “The new rule takes a snapshot of an ETC’s Lifeline subscribers as of the first of the month and provides reimbursements for the previous month’s service based on the number of subscribers in the snapshot,” the ETCs [said](#) in their petition for reconsideration. “To remedy the injustices described herein, the rule need only be modified to add to the snapshot count any subscribers de-enrolled in the previous month that received Lifeline service during that month.” The petition was the second wireless recon petition filed at the FCC. CTIA is challenging a different aspect of the rules (see [1508130048](#)). Wireless ETCs American Broadband and Telecommunications, Assist Wireless, Easy Telephone, iWireless, Telrite, Telscape Communications and Total Call Mobile signed the petition. “Most egregiously,” ETCs wouldn’t be reimbursed for service in the month of December for all subscribers that fail to recertify their eligibility annually because Universal Service Administrative Co. requires all such subscribers to be de-enrolled by Dec. 31, the filing said. “Annual recertification is the largest single de-enrollment event in the Lifeline program. Annual recertification failure rates vary by carrier from 10 to 50 percent.”

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T-Mobile became the third wireless carrier to support FM chip activations in its smartphones, NextRadio said Friday. Activating the FM chip, already built into every smartphone sold in America, “allows users to download the NextRadio app and engage in a visually compelling, interactive experience with local radio stations, without the data charges and battery drain of streaming,” NextRadio said. Word of T-Mobile’s endorsement for FM chip activations came in a tweet from CEO John Legere that NextRadio publicized, in which he said the carrier “will push our OEM partners to support” the move. Sprint has supported FM chip activations in smartphones for years, while AT&T added its support for FM chip activations last month (see [1507280054](#)). Virtually all the FM chip activations to date have come in Android smartphones. Apple has remained the biggest holdout on FM chip activations in its iPhones, but through no “lack of effort” from Sprint to win Apple over, NextRadio told us at the NAB Show in April (see [1504140047](#)). As for any possible change since in Apple’s resistance, “Apple does what they want but the more carriers asking, the more Android phones supporting FM radio and the more consumers asking for NextRadio can only help get Apple’s attention,” NextRadio President Paul Brenner emailed us Friday. “We are ready to talk to them any time about the power of local radio.” Apple representatives didn’t comment. —*PG*

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FirstNet operations in fiscal year 2014 were financed by NTIA capital contributions of \$24.3 million, said a [report](#) by Acting Chief Financial Officer Kim Farington, posted by FirstNet Friday. FirstNet also paid out \$900 million to buy assets, the report said. Operating expenses were up 43 percent over the previous year, reflecting a larger staff and activities “to execute the Strategic Roadmap and create the internal capability required to support FirstNet’s mission,” the report said. “The clean audit opinion demonstrates the hard work by our talented and dedicated financial team,” Farington [said](#) in a news release. “They have been working diligently to implement strong policies and business practices, and to resolve complicated financial management issues associated with a newly established federal agency. Further, the effort has proven the soundness of the overall health of FirstNet’s financial management capabilities, driven by strong leadership commitment and partnerships within the Department of Commerce.” The report said FirstNet owns one class of “intangible asset,” the license for the 700 MHz D-block. “Under current law, the spectrum license is not tradable or exchange able in any market and any measure based on potential cash flow would be purely speculative,” the report said. “Therefore, FirstNet has not recognized in its financial statements any value related to the spectrum license granted by the FCC.” The report also said that during the fiscal year FirstNet took possession of a donation of microwave and LTE equipment from the City of Charlotte, North Carolina.

Roughly two-thirds of parents and 56 percent of students plan to do most back-to-school shopping at mass merchandisers, and 85 percent of respondents expect their back-to-school shopping to be in brick-and-mortar stores, [said](#) a Market Track survey done last week. Mobile shopping is showing continued growth with 27 percent of respondents having made back-to-school purchases on a mobile device, while 40 percent have or will use their devices to compare prices and hunt for discounts, the report said. The online survey canvassed 1,000 adult consumers responsible for back-to-school shopping for children.

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Sprint representatives made their case for revised special access rules, in a meeting with FCC General Counsel Jonathan Sallet and others at the agency, said a filing posted Friday in docket 05-25. “We discussed the importance of the special access proceeding to wireless competition and the need to release the data the FCC has collected in a timely fashion,” Sprint [said](#).

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AT&T said it would put in place what it calls its Mobile Share Value plans starting Saturday. Among the changes, AT&T subscribers get 15 GB of data per month for \$100, up from 10 GB for the same price under the previous plan, AT&T [said](#) Friday.

## Internet

The FTC “wants to know” about consumers’ privacy-related complaints against companies, it said Friday, noting in a [blog post](#) that its new Complaint Assistant website will make it easier for consumers to report complaints. The Complaint Assistant site is meant for complaints about issues like unauthorized collection of consumers’ information and unauthorized disclosure of a consumer’s location on social media, the FTC said.

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Most people haven’t installed security software on personal devices, strengthened their Wi-Fi passwords or changed their passwords more frequently, despite the recent increase in reported cyberattacks, [said](#) a national survey by Wakefield Research, commissioned by Citrix. The July 6-13 survey of more than 1,000 U.S. adults was done online and by email invitation.

## State Telecom

The 8th U.S. Circuit Court of Appeals reversed a lower court [decision](#) and remanded Sprint’s appeal of the U.S. District Court in Des Moines’ ruling that dismissed its complaints against the Iowa Utility Board, [said](#) a decision issued Friday. Sprint argued that fees it was required to pay Windstream for unpaid state access charges for VoIP calls fell under information calls, so they weren’t subject to regulations. The IUB said the calls fell under telecom services and were, in fact, subject to state regulations. The companies had no immediate comment Friday.

Charter Communications' planned buy of Bright House Networks and Time Warner Cable would help the newly formed New Charter in promoting diversity, [said](#) an ex parte filing from the California Hawaii State Conference of the NAACP in FCC docket 15-149. New Charter would be able to emphasize progressive inclusion practices and ensure access to independently owned and minority-focused programming, the letter said. The deals would also promote better relations within many minority groups, it said.

## Telecom Notes

A U.S. District Court judge in Los Angeles vacated a hearing scheduled for Monday (see [1508130050](#)) in Human Rights Watch's case against the Drug Enforcement Administration claiming the DEA illegally collected the group's international phone call records, a [notice](#) issued Thursday evening said. The DEA asked the court to dismiss the case because the data collection was stopped and the database holding the information has "been purged of the collected data," the agency's motion said. Judge Philip Gutierrez said in the notice that the DEA's motion to dismiss will be considered based on submitted pleadings and that no appearance by counsel is necessary.

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The FCC pushed back comment deadlines in its broadband deployment inquiry to Sept. 15 and Sept. 30, the Wireline Bureau [said](#) in an order issued Thursday in docket 15-191. The bureau wants to ensure the public has "sufficient time to respond to the numerous and complex issues" raised in a notice of inquiry the FCC recently adopted and released (see [1508060049](#) and [1508100054](#)). Under Section 706 of the Telecom Act, the commission must determine if advanced telecom capability is being rolled out to all Americans in a reasonable and timely way, and if it's not, take immediate actions to remove barriers to deployment.

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Payments are to be made from the Telecom Relay Service Fund to Sprint for provision of Web CapTel service, an IP-captioned telephone service, from Jan. 1, 2014, to the present, the FCC Consumer and Governmental Affairs Bureau [said](#) Friday. "The compensation at issue was withheld by the TRS Fund administrator, Rolka Loube, pending a determination as to whether the service was provided in compliance with the Commission's emergency call handling requirements," the order said. "We find that there is no valid basis for a finding of noncompliance, and thus, direct Rolka Loube to release all compensation withheld and otherwise owed for the period specified." The bureau directed Sprint to provide Rolka Loube with calling information during the specified period, if it hasn't already done so, to allow for proper payments.

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Lightower and Fibertech Networks completed a \$1.9 billion combination, doubling the individual companies' respective service footprints, a Lightower news release [said](#) Thursday. The combined company will operate under the Lightower name, and it said the fiber provider has customers including wireline and wireless carriers.

## Intellectual Property

Limelight Networks infringed on a content delivery patent held by Akamai, the U.S. Court of Appeals for the Federal Circuit ruled in an en banc opinion Thursday. The Federal Circuit reversed a previous decision saying Limelight wasn't liable for direct infringement. "We are disappointed this outcome isn't aligned with the recent rulings in our favor," Limelight CEO Bob Lento [said](#) in a statement: "We will not allow this to distract us from serving our global customers." Limelight will study all options to determine its next steps, it said. "We are extremely pleased with the Federal Circuit's decision," Aaron Ahola, Akamai deputy general counsel, [said](#) in a statement. A jury ruled in 2008 that Limelight infringed on the patent, Akamai said, and initially awarded the company more than \$45 million in damages.

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Cisco is helping to lead the charge for a "high quality, next-generation codec that can be used everywhere" and will be royalty-free, Jonathan Rosenberg, chief technology officer in Cisco's Collaboration business, said in a [blog post](#). Cisco hatched the effort because "the patent licensing situation for H.265 has recently taken a turn for the worse" with the formation of "two distinct patent licensing pools" that are missing many H.265 license holders among their licensor members, Rosenberg said, referring to MPEG LA and HEVC Advance (see [1507220001](#)). "The total costs to license H.265 from these two pools is up to sixteen times more expensive than H.264, per unit," he said. The licensing terms of MPEG LA and HEVC Advance "preclude usage of H.265 in any kind of open source or freely distributed software application, such as web browsers" or in "freemium" software products, he said. Though H.265 "is still a good fit for hardware products," it can't serve as "a universal video codec across hardware and software," he said. Code-named "Thor," Cisco created a new codec development process that "would allow us to work through the long list of patents in this space, and continually evolve our codec to work around or avoid those patents," he said. "Our efforts are far from complete, but we felt it was time to open this up to the world." So Cisco "open-sourced" the code, and contributed Thor to the Internet Engineering Task Force, which has begun a standards activity to develop a next-gen royalty free video codec in its NetVC workgroup, he said. "As more technology gets contributed to this cause, the greater its chance of success." MPEG LA and HEVC Advance representatives didn't comment.

## Broadcast

Friday's deadline passed for ATSC's S34-2 ad hoc group to deliver a recommended ATSC 3.0 audio codec to its parent S34 subcommittee, but with no announcement on a winning system. A statement from ATSC President Mark Richer suggested an announcement on the winning codec might be a distance off. "ATSC will announce elements of ATSC 3.0 as they are approved for Candidate Standard status by ATSC's Technology Group 3," Richer emailed us Friday, in reference to the technology group chaired by Triveni Digital Chief Science Officer Rich Chernock that's overseeing all ATSC 3.0 standardization work. "In the case of audio," Richer said, "the work of a subcommittee continues and there is nothing yet to announce." Dolby AC-4 and the MPEG-H audio alliance of Fraunhofer, Qualcomm and Technicolor are the two proponents vying to be chosen as the ATSC 3.0 audio system (see [1508110027](#)). —PG

## Media Notes

The U.S. Court of Appeals for the D.C. Circuit partially affirmed and partially overturned a 2013 Copyright Royalty Board decision that gave the Billy Graham Evangelistic Association (BGEA) and 22 other religious ministries that own copyrights on devotional TV programming 59 percent to 62.86 percent of royalties for cable programming aired between 2000 and 2003. The CRB had ruled that the Independent Producers Group would receive 37.14 percent to 41.02 percent of royalties. The religious ministries had argued that they should receive full royalties on the programming because IPG had no “valid, compensable claims” within the devotional programming category. IPG proposed they receive 37.3 percent to 53.1 percent of royalties. The religious groups objected to IPG’s claim to represent several of the ministries, saying BGEA revoked IPG’s agreements for 2002 and 2003. The three-judge D.C. Circuit panel—Judges Janice Brown, Brett Kavanaugh and Patricia Millett—[vacated](#) the CRB’s ultimate royalty allocation Friday, ruling it “was arbitrary and capricious” since the royalty judges had rejected the allocations proposed by both the ministries and IPG. “Settling royalty distributions by agreement reflects a separate avenue for resolving royalty distributions under the Copyright Act, subject to its own requirements,” Millett said in the court’s opinion. “In this case, any intersection of the two parties’ numbers was the product of accident, not agreement.” The CRB must now re-examine the royalty allocations, the court ruled. The D.C. Circuit also said, however, the CRB “reasonably determined” that IPG had authority to represent four of the claimant ministries and “reasonably declined” consideration of the ministries’ claim for full royalties. The ministries are generally pleased with the D.C. Circuit’s ruling, said Pillsbury Winthrop lawyer Matthew MacLean, who represented the ministries in the case. The ministries are confident the CRB will re-examine the royalties allocation based on evidence instead of “simply splitting the baby,” MacLean said. The IPG takes issue with the D.C. Circuit’s vacation of the existing CRB royalties allocation because the court appeared to suggest the IPG’s allocation methodology was “100 percent worthless,” said Pick & Boydston lawyer Brian Boydston. The CRB in reality was critical of the IPG methodology but didn’t completely discount it, he said. The D.C. Circuit “could have reached a different decision if it saw it that way,” Boydston said. “I’ll be curious to see what the CRB judges have in mind.”

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NAB and Nexstar are pushing back at a Mediacom petition for new blackout rules. It’s “little more than a cynical ploy to curry favorable governmental treatment to lower its costs and help its bottom line,” NAB said in an FCC filing posted Friday in RM-11752. Mediacom in July petitioned the FCC to adopt rules preventing local broadcasters from imposing blackouts unless a station’s signal is available for free over-the-air or via Internet streaming to 90 percent of the homes in the relevant market (see [1507070061](#)). “Their comical plea might as well have been delivered ... on the back of a unicorn,” NAB [said](#) as it argued against Mediacom’s assertion broadcasters are focused primarily on satellite uplink facilities and multiplexing their signals to the detriment of free public access to those signals, not extending the public’s free access to those signals. Mediacom’s proposal “is just one more filing [by an MVPD] seeking Commission assistance to avoid negotiating in good faith to reach fair and equitable terms,” Nexstar [said](#) as it echoed NAB’s assertion that the FCC lacks the authority to make such a move. Mediacom “conflates the broadcaster obligation to serve the needs and interests of their communities with a requirement that broadcasters transmit viewable signals via MVPDs,” Nexstar said. The broadcaster called the proposal unworkable because it would require the FCC to both define “active” negotiation and come up with a means for determining that a specified percentage of MVPD subscribers were also reached by a broadcaster’s over-the-air signal at a particular point in time.

DirecTV customers in San Diego are experiencing a blackout of KFMB-TV (CBS) San Diego—that blackout being “one of the main reasons everyday people are fed up with Washington,” the American Television Alliance said Friday, repeating its frequent push for changes in retransmission consent rules. KFMB didn’t comment.

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Turner Broadcasting System acquired a majority stake in live video company iStreamPlanet, it said Friday in a news release. Turner plans to leverage the company’s technology to deliver its over-the-top programming, develop new products and shift its core technology infrastructure to the cloud, said the release. iStreamPlanet will continue to be a stand-alone entity, Turner said. Turner is a unit of Time Warner.

## Communications Personals

Shenandoah Telecommunications, preparing for proposed purchase of nTelos (see [1508110067](#)), promotes to senior vice presidents **William Pirtle** for marketing and sales, **Thomas Whitaker**, operations, and **Edward McKay**, engineering and network planning ... Fiber network provider SiFi Networks names **David Thomas**, ex-BT, head-network operations ... Interface Security Systems promotes **Chuck Moeling** to chief marketing officer.

## Communications Daily Calendar

- Aug 17                      FirstNet board teleconference, 10 a.m. — <http://1.usa.gov/1OLsUeK> and 888-997-9859, PIN 3572169
- Aug 17–20                IoT Evolution Expo and Wearable Tech Expo, Caesars Palace, Las Vegas — <http://www.iotevolutionexpo.com/west/about.aspx>
- Aug 18–22                Telecommunications for the Deaf and Hard of Hearing biennial conference, with speakers including FCC Chairman Tom Wheeler, Hyatt Regency Baltimore — <http://bit.ly/1g9gvGG>
- Aug 20                    FCC Office of Communications Business Opportunities workshop on supplier diversity, 9:30 a.m., Commission Meeting Room — <http://fcc.us/1ejnbjD>
- Aug 26                    Commerce Spectrum Management Advisory Committee meets, 1 p.m., Boeing, 929 Long Bridge Dr., Arlington, Virginia — <http://1.usa.gov/1fjMqDs>
- Aug 26–27                Technology Training Corp. event on unmanned aircraft systems, Wyndham Hotel, 1355 N. Harbor Dr., San Diego — <http://bit.ly/1SpyrbK>
- Aug 27                    FCC emergency alert system workshop, 1 p.m., Commission Meeting Room — <http://bit.ly/1E6soCs>

- Aug 27 FirstNet “industry day,” 1 p.m., U.S. Geological Survey, Peck Auditorium, 12201 Sunrise Valley Dr., Reston, Virginia — <http://bit.ly/1DtLZBZ>
- Aug 28 FCC Downloadable Security Technology Advisory Committee meets, time TBD, Commission Meeting Room — <http://fcc.us/1INKMfX>
- Sep 2 Albany Public Safety Regional Planning committees meet, 10 a.m., New York State Harriman State Office Campus, Building 7A first-floor training room, 1220 Washington Ave., Albany — <http://bit.ly/1DA0svJ>
- Sep 2 Alliance for Telecommunications Industry Solutions Network Reliability Steering Committee quarterly virtual meeting, 11 a.m. — <http://bit.ly/1ztRRrv>
- Sep 8 New England Public Safety Regional Planning committees meet, 10 a.m., Connecticut Fire Academy, 34 Perimeter Rd., Windsor Locks — <http://bit.ly/1yHp2lL>
- Sep 8–10 Space 2.0 satellite event, Crowne Plaza San Jose-Silicon Valley, 777 Bellew Dr., Milpitas, California — <http://bit.ly/1MoePXe>
- Sep 8–11 NATOA annual conference, Hard Rock Hotel, San Diego — <http://bit.ly/1Nr8xVf>
- Sep 9 FTC data security conference, 10 a.m., University of California Hastings College of the Law, 200 McAllister St., San Francisco — <http://1.usa.gov/1HsvhCm>
- Sep 9 FCC Media Bureau daylong workshop on Form 323, Commission Meeting Room — <http://bit.ly/1SWJ464>
- Sep 9 Ohio Public Safety Regional Planning committees meet, 10 a.m., Holiday Inn Worthington, 7007 North High St., Worthington — <http://bit.ly/1INjOK3>
- Sep 9–11 CTIA Super Mobility Week, Sands Expo & Convention Center, Las Vegas — <http://bit.ly/1HUKUnR>
- Sep 10 New York City Metropolitan Area Public Safety Regional Planning committees meet, 10 a.m., Paramus Life Safety Complex, 1 Jockish Sq., Paramus, New Jersey — <http://bit.ly/1LmyxjH>
- Sep 15 National Public Safety Telecommunications Council teleconference meeting, 1 p.m. — <http://bit.ly/1MPyDLI> and 510-227-1018, PIN 1927086#
- Sep 15 Utilities Telecom Council rural broadband conference, Crowne Plaza Washington National Airport, 1480 Crystal Dr., Arlington, Virginia — <http://bit.ly/1L8Qd1z>
- Sep 16 FCC Consumer and Governmental Affairs Bureau workshop on robocalls and caller ID spoofing, Commission Meeting Room, details TBA — <http://bit.ly/1PiKiIy>

- Sep 16 Department of Energy and Utilities Telecom Council critical infrastructure communications policy conference, Willard Intercontinental Hotel — <http://bit.ly/1DQmCde>
- Sep 16–18 Association of Cable Communicators’ Cable Communications Institute, Syracuse University’s Lubin House, 11 E. 61st St., New York — <http://bit.ly/1gxwhuU>
- Sep 17 Silicon Flatirons event on closing the digital divide, 1 p.m., University of Colorado Law School, Wittemyer Courtroom, Room 101 — <http://bit.ly/1EsL8fw>
- Sep 17 FCC monthly meeting, 10:30 a.m., Commission Meeting Room — <http://fcc.us/1nuCKDQ>
- Sep 21–24 ATSC 3.0 Specialist Group/Ad Hoc Group “F2F” Meetings, Holiday Inn Crystal City, Arlington, Va. — <http://atsc.org/events/>
- Sep 23 MeriTalk cybersecurity event, 7:30 a.m., Newseum, Knight Conference Center — <http://bit.ly/1L6la9t>
- Sep 24 Public Knowledge awards given on intellectual property, information policy and Internet Protocol, with remarks by FCC Chairman Tom Wheeler, 5:30 p.m., Reagan Building, pavilion floor — <http://bit.ly/1DQHLEa>
- Sep 24 FCBA fall reception, 6 p.m., Supreme Court — <http://bit.ly/1IztQkI>
- Sep 24 NTIA stakeholder meeting on drone privacy, 1 p.m., American Institute of Architects, boardroom, 1735 New York Ave. NW — <http://1.usa.gov/1DcLLsZ>
- Sep 24 FCC Technological Advisory Council meets, 1 p.m., Commission Meeting Room — <http://fcc.us/1vkMmpi>
- Sep 25–27 Research Conference on Communications, Information and Internet Policy, George Mason University School of Law, Arlington, Virginia — <http://www.tprc.org>
- Sep 28 NTIA and Next Century Cities daylong regional broadband summit on New England, Holiday Inn by the Bay, 88 Spring St., Portland, Maine — <http://1.usa.gov/1Dr6ZZR>
- Sep 28–29 Interactive Ad Bureau MIXX Conference, Crowne Plaza Times Square Hotel, New York — <http://www.iab.net/mixx/>
- Sep 29–30 National Association for Multi-ethnicity in Communications annual conference, New York Marriott Marquis — <http://bit.ly/1giLcbS>
- Sep 30 Georgia Regional Planning committees meet, 10 a.m., Georgia Public Safety Training Center, Training Bay-A, 1000 Indian Springs Dr., Forsyth — <http://bit.ly/1MaqBTw>

- Sep 30–Oct 1 FCC Connect2Health Task Force meetings, Jacksonville and Miami, details TBA — <http://fcc.us/1CTIPqI>
- Sep 30–Oct 1 International Association of Privacy Professionals Privacy Academy and Cloud Security Alliance Congress privacy and security conference, including FCC and FTC officials, Bellagio Las Vegas — <http://bit.ly/1SJXAn2>
- Sep 30–Oct 2 NAB Radio Show, Atlanta Marriott Marquis — <http://bit.ly/Z9KfuI>
- Oct 5 NATOA webinar on rights of way management ordinances, 2 p.m. — <http://bit.ly/1mwTuh6>
- Oct 7–8 National Association of Black Owned Broadcasters annual fall broadcast management conference, Washington Marriott Georgetown — <http://nabob.org/events/>
- Oct 7–9 Competitive Carriers Association annual convention, Fort Lauderdale Convention Center — <http://bit.ly/1zbWpkQ>
- Oct 8 Hosted Payload and Smallsat Summit, Washington Convention Center — <http://bit.ly/1FdjLEY>
- Oct 12–13 Internet Association first policy conference, Rosewood Sand Hill, 2625 Sand Hill Rd., Menlo Park, California — <http://bit.ly/1VXqijp>
- Oct 13–16 Society of Cable Telecommunications Engineers Cable-Tec Expo, Morial Convention Center, New Orleans — <http://bit.ly/1N9XNgg>
- Oct 13–16 IEEE Broadcast Technology Society symposium, Caribe Royale, 8101 World Center Dr., Orlando — <http://bit.ly/1PZajxp>
- Oct 18–21 Comptel fall show, Marriott Marquis San Francisco — <http://bit.ly/1Ek1GGC>
- Oct 18–22 ICANN 54 conference, Convention Centre Dublin, Spencer Dock, North Wall Quay — <http://bit.ly/1fjMGCj>
- Oct 20–22 Broadcasting & Cable's NYC Television Week, Waldorf Astoria and Park Central hotels — <http://bit.ly/1IetfGF>
- Oct 21 NTIA stakeholder meeting on drone privacy, 1 p.m., American Institute of Architects, boardroom, 1735 New York Ave. NW — <http://1.usa.gov/1DcLLsZ>
- Oct 22 FCC monthly meeting, 10:30 a.m., Commission Meeting Room — <http://fcc.us/1nuCKDQ>
- Oct 23 Silicon Flatirons event on risk assessment in spectrum policy, 1 p.m., University of Colorado Law School, Wittemyer Courtroom, Room 101 — <http://bit.ly/1IOoS3Z>