

# Communications Daily

The authoritative news source for communications regulation



A service of WARREN COMMUNICATIONS NEWS

FRIDAY, FEBRUARY 6, 2015

VOL. 35, NO. 25

## Table of Contents

### Top News

Lawmakers Feel White House Pressure on Net Neutrality .....	1
Shared Spectrum Model for 3.5 GHz Band Seen as Wave of Future .....	4
Opponents Question Net Neutrality Legal Authority .....	6
Wheeler's Net Neutrality Stance Said Likely to Influence Europe .....	8
Increased Shared Spectrum Within 10 Years, Experts Say .....	10
Sprint Adds Subscribers as Losses Accelerate .....	11
Techies, Law Enforcement Agree: Data Breaches Need More Attention .....	12
Anthem Data Breach a 'Wake-Up Call' .....	13
SiriusXM CEO Sees Connected Car as 'Next Step in Solidifying Our Competitive Advantages' .....	14
Copyright Office's Music Licensing Study Calls for Terrestrial Performance Right .....	15

Capitol Hill .....	17
--------------------	----

Wireline .....	19
----------------	----

Wireless .....	20
----------------	----

Internet .....	20
----------------	----

State Telecom .....	22
---------------------	----

Broadcast .....	23
-----------------	----

Cable .....	23
-------------	----

Media Notes .....	24
-------------------	----

Communications Personals .....	24
--------------------------------	----

### Upton Irate

## Lawmakers Feel White House Pressure on Net Neutrality

The White House rebuffed the idea of net neutrality legislation, just as House Minority Leader Nancy Pelosi, D-Calif., set her bar for legislation in issuing a [statement](#) Wednesday praising FCC Chairman Tom

Wheeler's net neutrality proposal. "Any related legislation must be compared to the benefits of the consumer protections and new competition that this FCC proposal delivers," Pelosi said. The White House released a [photo](#) of Pelosi speaking with President Barack Obama in the Green Room of the White House Wednesday.

Hill Republicans have pressed for legislation to sidestep the Communications Act Title II reclassification of broadband that Wheeler intends to impose, and the Commerce committees' ranking Democrats told us they're open to negotiating after the Feb. 26 FCC vote on Wheeler's draft order (see [1502040047](#)). Senate Commerce Committee Chairman John Thune, R-S.D., believes the administration and the FCC have lobbied Democrats to keep them off his bill, he told us Wednesday.

The White House is "certainly encouraged to see that the FCC is heading in the same direction of safeguarding net neutrality with the strongest possible protections," Press Secretary Josh Earnest said at a briefing Wednesday. "This is consistent with the view that the president articulated back in the fall. And the president has indicated that as this process moves forward, that additional legislation is not needed." Earnest said the administration would avoid "detailed comment about their proposal out of respect for the independent process that the FCC is engaged in right now." The White House took an active hand in the proceeding in November, directly calling for the FCC to reclassify broadband as a Title II service and rallying people to that cause in a petition (see [1411100035](#)).

House Commerce Committee Chairman Fred Upton, R-Mich., lashed out at the White House for its involvement and dismissed the idea that the FCC is independent. "The White House needs to get its hands off the FCC," Upton said in a [statement](#) Thursday, citing a *Wall Street Journal* [report](#) on administration lobbying of the agency. "The White House's efforts to drag the Internet into 1930s regulations is a move that puts the FCC on the fast-lane to the federal courthouse. We have a solution that achieves bipartisan goals to protect an open Internet, satisfying both the president's and Chairman Wheeler's previously stated requirements."

Several Democrats have rallied around the FCC proposal and resisted the GOP legislation. Hill Republicans, in turn, frequently pointed to the proposed legislation in their statements Wednesday slamming the FCC proposal. "We have repeatedly asked the Administration and the agency to work with us to develop a legislative solution," Senate Communications Subcommittee Chairman Roger Wicker, R-Miss., said in his [statement](#). "I look forward to working with Chairman Thune, our House Republican counterparts, and amenable Democrats to craft an alternative measure that would ensure certainty for consumers and providers while allowing innovation to continue to flourish."

"I think that the FCC has done the right thing," Sen. Ed Markey, D-Mass., told us Thursday at the Capitol. "I think these are the rules that we need for the 21st century. I think we should wait to see the details of the rules but they may be the answer. And I think we should give the FCC the chance. I believe the FCC is in the midst of drafting a Declaration of Independence for the Internet for the 21st century, and I think they're doing a very good job."

"There's nothing inappropriate, to my knowledge, and nothing to be incensed about—other than perhaps the ahistorical and highly ironic claim that Obama's the one who made this a partisan issue," Free Press Policy Director Matt Wood told us of the administration's involvement. "The FCC is not making some kind of freelance bureaucratic determination here by returning to Title II." Wood said the agency is simply "finally" following the law embodied in the Telecom Act.

"The Congress makes our rules," Wheeler said in a [PBS interview](#) released Wednesday night. "I have talked to all the leadership of Congress in telecommunications in the last 24 hours and said, 'By us

# FOR MILLIONS OF AMERICANS, HIGH-SPEED INTERNET WILL SOON BE WITHIN REACH.

Millions of Americans will have a new choice for high-speed Internet because of this merger. It's one reason the AFL-CIO, the CWA, local chambers across the country, high-tech innovators, and dozens of state and local leaders have expressed support for our merger. Expanded or enhanced high-speed service to 15 Million customer locations, mostly in rural areas. Content delivered anywhere, on any device. A stronger, better competitor to cable. We can't wait to have you climb on board.

LET'S GO DIRECTLY TO POSSIBLE.

LEARN MORE AT [WWW.ATTANDDTV.COM](http://WWW.ATTANDDTV.COM)



COMPETITION



HIGH-SPEED  
INTERNET



INNOVATION



CONTENT  
ANYWHERE



RURAL AMERICA

putting out these rules, it creates some certainty in terms of just what the debate is about rather than these ethereal kind of concepts that have been kicking around.” Wheeler said he disagreed with Thune that it’s a “power grab” and with House Judiciary Committee Chairman Bob Goodlatte, R-Va., that it would squelch investment. Wheeler has declined to comment specifically on Thune’s bill. “The Congress is the Congress,” Wheeler said when asked about the bill at the FCC’s January meeting. But Wheeler invoked “the vast future” of broadband, urging people to consider the implications of the agency’s role. The GOP bill would limit the FCC’s authority to regulate broadband, with provisions cutting off its ability to rely on Title II and Telecom Act Section 706. — *John Hendel*

**Carriers 'Have Gotten Greedy'**

**Shared Spectrum Model for 3.5 GHz Band Seen as Wave of Future**

The FCC is moving toward final rules for spectrum sharing in the 3.5 GHz band and they should be out shortly, Preston Marshall, Google principal wireless architect, said Thursday at a spectrum conference. Marshall said exclusion zones, proposed to protect Navy operations in the band, shouldn’t be an impediment.

“Whether you like it or not, it’s probably going to happen,” Marshall said of shared use of the 3.5 GHz band. “We don’t want to see something where we got a regulatory win but consumers don’t get anything out of it.” Marshall said any discussion 18 months ago on the topic would have focused on whether sharing the band was desirable, but now the focus is on making sharing work.

In April, the FCC approved a further NPRM seeking final comments on the use of the 3.5 GHz band as a kind of sharing test case and for small cells. Questions always have swirled around the use of the band, especially concerns that exclusion zones designed to protect naval operations in the spectrum are far too

	<p>EDITORIAL &amp; BUSINESS HEADQUARTERS 2115 Ward Court, N.W., Washington, DC 20037</p>	<p><b>Business</b></p>
<p>(ISSN 1537-3088) PUBLISHED BY WARREN COMMUNICATIONS NEWS, INC. Jonathan Make ..... Managing Editor Howard Buskirk ..... Associate Managing Editor</p>	<p>Albert Warren <i>Editor &amp; Publisher 1961–2006</i></p>	<p>Brig Easley ..... Exec. VP-Controller Deborah Jacobs ..... Information Systems Manager Gregory Jones ..... Database/Network Manager Annette Munroe ..... Dir. Marketing &amp; Circulation Katrina McCray .. Sr. Sales &amp; Mktg. Support Specialist Loraine Taylor .... Sales &amp; Marketing Support Assistant Tim Wysong ..... Billing &amp; Renewal Associate</p>
<p>Warren Communications News, Inc. is publisher of Communications Daily, Warren’s Washington Internet Daily, Consumer Electronics Daily, Television &amp; Cable Factbook, Cable &amp; Station Coverage Atlas, and other specialized publications.</p>	<p>Paul Warren ..... Chairman and Publisher Daniel Warren ..... President and Editor Michael Feazel ..... Executive Editor Paul Gluckman ..... Executive Senior Editor Howard Buskirk ..... Executive Senior Editor Jonathan Make ..... Managing Editor Rebecca Day ..... Senior Editor Monty Tayloe ..... Associate Editor Kery Murakami ..... Associate Editor John Hendel ..... Assistant Editor Jimm Phillips ..... Assistant Editor Joe McKnight ..... Assistant Editor Marlena Chertock ..... Assistant Editor</p>	<p><b>Television &amp; Cable Factbook</b></p>
<p>Send news materials to <a href="mailto:newsroom@warren-news.com">newsroom@warren-news.com</a></p>	<p><b>International Trade Today</b></p>	<p>Michael Taliaferro ..... Managing Editor Kari Osel ..... Sr. Ed. &amp; Editorial Supervisor Colleen Crosby ..... Sr. Ed. &amp; Editorial Supervisor Bob Dwyer ..... Senior Research Editor</p>
<p>Follow <i>Communications Daily</i> on Twitter: <a href="https://twitter.com/Comm_Daily">https://twitter.com/Comm_Daily</a></p>	<p>Tim Warren ..... Managing Editor Brian Feito ..... Associate Editor Brian Dabbs ..... Assistant Editor</p>	<p><b>Sales</b></p>
<p>Follow Warren Communications News on Facebook: <a href="https://www.facebook.com/WarrenCommunicationsNews">https://www.facebook.com/WarrenCommunicationsNews</a></p>	<p>Copyright © 2015 by Warren Communications News, Inc. Reproduction in any form, without written permission, is prohibited.</p>	<p>William R. Benton ..... Sales Director Agnes Mannarelli ..... National Accounts Manager Jim Sharp ..... Account Manager Brooke Mowry ..... Account Manager Kara Durante ..... Account Manager Mark Hobson ..... Account Manager</p>
<p>Phone: 202-872-9200 Fax: 202-318-8984 <a href="http://www.warren-news.com">www.warren-news.com</a> Email: <a href="mailto:info@warren-news.com">info@warren-news.com</a></p>	<p>Dir. of Advertising: Richard Nordin Phone: 703-819-7976 Fax: 202-478-5135 <a href="mailto:richard@groupnordin.com">richard@groupnordin.com</a></p>	
<p>By using our email delivery service, you understand and agree that we may use tracking software to ensure accurate electronic delivery and copyright compliance. This software forwards to us certain technical data and newsletter usage information from any computer that opens this email. We do not share this information with anyone outside the company, nor do we use it for any commercial purpose. For more information about our data collection practices, please see our Privacy Policy at <a href="http://www.communicationsdaily.com/privacy">www.communicationsdaily.com/privacy</a>.</p>		

large (see [1404240041](#)). Initial base cases for interference zones were far too conservative, Marshall said. “We think we’ve made people rethink the exclusion zone.”

The Department of Defense has come “a long way” in its thinking on dynamic spectrum sharing, Marshall said. “You’ve got to give DOD credit, they’ve really come far,” he said. “At least in this band they’ve really worked hard to understand our arguments.” If the rules required the kinds of exclusion zones discussed at last year’s FCC meeting, covering half the U.S. population, use of the band wouldn’t make economic sense, he said. Most likely the zones will take in only a “fraction of the population,” he said.

In another sign of progress, the Navy at one point said it could not accept listening devices that could compromise security, Marshall said. “It’s kind of humorous to see the Navy say, ‘Nobody can know where our carrier is,’” he said. “It comes under a bridge that thousands of cars drive over every hour. It’s in Google Maps. There’s a website in Japan that has every carrier location worldwide.”

Kurt Schaubach, chief technology officer at Federated Wireless, said over time there will no longer be the need for exclusion zones in the 3.5 GHz band. “It’s going to be a process of building confidence,” he said. “It’s going to be a staged process.” The band should be seen as a “proof of concept” rather than an experiment and should be a model for other bands, he said. “This is the beginning of the new way of thinking about how to regulate and allocate spectrum.”

The 3.5 GHz band could provide an alternative to LTE-unlicensed, Marshall said. There’s a “real opportunity,” he said. “The guy who can figure out how to use the Wi-Fi model and deliver reliable LTE is the guy who wins the LTE business.” Schaubach said that sharing at 3.5 GHz could be helpful to improved wireless penetration inside buildings. Wi-Fi has been “tremendously successful” but can’t “scale” to the levels industry needs to handle unlicensed traffic, he said. The band is really targeted to small cell operations with power limits tailored to that use, he said.

The FCC has proposed a three-tiered access and sharing model composed of federal and nonfederal incumbents, priority access licensees, and general authorized access users, with use of the band managed by a spectrum access system (SAS). Speakers conceded the SAS would be the most complicated spectrum management system in history.

Spectrum’s value is only increasing and spectrum will be commoditized, said Declan Ganley, CEO of Rivada Networks. Its technology allows companies to bid for use of a specific spectrum band in a specific location at a specific time, he said. “There’s no gatekeeper, other than the marketplace.” Ganley pointed to the technology to help FirstNet sell unutilized spectrum after the national network is launched. “It provides ruthless preemption for public safety,” he said. Ganley estimated that even mid-size states could see hundreds of millions of dollars in revenue by leasing out access to FirstNet spectrum.

Public safety will get access to the network when it needs it in just 30 milliseconds using the technology, Ganley said. “It’s imperceptible that anyone else is using the network.” Ganley suggested broadcasters could make a lot more money by leasing their spectrum and getting a monthly check rather than selling it in the TV incentive auction. DOD already is thinking about how its spectrum could be utilized by others, with the same “ruthless pre-emption” that FirstNet will have, he said.

Ganley also sees carriers taking a bigger interest in spectrum commoditization, though most are resisting so far. Some carriers have told Rivada that “we wish you would just go away,” he said. Subscribers don’t care what spectrum their smartphone is using, just that it works, he said. “It took carriers 25 years to



understand that they weren't in the tower business." Mexico is leading the way with a proposal by regulators to run a bandwidth market, he said. Australia is also investigating a spectrum exchange. A spectrum exchange is a more efficient way to reallocate spectrum than one-off FCC auctions and bidding wars, he said.

U.S. carriers have a simple strategy on spectrum, "they want it all," said Darrin Mylet of 6 Harmonics, which targets TV white spaces. Carriers "have gotten greedy," he said. Mylet said some FCC commissioners called at CES for a slowdown in the move to an incentive auction so carriers can reboot after the AWS-3 auction. "Who does the FCC work for?" he asked. Mylet said that worldwide, no more than 10,000 white spaces devices have been sold. — *Howard Buskirk*

### Preview of Court Arguments?

## Opponents Question Net Neutrality Legal Authority

Though senior FCC officials told reporters the legal authority behind the draft net neutrality order Chairman Tom Wheeler was due to have circulated Thursday was based on a triple-barreled approach, Communications Act Title II opponents maintained that it faces several legal hurdles. They cited the agency's assertion that the nature of broadband has changed since it was classified as a Section 706 information service as one example.

TechFreedom President Berin Szoka and International Center for Law and Economics Executive Director Geoffrey Manne predicted the draft order would fail in court, if approved by the commission as expected. Free State Foundation President Randolph May put the odds of the order's survival after legal scrutiny at "just 50/50." Agency officials, like those at Wednesday's media briefing outlining the draft, expressed confidence it would survive an expected court challenge. The arguments on both sides give some indication of the issues likely to be raised in a court appeal, telecom attorneys said.

The draft order responds to the January 2014 U.S. Court of Appeals for the D.C. Circuit decision that threw out much of the commission's 2010 open Internet rules, the officials told reporters. Broadband retail services, the relationship between broadband and edge providers, and wireless services are all proposed to be reclassified under Title II, the officials said, dealing with the court's concern the rules treated broadband providers as common carriers, even though the commission has said they weren't. As a backup, officials said the draft order also is based on the agency's Section 706 authority. In a third line of defense, the draft order also specifies that the relationship between broadband providers and edge providers also comes under Title II, also in response to questions the court raised in its ruling, the officials said.

In justifying the agency's change of heart in classifying broadband, a senior official said much has changed since broadband was classified as a bundled information service. Consumers no longer look at the broadband services, including email or Web browsing, as a single bundled service, said the official. They're primarily interested in access to the Internet, which makes broadband a Title II telecom service, said the official. "Look at how broadband is advertised today. Do carriers ever say that they have the best email client? Of course not. They advertise speed and carriage, period," said Free Press Policy Director Matt Wood.

Broadband providers would shoot down that justification "fairly easily by showing they essentially have the same set of offerings as there were 10 years ago," Szoka said. Szoka and Manne, during a call with reporters, cited the problem of the draft order's proposed forbearance from eight Title II sections as part of

# COMCAST IS COMMITTED TO AN OPEN INTERNET.

---

## HERE IS WHAT WE MEAN WHEN WE SAY THAT:

- Comcast supports Net Neutrality. We are the only Internet service provider in America legally bound by full Net Neutrality rules
- Comcast won't throttle back the speed at which content comes to you
- Comcast doesn't prioritize Internet traffic or have paid fast lanes
- Comcast won't block access to lawful content
- Comcast's Internet Essentials<sup>SM</sup> will make the Internet more accessible to low-income families

That's what we're for. And that's why we will extend Net Neutrality protection to millions of Time Warner Cable customers in cities across America. Find out more at [comcastcorporation.com/together](http://comcastcorporation.com/together)



a modernized Title II approach (see [1502040052](#)). Congress' intent in giving forbearance authority was to let the commission lighten regulation, Szoka and Manne said. They said the draft order would violate that intent by being used as part of adding regulatory burdens on broadband providers through reclassification.

The forbearance aspect of the draft order faces “serious legal hurdles,” May said. The FCC will have to make a claim in the same order about the need to toughen its authority under Title II while forbearing from regulations—arguments “that are directly at odds with one another,” he said.

The argument may not be a strong one, said a cable attorney whose clients oppose Title II. The FCC “will be given ample leeway to forbear to preserve the deregulatory status quo. It’s not a slam dunk but the court is likely to defer to the commission’s judgment on the lack of necessity for most Title II provisions,” the attorney said. An agency official told us Thursday that based on how broadband is offered, it’s a Title II telecom service. Since it’s a telecom service, the agency is following Congress’ mandate to forbear from unnecessary regulations, said the official.

An AT&T spokesman pointed to Vice President-Federal Regulatory Hank Hultquist’s Feb. 2 blog post, which questioned whether the nature of broadband has changed from an information service to a telecommunications service. Reclassifying all broadband providers also runs into legal issues, Hultquist argued, because the agency has to “make particularized findings” about the “offerings of individual carriers.” The agency “cannot mandate that a service be offered on a common carrier basis without, at a minimum, a finding that a particular provider has market power in a particular geographic market,” he said. “Needless to say the FCC has engaged in no analysis of market power on a geographic market basis.”

The legal authority laid out by the agency is “nothing new,” said Cinnamon Mueller cable lawyer Barbara Esbin, who represents the American Cable Association and is a former associate Media Bureau chief. The FCC doesn’t have enough of a policy or legal basis to meet the “heavy burden” that “arriving at the opposite conclusion” of broadband’s classification isn’t “arbitrary or capricious,” ACA said in a [letter](#) to the commission.

Because the FCC until Wednesday didn’t specify from which sections it wanted to forbear, the commission may run into problems with Administrative Procedure Act notice requirements, said May. It’s troubling for the order that “arguably consumers’ perceptions of the nature of Internet access have not changed since the *Brand X* decision,” he said: President Barack “Obama’s active intervention has cast the FCC’s action in a light in which the courts may not accord the usual deference.” — *Kery Murakami*

### 'Beacon' for World?

## **Wheeler’s Net Neutrality Stance Said Likely to Influence Europe**

FCC Chairman Tom Wheeler’s approach to net neutrality could sway the EU debate, observers said in interviews Thursday, the day after he unveiled his plan in the face of opposition from cable (see [1502040054](#)) and telco ISPs (see [1502040052](#)). The issue on the continent is now in the hands of EU telecom ministers. New compromise language from the Latvian EU presidency will be discussed by a Telecom Council working group Feb. 10, an EU diplomatic source said. The European Commission said it’s following the U.S. debate “with great interest.”

The FCC will be voting on text that isn’t available yet, said Pantelis Michalopoulos, head of Steptoe & Johnson’s telecom, Internet and media group. But the FCC fact sheet and Wheeler [op-ed](#) in *Wired* signal



“very strong rules” that vindicate consumers and the online industry, and that are the most protective provisions the agency has ever adopted on net neutrality, Michalopoulos said. It would be surprising if they don’t become a “beacon” for the Europe and the rest of the world, he said. The Council and EU regulators may well expect that the U.S. rules will form part of the fabric of doing business for all online providers, he said.

While adoption of Wheeler’s plan is likely (see [1502040055](#)), the message will play well with European Parliament members who have taken a more citizen-friendly stance, wrote telecom consultant Innocenzo Genna, who represents smaller players, in a [blog post](#). Wheeler is playing “the carrot and stick game,” with the stick being a new net neutrality regulation and the carrot the guarantee not to apply access control rules, he said.

Most of Europe’s net neutrality discussion is taking place at the national level, said Steptoe & Johnson (Brussels) competition attorney Yves Botteman. Governments seem to feel that the question of what net neutrality should look like hasn’t reached the degree of maturity needed for EU-level action, he said. As with policies in other areas, the EU has been taking stock of what its members have been doing and then trying for some minimum level of harmonization, which has resulted in the current watered-down net neutrality principles being discussed in the Council, he said.

The Latvian presidency compromise proposal would allow specialized services as long as they don’t hamper best-effort Internet services, and requires access providers to treat traffic equally unless there’s exceptional congestion (see [1501210003](#)). Its amended proposals are set out in a Feb. 4 memo, according to a copy of the document we reviewed. The memo added several recitals that address governments’ requests for further clarifications, and proposed new language on price discrimination.

The new FCC stance will “affect the balance of the European negotiations,” said Genna. The European Parliament will “surely attack the paid prioritization” provisions proposed by the presidency on the basis that this practice is destined to be outlawed in the U.S., he said. Whatever compromise governments in the Council reach, they’ll have to offer “a more robust guarantee for best effort Internet,” he said. The new FCC position “will surely help the European Parliament to defend its citizens-friendly approach,” he said.

Wheeler’s approach will be influential in showing the importance of the issue and the need for a “clear solution,” but that solution won’t replicate what the U.S. does, said K&L Gates (Brussels) attorney Ignasi Guardans, who handles public policy and law matters. There’s no equivalent in the EU legal system for classifying ISPs as common carriers, and no one would support that position in any case, he said. Wheeler’s model of “strong interventionism” won’t happen in Europe, nor would national regulators accept it, he said. But he said the EU’s ultimate goal of supporting an open Internet is identical to the U.S.’s.

The EU and U.S. positions on net neutrality “seem to be converging,” said David Cantor, a Brussels attorney who advises on telecom law and strategy. Meanwhile, he said, “the jury seems to be out on zero-rated data on both sides of the pond.” Zero rating lets mobile users access content from selected sources without the data usage being counted against their data caps. The issue is sparking increased debate in Europe over whether it conflicts with the EU version of net neutrality, said a Tuesday Benton Foundation [blog post](#) by Georgetown Institute for Public Representation Senior Counselor Andrew Schwartzman.

The EC is expected to announce a “digital single market (DSM)” package in May but it’s not known if it will include net neutrality provisions, said Steptoe & Johnson (Brussels) competition lawyer Agapi Patsa. If the EC sees that its current “connected continent” telecom reform package won’t fly, it might want

“bridge” legislation on net neutrality until the DSM measure is in place, which could take several years, she said, stressing that she was speaking only for herself. Many EU governments will be interested in seeing what the U.S. does, and Internet players are likely to lobby them and Brussels based on what’s happening in Washington, Botteman said. In the meantime, national telecom and EU antitrust regulators will continue to deal with claims of discriminatory behavior by access providers, he said. — *Dugie Standeford*

## **Auctions Called Outdated**

### **Increased Shared Spectrum Within 10 Years, Experts Say**

Spectrum will increasingly be shared in the next decade, said speakers at a spectrum conference Thursday sponsored by PricewaterhouseCoopers, but frameworks for this type of sharing need to be established. Some questioned whether auctions are the best way to allocate spectrum or if they’re an outdated model.

Since spectrum is a finite public resource, it must be used more efficiently, panelists said. “Unlike any other natural resource, we know spectrum will be here forever basically until our atmosphere goes away,” said Stuart Timerman, director of the Defense Spectrum Organization at the Department of Defense. It will take time to find ways to use spectrum more efficiently, he said. Industry can’t throw away 80 years of slicing and dicing spectrum, use new technology and not expect anything to happen, he said: “You can’t move as fast as an election cycle because you’re dealing with technology, physics, funding.”

PwC principal Dan Hays questioned if auctions are the best way to allocate or assign spectrum. “This notion of big one-time auctions probably is a bit dated,” he said. “It’s high time for us to think about how a public asset is being used most effectively for the future.” The auctions have become very expensive, said Lawrence Krevor, Sprint vice president-legal and government affairs. “It questions what carriers can really afford to invest in networks and provide competitive services on a long-term basis,” he said. “It’s like a heroin addict,” said Mark Aitken, Sinclair vice president-technology. “Give me that next \$25 billion shot, please.”

The U.S. is facing a spectrum scarcity in both volume and quality, said John Dooley, managing partner at Jarvinian Spectrum Opportunity Fund. “The accumulative chorus of noise and interference is growing,” he said. “The effective throughput of spectrum is degrading.” There won’t be a magical solution to interference, and receiver standards are needed, Hays said. “This will be a multi-decade issue.”

“The next 10 years is going to be all about technology as a solution to the [spectrum] crisis,” said Tim Downs, vice president of emerging markets at Light Reading, who directed the conference. The shift to using more data and video also makes it important to regulate spectrum effectively, Hays said. “When it was voice and email, it was arguably pretty easy. Those were narrowband applicants,” he said. He questioned what would happen to spectrum allocated for broadcast if over-the-top services replace broadcast and cable.

Regulatory frameworks don’t exist to ensure efficient spectrum use, Hays said. “As the spectrum user community, we have a duty to think about spectrum issues much like we did years ago for recycling,” he said, suggesting spectrum use be reduced, recycled and reused. “Sharing isn’t going to solve the problem alone when you have massive rises in usage at different times of the day. The answer is going to have to be a portfolio approach, a mixture of licensed, unlicensed and shared spectrum.” Timerman cited the National Advanced Spectrum and Communications Test Network, set up in September, which lets industry test capable systems for efficient spectrum use.

Industry can combine several sharing options on a platform that enables consumers to consume what they want, Aitken said. “What’s critical to the future of this nation, consumers, government, wireless providers and broadcasters is that we begin to look at the need for heterogeneous networks for a hybrid future. For the harmonization of standards.”

Timerman suggested creating a national spectrum strategy to deal with spectrum issues in the future and said the DOD wants to work with the industry to find solutions. The DOD is almost ready to publish its road map for moving forward, he said. In the past, the DOD was secretive about its uses of spectrum because of classified information, he said. Industry came up with the idea of the DOD sharing sensitive information with a trusted agent to gain insight into DOD systems and make informed decisions, he said. “We’ve done a lot of damage pigeonholing ourselves into spectrum,” he said. “We’d like to find other ways to use spectrum, move throughout spectrum, to protect the U.S. and allow [businesses] to operate without the restrictions of the allocation chart.”

Broadcasting can look very different, Aitken said, suggesting it will be IP-packet based in the future. “Technologically, we can have a candidate ready by the end of this year. If we had the regulatory freedom, I’d postulate that we could launch these new kinds of services and deploy beta trials 18 months from now. The reality is it’s going to be a lot longer.” He said broadcasting should be involved with 5G. Sinclair intends “to be part of that market in both delivery and receive side,” he said. — *Marlena Chertock*

## 'Long Way to Go'

### **Sprint Adds Subscribers as Losses Accelerate**

Sprint had a \$2.54 billion fiscal Q3 operating loss, it [said](#) Thursday, vs. a \$576 million year-earlier loss. The carrier added 30,000 net postpaid subscribers in the three months ended Dec. 31 to reach 55.9 million total subscribers, letting it continue to claim the title of No. 3 U.S. carrier, with 900,000 more subscribers than fast-growing T-Mobile. The customer adds came at a cost.

Revenue was down 2 percent to \$9 billion in Q3 from the year-ago quarter as the company controlled by Japan’s SoftBank offered to cut in half the wireless rate plans offered by Verizon and AT&T for customers who switch to Sprint. SoftBank’s Masayoshi Son, who is Sprint’s chairman and has promised to shake up the wireless business, said he was encouraged by what he called “improving trends” at the carrier. Analysts mostly agreed, with some saying more work lies ahead.

Sprint had a \$1.9 billion reduction in the “Sprint trade name” value and its net loss was more than double the \$1.04 billion deficit of the year-ago quarter. Sprint also reported a \$200 million charge to reduce the carrying value of its wireline network assets. Postpaid gross additions were the highest in three years, but postpaid churn accelerated to 2.3 percent. But Sprint also said it had an “industry-best” prepaid net additions of 410,000 on the Sprint platform.

Sprint said its network performance is also improving, with 800 MHz voice deployment at nationwide availability, 4G LTE coverage expanding to cover 270 million people and the 2.5 GHz 4G LTE deployment covering 125 million.

“We are pleased with the growth in sales in the quarter and the improving quality of our customer base as we begin our turnaround plan,” said Sprint CEO Marcelo Claure. “However, we acknowledge there

is a long way to go to reach our goals, including lowering our postpaid churn rates to competitive levels.” Claire replaced Dan Hesse as CEO in August (see [1408070044](#)).

“When Sprint finally got serious about cutting prices to stop the bleeding on subscribers, they necessarily worsened the bleeding on margins and cash flow,” said analyst Craig Moffett of MoffettNathanson in a note to investors. “True to expectations, their subscriber metrics have gotten better (a little). But their financial results have gotten worse. The questions about burn rate and when Sprint will run out of cash are becoming inescapable.” Moffett said one bright note is that Sprint has lots of spectrum it could sell and the AWS-3 auction demonstrated the value of spectrum.

“Steps in the right direction is what we need from Sprint,” said Wells Fargo analyst Jennifer Fritzsche. “We got that today.” — *Howard Buskirk*

### **Confusion Benefits Criminals**

## **Techies, Law Enforcement Agree: Data Breaches Need More Attention**

If one isn’t obsessively focused on the issue of data breaches, “you’re not assessing the risks properly,” FBI General Counsel James Baker said Thursday during an Online Trust Alliance event where the latest major data breach also drew attention (see [1502050030](#)). “There are more and more data breaches since so many entities are collecting data,” FCC Enforcement Bureau Chief Travis Leblanc said. “It’s impossible to eliminate all data breaches,” but companies can try really hard and take basic steps to reduce the likelihood of a breach, he said.

Like the FTC, Leblanc said his former employer, the Department of Justice, doesn’t sue every entity that has a breach, but does hold those who have data security practices that are “wholly inadequate” legally responsible. The challenge for agencies is that it’s difficult for laws to keep up at the same pace as innovations in technology, Leblanc said. Creating and implementing legislation takes three to five years, he said: By the time a final resolution is in place, “technology is light years ahead,” which is why tech-neutral legislation is needed.

A mindset change is needed for cybersecurity practices, said Symantec Director-North America Government Affairs Jeff Greene. Companies are looking for an incentive when cybersecurity should be viewed as a part of doing business, he said. Mike Hammer, web operations security for American Greetings, said some think there will be more data breaches this year than last. “We are losing ground,” he said, since it takes legislators years and companies months or years to make these security changes and plans, while “bad guys” hack into a database “over a six-pack,” he said. Matthew Braverman, FBI supervisory special agent for cybersecurity, said scrutinizing emails and calling someone to confirm an email came from them can go a long way in preventing cyberattacks.

Examining which vendors a company partners with should also be considered, Hammer said. More often than not, third-party vendors are involved in a data breach, data privacy and security lawyer Christopher Cwalina of Holland & Knight said. Part of the reason may be related to the “cultural pre-notation” that data stored in a cloud is secure, Twitter Postmaster Josh Aberant said. Companies still need to have an inventory of their digital assets, back up the information and know who has access to the information, Aberant said. Tim Rohrbaugh, chief information security officer at identity theft prevention firm Intersections,



said the definition of privacy varies from person to person, company to company: “The reason criminals are winning is because of absolute confusion inside businesses.”

While the FTC pushes for data minimization to protect user data, law enforcement is advocating for all information to be collected and retained, Aberant said. Cwalina called data minimization a “myth,” saying businesses “want as much data as they can” get since it may be worth something in six months. Passwords are one thing Braverman and Greene agreed can be used to help prevent data breaches, but Hammer said “passwords are dead.” Passwords are “necessary but not efficient” since they’re “vulnerable,” Hammer said. Multifactor passwords are the future, which would include device fingerprinting and a device recognizing typing patterns, Hammer said. “Passwords are only as secure as the security questions protecting them,” Leblanc said, saying a security question such as the name of a high school can easily be discovered. — *Katie Rucke*

## Data Security Crucial to Privacy

### **Anthem Data Breach a 'Wake-Up Call'**

Health insurance giant Anthem’s hacking last week, leaving vulnerable personal information for 80 million current and former customers and employees (see [1502050028](#)), was a subject of an Online Trust Alliance (OTA) panel on privacy Thursday, at which speakers were divided about the breach’s significance. Anthem said Wednesday that personal information was stolen, but Anthem CEO Joseph Swedish said in a [statement](#), “There is no evidence that credit card or medical information, such as claims, test results or diagnostic codes were targeted or compromised.” A Democratic FTC commissioner and the head of the group that organized Thursday’s event both called the breach a wake-up call.

Just because a company suffers a data breach doesn’t mean that the FTC will file a complaint, Commissioner Julie Brill said at the event: “Stuff happens. It’s impossible to have perfect security.” She said the FTC has taken 55 data security actions to date.

Companies need to have reasonable security, Brill said. Companies need to have a process in place, set up a good security system, examine the security system, fix vulnerabilities and respond when hacked, she said. “Not everyone who suffers a breach will be in trouble because reasonable security doesn’t violate the law,” Brill said. “Just because you don’t suffer a breach doesn’t mean you didn’t violate the law” and the FTC may take action, she said.

House Homeland Security Committee Chairman Michael McCaul, R-Texas, said in a written statement that the Anthem “attack” is a “reminder of the persistent threats we face, and the need for Congress to take aggressive action to remove legal barriers for sharing cyber threat information. ... As Chairman I will lead this effort with other committees in the House and Senate to ensure we move forward with greatly needed cybersecurity legislation as soon as possible.”

The Anthem data breach is a “wake-up call,” said OTA Executive Director Craig Spiegle. Brill agreed, adding there are “lots and lots of breaches” that the public is largely unaware of because notification laws vary from state to state. Talking about President Barack Obama’s call for federal data breach and data security legislation, Brill said she would like to see a requirement that companies must notify consumers of a data breach unless there is no risk of harm. For instance, if a tape were recovered soon after it was lost and it was determined no information had been taken, or a database were highly encrypted, notification



wouldn't necessarily be needed, Brill said. "Nuisance notification is removed," while allowing consumers to take action given that the risk of identity theft lasts for years following a data breach, she said. Brill advocated for a strong federal law when it comes to data breaches and for the FTC to have authority. State law enforcement and attorney generals would still be able to enforce the law as well, Brill said.

More than 60 state bills related to privacy passed last year, Brill said. Most of those bills were "nips and tucks" related to issues such as data privacy and employers asking employees for social media passwords, she said. The legislation was important since privacy doesn't exist without data security, Brill said, but Congress needs to act. Congress should at least introduce the Consumer Privacy Bill of Rights that Obama urged a few years ago, Brill said. Doing so shows other countries that "the U.S. is being serious about privacy," and lets the public have a discussion, she said. Though Brill said she recognized the "good regime" of U.S. privacy laws, "the problem I have is the laws were created in the 1990s and early 2000s," she said: There are gaps where information is not protected.

As noted in the [FTC Internet of Things privacy report](#) (see [1501270034](#)), there are products and services that don't have a user interface where consumers can exercise their choices, Brill said. Seventy percent of the information on the 25 billion devices currently in use is shared over an unencrypted network, Brill said. "This is a huge security issue," as it can affect a device's functionality, Brill said. For example, a hacker could disable a driverless car or a pacemaker, she said. "Unless security is done right, this will become more common." Third-party data brokers and advertisers also should offer consumers a chance to opt out of the collection of information used for marketing purposes, Brill said. Entities creating consumer profiles need more accountability for collecting sensitive information such as whether an individual has AIDS, diabetes or is a single parent, she said. "Aggregators must be more responsible where they sell information."

Companies need to think about "building security from the start" and keep self-regulatory codes up to date, Brill said. "We are seeing companies competing on privacy" after recognizing consumers are concerned, Brill said. Spiegle said he just purchased a smart home, which had a default administrator and password that were simply "admin" and "password" respectively. "The company said don't change them because it's easier on us," Spiegle said, adding that not changing this information is also "easier for criminals." — *Katie Rucke*

### **'All-New Streaming Product' Looms**

## **SiriusXM CEO Sees Connected Car as 'Next Step in Solidifying Our Competitive Advantages'**

SiriusXM's "main competition" has been and always will be "free ad-supported entertainment," a metric that "doesn't change in the connected vehicle," CEO Jim Meyer said Thursday on an earnings call. In the era of the connected car, "our focus will continue to be on convincing people to pay for a premium experience with great content that is extremely easy to use," Meyer said.

SiriusXM has "major efforts" that are "well underway to avail ourselves of the enhanced capabilities of connected vehicles to supplement our satellite network," Meyer said. This work "will be the next step in solidifying our competitive advantages," he said. Meyer said that combining the company's Internet protocol and satellite technologies through the connected car "will let us offer more features to subscribers and will help us better understand and manage our customer relationship with them."

SiriusXM's network and spectrum are among the company's most "underappreciated" assets, Meyer said. "They provide tremendous value to us for our core service, but in the future we will have significantly more

flexibility, as we adopt wide-band radios and increase ancillary uses of our nationwide system. We are extremely excited about the long-term benefits to our business of this growing network flexibility and in-car connectivity.”

In the “near term,” SiriusXM has plans to “implement an all-new streaming product,” including new iOS and Android apps “in a new Web experience,” Meyer said. “Our apps weren’t good enough and we needed to put more resources into making them better.” The new so-called SXM apps “are the result of a yearlong effort to completely re-architect our streaming platform, bringing more services in-house and giving us flexibility to push out more frequent updates and enable our service for additional platforms,” he said.

Through the new apps, “our subscribers will be able to easily discover content and search through SiriusXM’s vast archives of entertainment,” Meyer said. “Users will also see improved speed when signing in or changing channels, as well as enhanced reliability in low bandwidth situations. We are beta testing these new apps now and we hope to roll them out to our broader subscriber base within the first half.” — *Paul Gluckman*

### Implications for Congressional Review

## **Copyright Office’s Music Licensing Study Calls for Terrestrial Performance Right**

The Copyright Office’s music licensing study was greeted with approval by many proponents of artists’ rights, but some questioned the viability of the office’s recommendations, they said in statements. The office released the study Thursday, and many expect it to influence Congress’ copyright review. The study recommended that a public performance right be applied to terrestrial broadcasters and that pre-1972 sound recordings be fully federalized, both of which have been hotly contested music licensing issues on Capitol Hill and in the courtroom. Supporters of digital services worried that some of the recommendations, if enacted, would put those groups at a disadvantage.

“The reality is that both music creators and the innovators who support them are increasingly doing business in legal quicksand,” Register of Copyrights Maria Pallante said in the report. “This state of affairs neither furthers the copyright law nor befits a nation as creative as the United States.”

The 245-page report also recommended moving “all ratesetting to the Copyright Royalty Board”; repealing section 114(i) of the Copyright Act, which “prevents ratesetting tribunals from considering sound recording performance royalties”; streamlining “interim ratesetting and requir[ing] immediate payment of royalties”; and permitting performance rights organizations to “opt-out” of “interactive streaming.” Other recommendations included allowing “bundled licensing of mechanical and performance rights”; the permitting of “collective licensing of mechanical rights but with an opt-out right for interactive streaming and download uses”; and ensuring that “copyright owners possess audit rights.”

“We welcome the Copyright Office efforts and look forward to reviewing the report and reactions to it as part of our ongoing copyright review,” a House Judiciary aide said. The report is “comprehensive and forward thinking,” said House Judiciary Committee member Jerrold Nadler, D-N.Y. “I am pleased that the report recognizes reforms I have long advocated in support of fair compensation for artists, such as the enactment of a performance right on terrestrial radio, payment for pre-1972 recordings, and setting uniform royalty rate standards across platforms.” Nadler is expected to introduce his proposed MusicBus legislation this year (see [1412050057](#)).

“The report bolsters much of what the publishing and songwriting industries have long said, that the legal framework devised over 100 years ago should not be applied to the music licensing landscape of today,” National Music Publishers’ Association CEO David Israelite [said](#). “We applaud the recognition that music creators should be fairly compensated,” but “we hope that Congress rejects any further regulation of songwriters,” he said. It’s “critical that songwriters are given the freedom of other intellectual property owners—to sell their creations in a free market.”

The CO “proposes music licensing recommendations looking only through the lens of copyright owners,” an NAB spokesman [said](#). “Congress recognizes the unparalleled promotional value of broadcast radio, and has rejected a punitive new fee on local stations.” A “terrestrial performance right and the guiding principle of fair market pay for songwriters, artists and producers are important foundations of this new report,” said Neil Portnow, Recording Academy CEO. “We now call on Congress to implement common sense, pro-creator reforms in a comprehensive legislative approach.”

The CO is to be commended for acknowledging that “transparency in the music marketplace is essential to ending inefficiency and abuse,” but “many of its recommendations would put at risk the licensing structure and platforms that play music legally and compensate music creators,” [said](#) Matt Schruers, Computer & Communications Industry Association vice president-law and policy. “Policies that would unfairly discriminate against digital technologies and further consolidate market power among a few dominant rightsholder corporations will injure innovation, artists, and listeners alike.”

The CO’s report is “clear: the current music licensing system needs reform and fast,” said Paul Williams, American Society of Composers, Authors and Publishers president. “The many proposed updates—particularly recommendations intended to make the system more equitable for songwriters—underscore yet again the inefficiency of the current system for music fans and creators alike,” he said. The report said the music industry is “strained by the 70-year old consent decree regime and is not appropriately responsive to the free market, particularly in our new digital world,” Williams said. The report is an “important step towards meaningful reform.”

The CO “missed a significant opportunity to truly advance copyright, music licensing and the music marketplace,” said Lee Knife, Digital Media Association executive director. “The suggestions proposed would continue to fragment the already-complex licensing structure and put at risk those platforms that deliver music legally and compensate music creators,” he said. “Many of the specific recommendations throughout the report unfairly discriminate against digital technologies while supporting the further consolidation of market power among the handful of major corporations and their affiliated associations which dominate music licensing,” Knife said. “If implemented, these proposals will likely lead to artists and songwriters experiencing reductions in royalty payments and risk listeners having reduced access.”

“This is a complex topic, which is why we wholeheartedly support the efforts” of Judiciary Chairman Bob Goodlatte, R-Va., and the Obama administration to “look under the hood and examine the issues within the U.S. music licensing system,” said Dave Grimaldi, Pandora public affairs director. He congratulated the CO for “recognizing that greater clarity is central to a thriving music ecosystem.” “Statutory licenses are a necessary part of the music ecosystem,” Grimaldi said. Pandora “would be open to supporting the full federalization of pre-1972 sound recordings under a technology-neutral approach that affords libraries, music services and consumers the same rights and responsibilities that are enjoyed with respect to all other sound recordings.”

“All creators should receive fair pay, on all platforms and technologies, whenever their music is used,” and the CO “appears to forcefully agree with that principle,” said SoundExchange CEO Michael

Huppe. “The conclusion is inescapable that there should be an AM/FM radio performance right for sound recordings in this country.” When the CO calls for a terrestrial performance right and for “licensing parity” to level the playing field among music services and technologies, that’s a game-changing moment for this debate,” musicFIRST Coalition Executive Director Ted Kalo said. “It also categorically rejected the idea that satellite radio should have its own special below-market rate standard, calling the SiriusXM grandfather a ‘legislative artifact.’”

“The idea of having Congress federalize pre-1972 sound recordings has been tossed around for a quite some time,” said Harvey Geller of Gradstein & Marzano, who’s representing Flo & Eddie in their pre-1972 lawsuits against SiriusXM (see [1501160053](#) and [1409240079](#)). But there’s a “large chasm between the idea of federalization and the reality that doing so would first require wholesale revisions to many portions of the Copyright Act,” he emailed. “When the path to federalization is analyzed fully, the task becomes much too complicated and problematic to actually be doable.”

The study “makes a number of recommendations that will be helpful to songwriters and music services such as moving the rate setting process to the Copyright Royalty Board and away from the jurisdiction of the ASCAP and [Broadcast Music Inc.] rate courts,” said attorney Chris Castle, who represents artists and musicians and has worked with digital music services. “The rate courts have been a disaster,” he said. Castle said he was “skeptical” of the report’s proposed “general music rights organization,” which he described as a “government mandated uber licensing body.”

The CO did a “great job,” said Dina LaPolt of LaPolt Law, an IP and entertainment law firm. The office has “always been pro-creator and this study shows that they really do have creators’ best interests in mind,” she said. LaPolt said she was “very happy” with many of the report’s recommendations, including the “implementation of a sound recording public performance right, putting sound recordings and musical works on equal footing” and “implementing a uniform ‘fair market value’ rate-setting standard,” among others, she said.

“It’s probably too early to endorse these recommendations as the absolute path to legislative change, but it helps focus the conversation,” emailed Casey Rae, Future of Music Coalition CEO. “One thing that artists should be vigilant about is that proposed adjustments to US law not be constructed for the sole benefit of big media companies that control the most copyrights.” — *Joe McKnight*

## Capitol Hill

Sen. Orrin Hatch, R-Utah, wants federal regulators to approve Comcast’s proposed buy of Time Warner Cable, he told the FCC and Justice Department in a Wednesday three-page [letter](#). The deal “does not raise sufficient competitive concerns to warrant blocking,” Hatch said, urging “appropriate” conditions if necessary. He also pushed regulators not to impose any net neutrality obligations. “I urge the Commission and the Department of Justice to abide their statutory mandates and to not turn the merger review process into an opportunity to impose a controversial, unwise, and ultimately unnecessary regulatory agenda upon merging parties.” Hatch also penned a *Forbes* [op-ed](#) Thursday blasting Communications Act Title II rules for broadband. “The administration’s Internet power grab also completely ignores the fact that existing consumer protection laws provide all the tools necessary to ensure that the Internet remains free and open to all,” Hatch said. “Antitrust laws empower courts and the Federal Trade Commission to block business activities that harm consumers, including activities that restrict consumer choice.”



House Majority Whip Steve Scalise, R-La., formally introduced the FCC Consolidated Reporting Act (HR-734) Wednesday. Its two co-sponsors are Communications Subcommittee Chairman Greg Walden, R-Ore., and subcommittee ranking member Anna Eshoo, D-Calif. The Communications Subcommittee unanimously cleared a version of the bill at a markup Wednesday. Walden had circulated it as a discussion draft early in the week (see [1502040036](#)). Scalise and Eshoo had introduced a manager's amendment specifying the bill would not modify the FCC's authority over broadband, which the subcommittee approved.

---

Sen. Claire McCaskill, D-Mo., may try to resurrect her concerns about pay-TV industry billing practices in hearings of the Senate Homeland Security Investigations Subcommittee, she told us at the Capitol this week. McCaskill is ranking member of that subcommittee and a Commerce Committee member. She aggressively focused on those issues in the last Congress, proposing and withdrawing legislation in the form of an amendment to Commerce's Satellite Television Extension and Localism Act reauthorization bill and nearly holding a hearing on the issues in December (see [1412030047](#)). That hearing would have been held when she was still chairwoman of Commerce's Consumer Protection Subcommittee, when Democrats held the majority in the Senate. "I've got to visit with my [Commerce Committee] chair before I know," she said of next steps with any legislation and attention to those pay-TV issues. She said Commerce Chairman John Thune, R-S.D., seems "fixated" on net neutrality at the moment. Industry lobbyists doubted Thune would give McCaskill the platform she seeks to attack pay-TV industry practices that she would have had last Congress if the hearing she wanted were held. "I haven't had a chance to sit down with my chair on PSI to see if we can work out maybe some hearings on some of the subjects I did in Commerce that I think would also fit within the jurisdiction of the Permanent Subcommittee on Investigations," McCaskill told us. Sen. Rob Portman, R-Ohio, chairs PSI. —*JH*

---

Sen. Marco Rubio, R-Fla., intends to reintroduce one, or all, of his three pieces of wireless-focused legislation, likely in early March, with wireless hearings possible, he told us at the Capitol Thursday. He began working with the current Commerce Committee leadership on them as far back as September (see [1409220044](#)). Rubio introduced two of the three bills last year: the Wi-Fi Innovation Act (S-2505) with Sen. Cory Booker, D-N.J., pressing for FCC examination of the upper 5 GHz band, and the Wireless Innovation Act (S-2473), focused on reallocating of at least 200 MHz of government-held spectrum for private use, without any co-sponsors. Rubio prepared to issue a third bill—on removing regulatory siting barriers for carriers—in December with Sen. Claire McCaskill, D-Mo., but he told us then a procedural detail stalled that introduction (see [1412110036](#)). That stall involved a question of "the committee they wanted to send it to, that's one of the other issues, but I think we might have that resolved," Rubio said Thursday. "I think they could all be done simultaneously, but I'm not sure yet. ... Our goal is to make them bipartisan. That's one of the things that's holding us up still. But we'll get there." Rubio is working with Commerce to see if they could be introduced with "a time frame to get some hearings on the general issue but we haven't worked that out yet," he said. He pointed to congressional recess in February when predicting the legislative release will "probably have to be in early March." —*JH*

---

House Communications Subcommittee Vice Chairman Bob Latta, R-Ohio, lost the one Democratic backer for his legislation prohibiting FCC use of Communications Act Title II for the regulation of broad-



band. Latta introduced a similar bill in the last Congress and reintroduced it (HR-279) last month. Rep. Charles Rangel, D-N.Y., was listed as the lone Democratic co-sponsor in recent months. Rangel has vocally backed Title II approaches to net neutrality in the past week, signing a letter and making a statement backing FCC Chairman Tom Wheeler's Title II proposal. Rangel is no longer listed as a supporter of HR-279, following our inquiry this week. A Rangel spokeswoman declined to comment.

---

House Judiciary Chairman Bob Goodlatte, R-Va., introduced the Innovation Act Thursday, alongside several House members. HR-9 “contains commonsense reforms and makes the patent litigation process more transparent,” said Goodlatte in a [statement](#). It said the bill is identical to HR-3309, which the House passed in 2013. It would require “plaintiffs to disclose who the owner of a patent is before litigation” and to “explain why they are suing a company in their court pleadings,” it said. [CEA](#), the [Computer & Communications Industry Association](#), [Electronic Frontier Foundation](#), [NAB](#), [NCTA](#), [Public Knowledge](#), [TechNet](#), [Software & Information Industry Association](#) and Verizon released statements in support of the bill. The bill would weaken and devalue “the patents of all inventors working throughout America’s innovation economy,” said Adam Mossoff, senior scholar of the Center for the Protection of Intellectual Property at George Mason University, in a statement. “It broadly revises the entire American patent system by creating unprecedented hurdles for all owners of patented innovation who seek redress in court against infringers of their property rights.”

---

The Anthem health insurance company’s data breach “is another reminder that the cybersecurity threat to America’s infrastructure is the number one national security risk our country faces,” Sen. Dan Coats, R-Ind., said in a [statement](#) Thursday. Anthem said the breach may have exposed data for up to 80 million of its policyholders, prompting concerns from members of the Senate Commerce Committee’s Data Security Subcommittee during a hearing on possible data breach notification legislation (see [1502050031](#)). Coats, a member of the Senate Intelligence Committee, said he believes it’s “imperative that policymakers break down the barriers to information sharing that limit cyber defenses.” The Senate Intelligence Committee is one of several committees considering cybersecurity information sharing legislation. “Neither industry nor government alone can broadly improve our nation’s cybersecurity, and Congress must renew its commitment to address the wide range of issues posed by cyber threats through targeted legislation,” Coats said. “Our public and private networks remain all too ripe for exploitation, and securing those networks will remain a top priority” for the House Intelligence Committee, said ranking member Adam Schiff, D-Calif., in a statement. He said Chairman Devin Nunes, R-Calif., “and I are determined to make progress on this critical goal, so that we can protect our country, our economy, and citizens from any future attacks.”

## Wireline

Frontier Communications agreed to buy Verizon’s residential, commercial and wholesale wireline operations in California, Florida and Texas for \$10.54 billion, Frontier said Thursday. Included in the deal, which doubles Frontier’s size, are 3.7 million voice connections, 2.2 million broadband connections and 1.2 million FiOS video connections, a [news release](#) said. Subject to regulatory approval, the transaction is expected to close in the first half of 2016. “These properties are a great fit for Frontier and will

strengthen our presence in competitive suburban markets and accelerate our recent market share gains,” said Frontier CEO Maggie Wilderotter. The deal further strengthens Verizon’s focus on its core markets, Verizon CEO Lowell McAdam said, promising “a smooth transition” for customers and employees. Verizon also [said](#) it will lease the rights to over 11,300 of its wireless towers to American Tower Corp., which will also purchase about 165 Verizon towers for \$5 billion. The telco also announced \$5 billion accelerated share-repurchase program.

## Wireless

Sen. Kelly Ayotte, R-N.H., and FCC Commissioner Ajit Pai jointly questioned how FCC rules could let Dish Network buy \$13.3 billion worth of AWS-3 licenses for \$10 billion using bidding credits (see [1502020039](#)). “While most bidders put their own money on the line, some of the largest companies in the auction were using billions of taxpayer dollars. How is that possible?” they [asked](#) in an op-ed piece in Thursday’s *Wall Street Journal*. They warned that despite Dish’s alleged manipulation of the designated entity program, the FCC may further loosen DE rules. “What is astonishing about the manipulation of the bidding process is how cavalier the parties are,” they wrote. “The two Dish-related companies—Northstar Wireless and SNR Wireless—didn’t exist until a few months before the auction, and each reported to the FCC that it was a ‘very small business’ as neither had any gross revenues. Yet together the two companies magically managed to place bids more than seven times those of spectrum-hungry T-Mobile.” The FCC had no comment.

---

Mobile video—followed by music streaming and apps—will be the key driver of global mobile data traffic in 2015, said a Gartner [analysis](#) released Thursday. Citing data from mobile providers, Gartner Research Director Jessica Ekholm said mobile video is generating half of all mobile data and will grow to more than 60 percent of mobile data consumption by 2018. Two variables in projected data usage are video-calling services and music streaming, Ekholm said. Five minutes of FaceTime video chat on a 3G network uses just 15 MB of data but as the number of video callers grows, “the collective total amount can be large,” she said. If users shift to higher bit rate music services, that could also affect data usage significantly, she said. “Mobile music streaming can easily generate hundreds of megabytes of data,” depending on the service; a user listening to Spotify can consume more than twice as much data as a Pandora user, she said. Overall, mobile data traffic is forecast to grow 59 percent this year to 52 terabytes, up from 33 terabytes last year due to newer, faster networks and growing numbers of consumers using more affordable 3G and 4G handsets. Mobile data growth is expected to continue into 2016 at a 53 percent clip to 80 million terabytes, she said. By 2018, half of North American mobile connections will use 4G networks, Ekholm said, and 4G users will generate 46 percent of all mobile data traffic, consuming nearly 5.5 GB of data monthly—three times that of a 3G smartphone. Cisco this week [projected](#) a surge of mobile data usage in the coming years (see [1502030041](#)).

## Internet

“Big data will continue to contribute to and shape our society, and the Obama Administration will continue working to ensure that government and civil society strive to harness the power of these technologies while protecting privacy and preventing harmful outcomes,” wrote John Podesta, counselor to Presi-

dent Barack Obama, in a [blog post](#) Thursday announcing the White House's release of an interim progress report on big data and privacy legislative efforts. The [report](#)'s release comes about a year after Podesta released a [report](#) on data collection in the U.S. "One novel finding of the working group report was the potential for big data technologies to circumvent longstanding civil rights protections and enable new forms of discrimination in housing, employment, and access to credit, among other areas," Podesta said. The new report said the Obama administration has made progress on ensuring "student educational data is used only for educational purposes" and that "in the big-data era," technologies aren't used "inadvertently or deliberately" to discriminate. The report includes six priority policy recommendations and "a host of smaller initiatives to further the conversation about big data and privacy," such as creating a national standard for companies to notify customers in the event of a data breach, investing in big data research and technologies, and extending Privacy Act protections to non-U.S. persons. "Big data technologies raise serious concerns about how we protect personal privacy and our other values," Podesta said. "As more data is collected, analyzed, and stored on both public and private systems, we must be vigilant in ensuring the balance of power is retained between government and citizens and between businesses and consumers."

---

CEA hails the FCC "for recognizing the path forward involves a free, competitive and open Internet," President Gary Shapiro said Thursday in a [statement](#). But the rules FCC Chairman Tom Wheeler outlined "don't strike the right balance, failing to encourage the competition and investment needed to keep the Internet growing and thriving," he said. "There is a need for a reasonable and balanced approach, and reclassification to Title II isn't it." Wheeler's proposal would reclassify broadband as a common carrier service and impose the same net neutrality rules on fixed and mobile broadband. CTIA President Meredith Baker was also critical of Wheeler's proposals. "The mobile innovation and investment—\$120 billion since 2010 alone—that American consumers rely on will be placed at risk by the FCC applying intrusive regulatory restrictions on mobile broadband for the first time," Baker said.

---

Following a CES jam-packed with Internet of Things and smart home hopefuls, IHS in a post-show analysis identified opportunities and challenges for the fledgling market. Privacy and the need for standards are formidable challenges facing the IoT, but huge opportunities exist in an "increasingly tech-savvy consumer market" for the entire chain from semiconductor companies to appliance makers, IHS said. It predicted a potential connected universe of 30-90 billion devices within five years. Competing technologies and standards threaten growth within the IoT ecosystem, said IHS, citing Wi-Fi, Bluetooth Smart, 6LoPAN, ZigBee and cellular. At CES, groups such as the Open Interconnect Consortium, backed by Atmel, Broadcom, Dell, Intel and Samsung, were working to establish a connectivity protocol to enable interoperability among connected devices within a few years. The cost to connect within the IoT is "cheap" enough to make the IoT a reality this year, said IHS. Sensors will drive opportunities in consumer devices, and "cost-effective silicon" will drive shipments of nearly 12 billion sensors into consumer and mobile applications, up from 5.6 billion in 2012, it said. Data collected from the sensors have "vast implications" as the information becomes aggregated across many users in the cloud, said the industry researcher. The ability to analyze large amounts of data to track behavioral trends—such as the way millions of consumers use devices—can create "a level of predictive intelligence that is completely novel," said IHS. The ubiquity of the smartphone and its ability to communicate via Wi-Fi, Bluetooth and cellular positions it well as the gateway to the IoT, IHS said, but the smartphone has to continue to learn more languages as the IoT expands. On smart homes, "a holistic approach to IoT problem solving is needed," instead of the piecemeal approach now offered by disparate devices, IHS said. It envisioned a "pack-

age” approach combining hardware, firmware, middleware, application software, cloud services and other components delivered by solution providers as the “key to integration.” The smart home market is still a few years away from mainstream penetration due to the lack of interoperability among different systems, which is “causing confusion for the average consumer,” said IHS. —*RD*

## State Telecom

Washington, D.C., safety officials and Washington Metropolitan Area Transit Authority Interim General Manager Jack Requa said their agencies are working to increase testing of public safety radios in the wake of a Jan. 12 incident near WMATA’s L’Enfant Plaza Metrorail station in which first responders found their radios didn’t work properly during the rescue of passengers from a smoke-filled tunnel. D.C. Councilmen Jack Evans and Kenyan McDuffie, both Democrats, said during a D.C. Council hearing Thursday that they’re seeking further answers on the incident, in which one passenger died and 84 others went to area hospitals. The incident has also attracted scrutiny from Sen. Mark Warner, D-Va., and other D.C. area members of Congress (see [1501230066](#) and [1502030055](#)). All area public safety agencies have radio infrastructure throughout the Metrorail system independent of WMATA’s infrastructure and are responsible for testing their own equipment, Requa said. WMATA is working with local agencies and the Metropolitan Washington Council of Governments to “put in place formal protocols and procedures for regular radio testing with sharing of results and prompt action to correct deficiencies,” he said. D.C. Mayor Muriel Bowser’s administration also is taking immediate steps to improve radio communication connectivity, said Acting Deputy Mayor for Public Safety Kevin Donahue. Bowser has directed the city’s Office of Unified Communications, which is responsible for maintaining all of D.C.’s public safety radios, to conduct weekly radio tests in all Metrorail stations within city limits. Tests during the week of Jan. 19 found radios failed in nine Metrorail stations, while testing the following week found a failure in one station, Donahue said. The city’s Fire and Emergency Medical Services (FEMS) Department also issued improved protocols for communication between first responders when radios aren’t working properly, he said. Representatives for unions associated with WMATA and public safety agencies indicated that public safety radio connectivity is often intermittent in the Metrorail system, with D.C. Firefighters Association President Ed Smith saying it “remains to be seen” if FEMS’ recent encryption of its radio channels played a role in the communications failures at L’Enfant Plaza but noting the union has continually opposed encryption. First responders routinely encounter problems with radio connectivity in many large facilities in D.C., including federal buildings, Smith said. D.C. Councilwoman Mary Cheh, a Democrat, said she believes the radio problem in federal buildings “needs to be corrected” quickly. —*JP*

---

NARUC will consider two telecom-related resolutions at a meeting in Washington later this month. One [resolution](#) would urge the FCC to “reaffirm” its commitment to working with state utility regulators on goals and directives in the commission’s November IP transition NPRM, which also asked about possible rules to ensure backup power reliability for dialing 911 and to ensure improved communication about the retirement of legacy facilities and services (see [1411210037](#)). State regulators share responsibility with the FCC on 911 issues and several states are examining intrastate impacts of battery backup and copper retirement, NARUC said. The proposed resolution would ask the FCC to ensure that any rules adopted based on the IP transition NPRM don’t diminish states’ authority on 911 or copper issues, and the federal commission should endorse states’ continued involvement on those issues. The resolution also would ask the FCC



to require network providers to educate consumers on backup power requirements and would ask the commission to partner with states on educating consumers on backup power requirements. A second resolution would ask the FCC to “expeditiously approve” a November 2009 petition from the California Public Utilities Commission (CPUC) that sought “direct access” for all states’ regulators to state-specific information in the FCC Network Outage Reporting System (NORS). The FCC hasn’t responded to the CPUC petition despite additional support from other states’ regulators, NARUC said in the proposed resolution. Giving states access to NORS data would be consistent with FCC precedent of sharing confidential data with state regulators and would ensure “rapid and effective coordination” of efforts to restore networks, the resolution said. NARUC’s board is to consider both resolutions Feb. 18 based on the recommendation of the group’s Telecom Committee and Staff Telecom Subcommittee. NARUC’s Consumer Affairs Committee also is expected to consider the resolution on the FCC IP transition NPRM.

## Broadcast

With the end of the AWS-3 auction, the upcoming incentive auction will be costlier, panelists at a spectrum conference sponsored by PwC said Thursday. It’s unclear how that will affect broadcasters on the reverse side of the upcoming incentive auction, said Eric Wolf, vice president of technology strategy and management at the Public Broadcasting Service. “There will be a lot more demand for spectrum,” said John Hane, a Pillsbury communications lawyer. “Another view is the AWS-3 auction is fundamentally different from the 600 MHz auction. AWS was a fairly straightforward auction—people knew what they were bidding on. The 600 auction is very complex, even on the forward side of the auction.” The industry has “essentially forced consumers to stitch together the services that they want,” Wolf said. It can disaggregate and break up service from infrastructure, Hane said. He said he’s optimistic that ATSC 3.0 will be adopted. The “3.0 will make it a lot easier,” said John Lawson, principal of Convergence Services. “It seems like it’s happening, but there’s no structure to make these devices interoperable. We’re still in this scenario with silos.” Wolf said, “Don’t think about it as how many dollars per hertz or bits you can extract. Think about it as how can you help the consumer?” The FCC should be thinking of the consumer, too, and beyond the dollars, he said. “By 2025, I see the FCC trying to auction the T-band,” said Mike Gravino, director of the LPTV Spectrum Rights Coalition. “I see a constant struggle between the wireless industry and broadcast industry, even though we want to be the same, a struggle over this bandwidth.” —*MC*

## Cable

Cablevision’s new Freewheel Wi-Fi-exclusive unlimited data phone service went on sale Thursday, Cablevision said in a news release. The service uses Motorola Moto G Smartphones that operate only while connected to Wi-Fi and are sold at [Freewheel.com](http://Freewheel.com). Freewheel costs \$29.95 a month or \$9.95 for Cablevision’s Optimum Online customers, and doesn’t use a contract, the release said. “Freewheel will introduce additional features in the coming weeks and months that will underscore WiFi’s superiority over the legacy cellular model,” Cablevision said.

---

U.S. law enforcement and national security agencies requested customer information from Comcast 11,124 times between July 1 and Dec. 31, Comcast said in a [transparency report](#) released Thursday. Of



the requests, 530 were emergencies “involving danger of death or serious physical injury to any person,” and 8,208 of them were subpoenas, the report said. “Before providing any information to the government, we make sure that the request is appropriately tailored and that our response accords with governing law,” Comcast said.

## Media Notes

The FCC should look for new bands for wireless microphones to use, said [NAB](#) and [CTIA](#) in comments posted online in docket 14-166 Thursday. “It is critical for the FCC to immediately identify new bands on which wireless microphones may operate,” said NAB, urging the FCC to identify the new bands before the incentive auction ends. The FCC should explore new bands for wireless mics but require unlicensed operations to “cease use of licensed spectrum in areas where a 600 MHz licensee has commenced service,” CTIA said. The FCC should modify rules for unlicensed use so that unlicensed operations “adequately protect the substantial investments of 600 MHz licensees,” CTIA said. [CEA](#) also expressed concern about wireless microphone interference: “The Commission must weigh the costs and benefits of expanding access to spectrum for wireless microphone operators and undertake rigorous technical analyses to address potential interference concerns before it decides on any course of action.”

## Communications Personals

Disney promotes **Thomas Staggs** to chief operating officer; continues to lead Parks and Resorts until a successor is named ... Future of Music Coalition promotes **Casey Rae** to CEO ... Sen. Sherrod Brown, D-Ohio, hires **Rachel Petri**, leaving Senate Commerce Committee, as press secretary, effective Feb. 9 ... Windstream hires **Joseph Harding**, ex-Integra, as executive vice president-enterprise chief marketing officer ... Returning to Journal Communications is **Trina Jashinsky**, ex-Fiserv, as vice president-human resources ... T3Media, media and entertainment title management, delivery and monetization firm, hires **Mark Pougnet**, ex-Front Porch Digital, as chief operating officer and chief financial officer ... Catbird, software-defined security firm, hires **Bart Vansevant**, ex-Verizon, as chief marketing officer.

Effective on or around April 1, **Jack Domme** promoted to CEO, Americas, and executive officer, Hitachi Ltd., as **Takashi Hatchoji** retires as chairman, Hitachi America, and group chairman, Americas; **Eriyoshi Konno** promoted to president-CEO, Hitachi America, succeeding **Masaya Watanabe**, named president-CEO, Healthcare Group and Healthcare Company, Hitachi Ltd.; Domme remains CEO, Hitachi Data Systems, and also will be: vice president and executive officer, Hitachi Ltd.; chairman and CEO, Hitachi Information & Telecommunication Systems Global Holdings; and chairman, Hitachi Consulting; in June, Hatchoji will retire as a Hitachi Ltd. director.

Joining Future of Music Coalition board are **Ryan Chisholm**, Nettwerk Music Group, **Merrill Garbus**, tUnE-yArDs, **Dick Huey**, Toolshed, **Vickie Nauman**, digital music executive, **Thao Nguyen**, Thao & the Get Down Stay Down, **Benji Rogers**, PledgeMusic, and **Ken Umezaki**, Digital Daruma; and founding board members **Michael Bracy**, **Walter McDonough** and **Brian Zisk** will have emeritus status ... Verizon elects to board **Mark Bertolini**, Aetna ... Lobbyist registration: American Society of Composers, Authors and Publishers, **Thorn Run Partners**, effective Feb. 1.