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CTA 'Encouraged'

Email Privacy Act Momentum Will Lead to Markup, Passage Next Year, Supporters Say

Encouraged by strong backing for the Email Privacy Act among House Judiciary Committee members during a Tuesday hearing (see [1512010054](#)), bill supporters—congressional staffers, technology industry representatives and privacy advocates—said they believe [HR-699](#), which updates the Electronic Communications Privacy Act (ECPA), has the momentum to get to markup and then a floor vote. The only question was when that would happen. Many said they expected some action during the first half of 2016. A House

Democratic aide involved in the process said he expected a markup no earlier than spring due to other committee priorities.

Center for Democracy and Technology Vice President-Policy Chris Calabrese, a witness at the hearing, said Thursday that “the key to whether the bill moves” is Chairman Bob Goodlatte, R-Va. “We have now cleared all the procedural hurdles. We’ve had a hearing. We’ve had a great deal of deliberation on the bill over several congresses and it has tremendous support on the committee,” he said. “I just don’t think it can be ignored without some explanation from the chairman.”

Calabrese also said he didn’t hear of any significant issues in that hearing, despite some law enforcement and civilian government agencies such as the SEC saying certain provisions within HR-699, which is sponsored by Reps. Kevin Yoder, R-Kan., and Jared Polis, D-Colo., would hamper their investigations. But Calabrese said such “issues around the edges” can be resolved during a markup. The International Association of Chiefs of Police, which was one of several law enforcement organizations that sent [concerns](#) this summer to Yoder about the bill, didn’t comment.

Chances are good it will pass, the Democratic aide said Wednesday, though the bill may not get a markup until spring. He said the only people trying to stop the bill from moving forward are federal civilian agencies such as the SEC. “Other than that, the bill is overwhelmingly supported in the technology sector, among civil liberties groups on both the right and left,” he said. “It’s got 304 co-sponsors. We really think we have a lot of momentum.”

A Republican House aide also involved in the process said the hearing was “a huge step in the right direction.” He said the bill has “near-unanimous support” on the committee and “obviously would pass with a veto-proof majority in the House,” but didn’t predict when a markup would be scheduled. He also said that any law enforcement issues would be resolved during a markup. He doubted many lawmakers would look favorably on requests from the SEC and other agencies for “carve outs” or exemptions to certain bill provisions.

Another factor that may be in the bill’s favor is House Speaker Paul Ryan, R-Wis., the Republican aide said. Since becoming speaker Oct. 29, Ryan has put “an emphasis on regular order and transparency,” making Congress work more efficiently, the aide said: “That’s definitely an encouraging sign and maybe that’s got to do with the movement [of the bill] here.” Democratic and Republican aides said they thought passage of the House bill would also put pressure on the Senate to act on its version, called the ECPA Amendments Act ([S-356](#)), sponsored by Sens. Mike Lee, R-Utah, and Pat Leahy, D-Vt. Calabrese said the Senate presumably has the votes to move it out of the Senate Judiciary Committee. While the S-356 had a hearing in September, a committee spokeswoman said in an email that no movement on the bill is expected.

Jamie Boone, Consumer Technology Association government affairs director, said CTA is “encouraged” by the House hearing and that Goodlatte showed a willingness to move forward on HR-699. “He had a couple of reservations that he would like to try and work out,” she said. “I think the chances are good. It’s just a matter of process and whether they want to move this as a stand-alone or package together a larger ECPA reform package.” Boone said a markup could occur early next year. “This is a pretty limited specific bill and solution. It’s a narrowly drafted and tailored bill that I think has a lot of potential to move forward,” she said. Several other groups, including the Information Technology Industry Council and TechNet, and companies like Google also strongly supported the bill. Boone said her group hasn’t taken a position on the Senate version.

Electronic Frontier Foundation staff attorney Sophia Cope said Wednesday EFF is “hopeful” HR-699 will be approved, but unclear on what the timeline would be. “The bills have a lot of support in Congress, industry, and within the privacy community,” she emailed. “But the SEC and other civil agencies are really pushing for authority they don’t have today. They’re working really hard to convince the committees to amend the bills.” — *Dibya Sarkar*

Focus on Quick Results

EU, Major Internet Players Partner To Fight Online Terrorist Content

The EU Internet Forum aims to fight online terrorism and hate content via a public-private approach, the European Commission said in launching the project Thursday. EU governments, the European Parliament, Europol and the EU counterterrorism coordinator are expected to work with major online companies on a joint, voluntary strategy for finding and addressing the material, the EC [said](#). The companies were mostly tight-lipped about what their role might be. European Digital Rights strongly criticized the failure to include civil society groups in the discussion and accused the EU of trying to pressure the Internet industry into solving public policy problems. ISPs were left out.

Discussion at the forum will “focus on how to protect the public from the spread of terrorist material and terrorist exploitation of communications channels to facilitate and direct their activities,” said the EC. Talks will include how to make better use of the Internet to challenge terrorist narratives and online hate speech, it said. The Internet industry can play a key role in combating radicalization and incitement to violence, said Justice, Consumer and Gender Equality Commissioner Vera Jourová. But tackling online hate speech is a “delicate exercise” that must clearly define where free speech ends and hate speech begins, she said. The EC will push for faster detection of online terrorism incitement and hate speech, as well as for better procedures for taking such content down, it said.

Ask.fm, Facebook, Google, Microsoft and Twitter took part in the launch but said little about what they might do to help achieve the EU’s goals. Facebook and Microsoft confirmed participation. Twitter and Google didn’t comment. As the project “is in the early stages of discussing industry issues and approaches, we are unable to provide further comment,” a spokeswoman for Ireland-based Ask.fm told us. An Ask.fm statement said hate-based or extremist organizations are barred from using the site “to promote their campaigns or plans, celebrate their violent acts, fundraise, or recruit young people. We are committed to partnering with industry peers, government and law enforcement authorities to develop effective solutions to this complex issue.”

European Digital Rights branded the initiative “untransparent and dangerous.” EDRi has several worries, Executive Director Joe McNamee said, including: (1) The forum is “pretty much identical to several projects that failed in the past.” (2) The EC will claim that it’s a “facilitator” of the project in an attempt to avoid legal and political responsibility for any outcomes. (3) The EC will ignore the need for a “clear evidence base” for launching such projects and remain unclear about the precise problem it wants Internet companies to solve. (4) The Commission will side-step its legal obligation to ensure that any restrictions on fundamental rights are based on law.

EDRi is also concerned that the EC is ignoring research indicating “ill-conceived censorship is not just useless, but can also be counterproductive in the context of terrorist radicalisation,” McNamee emailed.

It's also possible that without a moderating voice from civil society, there won't be a balance between the EC's political priority to show that "somebody is doing something" and Internet companies' public relations need to respond to pressure being put on them as a result of being dragged into the process, he said. The organization also worries that legal content will be censored arbitrarily, he added.

ISPs also won't be part of the equation, said an ISP industry ally. That may be because the EC prefers to work with players that can commit to taking certain steps and then deliver in practice on their promises, the person said. The focus is on establishing a framework for efficient cooperation with the Internet industry "to quickly scale up efforts in this policy field," which is why online companies have been brought together with EU bodies, an EC spokesman told us. — *Dugie Standeford*

Mobile Markup Uncertain

2016 Hill Agenda May Feature FCC Reauthorization, Broadcast Exclusivity, Spectrum, Counsels Predict

Lawmakers may still try to take a stab at legislation reauthorizing the FCC next year, in addition to a bill involving broadcast exclusivity rules and the compulsive copyright regime, said Senate Commerce Committee GOP telecom policy director David Quinalty Thursday at a Practising Law Institute event. He and other Commerce Committee counsels are committed to advancing the wireless broadband legislation already under consideration, and some weighed possible net neutrality compromise legislation.

Quinalty wouldn't commit to inclusion of Senate Commerce Committee Chairman John Thune's Mobile Now spectrum package on the Commerce Committee's Dec. 9 markup agenda. "We will" mark up Mobile Now next week if possible but "very soon" if not, and he is "pretty confident" of it by sometime in January, Quinalty said of the pending markup, also expected to include a vote on the renomination of Commissioner Jessica Rosenworcel. Thune, a South Dakota Republican, circulated at least two Mobile Now drafts in November and initially had scheduled a November markup for the bill.

Thune and other senators have also "expressed an interest in exploring legislation" following up on a broadcast exclusivity [letter](#) sent by Thune, Senate Commerce Committee ranking member Bill Nelson, D-Fla., Senate Judiciary Committee Chairman Chuck Grassley, R-Iowa, and ranking member Patrick Leahy, D-Vt., to FCC Chairman Tom Wheeler urging him not to kill the broadcast exclusivity rules, Quinalty said. That's "an area where we may move to consider legislation next year," some measure that's "narrow and targeted" but "ripe for discussion," he said. Wheeler's response said the exclusivity rules would be considered as part of the FCC's retransmission consent proceeding (see [1511240061](#)).

Quinalty also committed to FCC reauthorization legislation, an unreleased draft of which this year involved much of the FCC process overhaul provisions found in other bills. "That's something we hope to take up next year and work on next year," Quinalty said, saying the measure may involve parts of FCC process overhaul legislation from Sen. Dean Heller, R-Nev. The House recently approved by voice vote the companion FCC Process Reform Act. Thune had produced a draft by June but Nelson staffers were seen as reluctant to negotiate on net neutrality and FCC reauthorization simultaneously, which Nelson himself told us this fall. Thune's office doesn't see FCC reauthorization as "punitive or partisan," Quinalty said. "It's actually the oldest expired reauthorization in our entire jurisdiction." The agency hasn't been reauthorized by Congress since 1990.

Net Neutrality Negotiation

Quinalty and John Branscome, senior communications counsel working for Nelson, said Thune and Nelson's offices still want a net neutrality compromise bill, negotiating that's extended through the past year. "Our bosses probably think we're closer than we've ever been," Branscome said. They're "working hard," agreed Quinalty, on "rules to protect the open Internet" codified in legislation. "A Title X, as Sen. Nelson puts it." The senators are fairly "optimistic," Quinalty said.

No equivalent negotiation has taken off in the House, despite entreaties at the year's start from Commerce Committee Republicans to Democrats. House Commerce Committee ranking member Frank Pallone, D-N.J., is open to legislation but he supports the order, his counsel David Goldman said. "The politics in the House right now is we have to watch and see what happens in the court." One "happy" outcome would be if the U.S. Court of Appeals for the D.C. Circuit, which holds oral argument in the net neutrality challenge Friday, upholds the order, Goldman said: "We think that'd be a great result." Branscome said legislation would have to fully protect consumers and FCC authority and called the Title X approach "a way to sort of move beyond the rhetoric of Title II that has dominated so much of this debate on the Hill." Branscome also expressed interest in the court challenge, saying some of "us" will be there during oral argument. "Betting on how the D.C. Circuit is going to rule is a sucker's bet," said David Redl, counsel to House Communications Subcommittee Chairman Greg Walden, R-Ore., and House Commerce Committee Chairman Fred Upton, R-Mich. Walden told us this week he's open to appropriations riders to curb the net neutrality order, while Thune actively pressured appropriators to avoid such riders due to his legislative negotiations (see [1512020056](#)).

T-Mobile's recent Binge On offering is a great example highlighting FCC uncertainty, Redl said. He questioned ambiguity House Republicans see in FCC enforcement and the net neutrality order's "Mother, may I" dynamic, as he framed it. "And we saw the FCC chairman come out and say 'yes you may for now,'" Redl said of Binge On. "That's a problem for my bosses. ... We've said this is one of our biggest concerns with Title II." T-Mobile should not have to "make that determination" of whether such a program is permissible, Redl said: "They shouldn't have to wonder is this going to be OK now? Is this going to be OK in 2017, when perhaps we have a new chairman?"

Thune's office is starting to hear private conversations "where companies have some innovative pro-consumer ideas that they're unwilling to bring to market" due to possible political and "regulatory backlash," Quinalty said. "Some of these ideas may end up flourishing in Europe." Redl also questioned some fines the FCC has proposed, "big enough to bankrupt" companies and issued when the authority to do so is in question. The size compels settlements, "something less than the crazy amount that they put" in the notice of apparent liability, Redl said. "This is a big concern for my bosses."

Nelson believes in strong and fair enforcement, Branscome said. Pallone sees a virtue in FCC and FTC complementary enforcement of privacy violations, Goldman said. Redl hopes Wheeler kicks off his privacy rule commitment next year with a notice of inquiry rather than enforcement actions. "We would expect them to do a proper rulemaking," Redl said. He also questioned the FCC Downloadable Security Technical Advisory Committee (DSTAC), created by last year's satellite-TV reauthorization, for potentially examining a broader swathe of video issues under Communications Act Section 629. "From our perspective, having worked on all that text, the statute is clear on what it instructs the DSTAC to do," Redl said. "From our perspective. that wasn't the job of the DSTAC." It's "not the appropriate venue" to raise the issues beyond downloadable security, he said.

'Same Direction' on Spectrum

Spectrum legislation is a part of what Redl said was a staffer focus on “working on policies that transcend the open Internet debate.” The House Communications Subcommittee approved broadband deployment and federal spectrum legislation Wednesday (see [1512020051](#)).

“It’s safe to say both committees are going in the same direction,” Quinalty said of Senate efforts involving Mobile Now, which contains similar spectrum and broadband deployment proposals. Lawmakers have yet to decide whether Mobile Now may incorporate some of the House proposals or whether both chambers could advance their separate efforts and then see about “combining them at some point in a conference-esque setting,” Quinalty said. He lauded the “novel” proposals in the Mobile Now drafts and said staffers are assessing “which of those can get broad consensus support throughout the committee” and among stakeholders and administration. NTIA’s intervention last month was one key reason Senate Commerce postponed consideration of Mobile Now (see [1511160060](#)). Quinalty referred to the Department of Defense as a “major stakeholder” in negotiations. Senate Communications Subcommittee ranking member Brian Schatz, D-Hawaii, “has an unlicensed bill that I think contains some good ideas that we might be able to work with them on,” Quinalty said.

Branscome cautioned of “tension” between licensed and unlicensed users and said Nelson wants to ensure that nothing “inadvertently compromises” progress in the private sector regarding spectrum or any spectrum provisions in the recent budget deal. Infrastructure proposals are also crucial, Branscome added, saying dig once makes “infinite sense.”

“We certainly have heard from a number of federal agencies when it comes to repurposing or opening up federal bands,” Quinalty said. “Money is a concern. It’s not the only concern. With the Department of Defense, it’s often operational issues as well.” Goldman and Redl cited problems with how the Con-

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gressional Budget Office scores spectrum legislation. Pallone doesn't want to be "hamstrung by that" and sees value in advancing spectrum legislation beyond when lawmakers are "trying to find a way to pay for things," Goldman said. — *John Hendel*

Multiple Reports in March

Recent Attacks Highlight Importance of CSRIC Work, Council Chairman Says

Recent attacks in Paris and San Bernardino, California, "tragically [put] an exclamation point" on the FCC Communications Security, Reliability and Interoperability Council work on telecom infrastructure security and reliability, said CSRIC Chairman John Schanz, Comcast Cable chief network officer. CSRIC's work on reliability of 911 systems is critical to police having situational awareness "that will make possible big data added to emergency response," said Public Safety Bureau Chief David Simpson after a presentation at the group's meeting by Working Group 1. It's working on recommendations for rerouting 911 calls between public safety answering points and on recommendations on aspects of location-based routing that use latitude and longitude information and other information.

"We would ask that as you guys work on your task, that you also think about some of those secondary value propositions associated" with that work, Simpson said. Working Group 1 is on track to submit a final version of its recommendations on location-based 911 call routing issues by CSRIC's planned March 16 meeting, with a draft version set to be completed by Feb. 15, said group co-Chairman Jeff Cohen, APCO chief counsel. Recommendations on 911 call rerouting best practices is set to be ready by Sept. 14, Cohen said.

Most CSRIC working groups said Thursday they're making steady progress on reports and recommendations across a wide swath of cybersecurity and other telecom issues. Six CSRIC working groups deal at least partially with aspects of telecom infrastructure security, including two on specific cybersecurity issues (see [1506240053](#)). Simpson praised the working groups for their overall progress, with several groups saying they'll have reports and recommendations ready for CSRIC consideration at the council's March 16 meeting.

Simpson raised concerns about Working Group 3's progress on reports and recommendations for improving the overall functionality of the emergency alert system, saying he and other FCC officials "don't have a warm fuzzy that this is being gone after by participants" as a priority. The FCC needs to see additional evidence of risk reduction going forward, Simpson said. Working Group 3 reports would examine EAS security, the provision of EAS in languages other than English and the development of an EAS operational handbook for use by broadcasters and other EAS participants. A report on EAS security that had been set for presentation at Thursday's meeting was delayed until March for "a number of reasons," said group co-Chairman Kelly Williams, an NAB senior director. A report on multilingual EAS alerts remains set for presentation at the March meeting and a report on the new EAS handbook is still to be ready by June, but can be pushed to another date depending on FCC needs, Williams said.

Working Group 2, which is looking at possible best practices for improving security of wireless emergency alerts, is "working feverishly" to have a report on that issue ready by the March 16 meeting, said group co-Chairman Farrokh Khatibi, Qualcomm engineering director. A second report on ways to encourage local and state officials' use of emergency alerts at a local geo-targeted level is set to be finished by September, Khatibi said. The working group is incorporating social media use of emergency alerts into its work, said co-Chairman Francisco Sanchez, public information officer with the Harris County, Texas, Office of Homeland Security & Emergency Management.

Working Group 5, focusing on cybersecurity information sharing in the communications sector, won't have a full report ready until March 2017 but is set to have a study on cases of sector use of information sharing ready by March, said group co-Chairman Chris Boyer, AT&T assistant vice president-global public policy. The use cases study will examine instances of both sharing between private sector entities and sharing between the private sector and government, Boyer said. A study on barriers to industry information sharing and possible solutions is set to be ready by June, he said. Working Group 7, which is examining ways to improve cybersecurity training in the communications sector workforce, also plans to have a final report ready by March 2017.

Working Group 4A, which is examining submarine cable resiliency, is working to have a report on existing gaps in coordination between federal, state and local agencies on submarine cable issues ready in time for it to be used as a reference for the FCC's rulemaking aimed at collecting systematic information on submarine cable outages, said group co-Chairman Kent Bressie, a Harris Wiltshire lawyer who represents submarine cable clients. Comments on the NPRM, adopted in September (see [1509170047](#) and [1511030019](#)), were due after our deadline. — *Jimm Phillips*

'No Panacea'

Pushes for Standards Review of LTE-U Coexistence Really Attempt at Stifling Competition, CTIA Says

LTE-U Forum backers and 3GPP allies continue to duke it out before the FCC. CTIA fired back Thursday at complaints that efforts to ensure coexistence between LTE-unlicensed and Wi-Fi are being partially hijacked. Those calls “for a formal standards review upends the permissionless innovation that is the hallmark of unlicensed spectrum policy,” CTIA said in a [submission](#) in docket 15-105.

The agency should instead reiterate its position on technology neutrality for the unlicensed bands, CTIA said. CTIA also repeated what has been a common talking point for LTE-U backers: that its coexistence-based design “makes it a good neighbor to Wi-Fi—often better than Wi-Fi is to itself” (see [1509100035](#)). That “coexistence-by-design” for LTE-U and the “listen-before-talk” protocol employed in licensed assisted access “are just two ways in which coexistence can be accomplished” by the two types of unlicensed LTE, CTIA said. It said the push by NCTA and others “is nakedly anti-competitive and contravenes FCC rules and practices.”

The CTIA filing was directed at comments from Google, Hewlett-Packard Enterprise, NCTA and a variety of Wi-Fi companies (see [1510220028](#)). They had said that, contrary to the industry-developed 802.11 standards that have made Wi-Fi successful, “the leading proponents of LTE-U have taken the opposite approach ... press[ing] forward unilaterally to deploy their own non-standardized form of unlicensed LTE in the United States.” While not making any specific proposals, NCTA et al. said the FCC “should carefully scrutinize this conduct.”

In its filing Thursday, CTIA said any standards-setting review “is no panacea” guaranteeing coexistence between LTE-U and Wi-Fi, since even Wi-Fi has no coexistence testing specification, only the listen before talk protocol. The NCTA comments are aimed at keeping a status quo “in 'their' (unlicensed) spectrum [as they] preclude new, innovative competitive developments,” CTIA said. And CTIA said the LTE-U

Forum and its supporters have done extensive outreach both formally and informally to the Wi-Fi world on coexistence issues. NCTA, Verizon, which is a chief founder of LTE-Forum, and Qualcomm, which also is a major proponent of LTE-U, didn't comment Thursday.

Ruckus Wireless, among submitters of the NCTA comments, “supports continued innovation in the unlicensed bands, including the introduction of LTE to those bands,” it said in a statement. “We also support Chairman Wheeler’s view that an open, broad-based, standards-setting process is critical in order for this introduction to be successful. For this reason, we favor the LAA and LWA programs being developed as features for LTE Release 13 within the consensus-based standard-setting process of 3GPP. We are also encouraged by the liaison and communication that has occurred between 3GPP and IEEE on the LAA program as it pertains to Wi-Fi coexistence, and hope that this cooperation will continue in the months leading up to the completion of Release 13.” — *Matt Daneman*

Seeking new Measurement Tools

As Consumers Watch More Non-Ad-Supported Video, Distribution Side Struggles With Monetization

TV viewers “have it made” in choices, said Joan FitzGerald, comScore senior vice president-television/cross-media services, at The TV of Tomorrow conference in New York Thursday. Moderating a panel, FitzGerald cited the many options consumers have for watching content on TVs, PCs and mobile devices, while “yesteryear” measurement tools and monetization fall behind.

Consumer use of video “is growing every single month,” said FitzGerald. Almost half of Internet traffic comes from mobile devices, she said. Consumers are “flexing their muscles and changing their behaviors, taking advantage of choice, convenience and content,” she said. Citing Pacific Crest numbers, FitzGerald said growth in multichannel video programming distributor subscribers turned negative in Q3, and cable households dropped 10 percent in the past five years.

While traditional video subscriptions are dropping, streaming video subscriptions are on the rise, FitzGerald said. Hulu subscriptions jumped 45 percent, and Sling TV added more than 70,000 subscribers in the quarter. Netflix is now in 35 percent of U.S. households, said FitzGerald, citing a 20 percent bump in its penetration from roughly a year ago.

But FitzGerald said viewership numbers aren’t as bleak as they seem because of dated measurement methods. In September, FitzGerald said, *Advertising Age* reported that for the first two nights of the new TV season the number of adults aged 18-49 watching prime time TV dropped 8 percent from the 2014 period. Viewing among adults aged 18-24 watching prime time TV for the two nights was down 20 percent and the 18-34 segment was down “even more,” she said, citing the same source.

“Unfortunately, the system that we rely on to measure our video content, and to monetize our video content, has really been failing us, and we need to do something about it as measurement companies,” said FitzGerald, including Symphony Advanced Media and TiVo Research Analytics, which were also represented on the panel. The current viewing measurement system was designed for “live TV, in the TV set, in the home,” said FitzGerald. “We’re just not capturing all of the impressions” being viewed by consumers “in this new environment,” she said.

Panelists cited initiatives to distribute video across platforms along with the ads to support it. Although video consumption is “fractured” across more platforms, a “huge amount of viewing” is happening on TV, said Sherry Brennan, Fox Networks senior vice president-distribution. What’s missing is “currency” in nontraditional platforms, said Brennan. “It’s not that we’re not able to measure what’s being viewed or know how many ads are being watched,” Brennan said. “It’s that there are varying ways of normalizing that data into a currency that can be sold.”

Industry “created a monster” by licensing content to platforms and services such as Netflix that don’t incorporate an ad model, said Brennan. That has created in consumers “a strong desire for content viewing without ads,” creating a challenge for networks like Fox “when half of your revenue comes from advertising,” Brennan said. “You can’t just kiss that goodbye without significantly increasing the cost of licensing the content.” Brennan called the situation a “double whammy,” where industry has become accustomed to a revenue stream from non-ad-supported platforms that aren’t replacing the lost ad revenue. She cited DVRs, because MVPDs pull in revenue from “selling their customers a way to watch our content without ads,” she said, without passing on any of the revenue to networks. “It’s a lose-lose for us.”

To compensate for lost ad revenue, Fox is looking at ways to change how ads are delivered, said Brennan. The network can’t yet insert targeted ads into linear viewing but that’s coming in the next few years, she said. It’s possible to insert ads into time-shifted content, and “I hope DVRs will come along,” she said. She envisioned a revenue model where ads are upfront in the DVR viewing: When users press play, they receive an ad “that you have to interact with for 30 or 60 seconds,” said Brennan. From that point on, “the ads could fall out,” she said: Fox is working on a project with Hulu putting ads in front of content “to let people interact” and then skip the rest of the ads. Fox is getting higher CPMs for that model, “but what we lack there is scale,” she said.

The varied content platforms create complexities in monetization on the buying and selling sides, said Jane Clarke, CEO of the Coalition for Innovative Media Measurement (CIMM), whose members include TV content providers, media agencies and advertisers. It’s not only challenging to get a measure of usage and user on each platform, said Clarke, but there has to be a way to determine the “unduplicated reach” of a campaign, which advertisers need to know. There has to be a way to separate content measurement from ad measurement so advertisers can add up all exposures, and content owners can understand how content is being consumed across all platforms, she said. Content providers need to be able to tell if viewership is “one person on five platforms or five people on each platform,” she said.

A major challenge for Dish Network is the decreasing use of TVs among millennials, which leaves MVPDs to chase the same pool of customers, said Prasad Joglekar, general manager-data and analytics. Those customers are “churning between one provider and another,” which drives up the cost of subscriber acquisition, and that means “we’re not able to break even for many, many years,” said Joglekar. If a customer churns out after two years, it’s not enough to recoup the cost of sending a truck to install a satellite dish on a home, he said. Exacerbating the financial strain is a growing trend for consumers to avoid paying for content they might have paid for in the past by deferring viewing and waiting for it to come out on Netflix “and watch no ads” in the process, he said. He cited Dish’s offering as a way to offset declining satellite-TV revenue but said it’s “still early days.”

Frank Foster, TiVo Research general manager, promoted TV’s effectiveness in advertising along with the company’s cross-screen research. TiVo worked with geolocation company NinthDecimal on three ad campaigns—mobile, online and TV—for a fast-food client that wanted to drive foot traffic to its restaurants. The customer reported a 15 percent return on investment from TV ads versus 2.5 and 5 percent from

online and mobile, he said: Agency buyers told TiVo that ads on a 60-inch TV were “a much more compelling experience” than with a mobile screen, where audio “isn’t very good and video doesn’t always sync.”

Panelists noted limitations of using 1940s-era audience measuring techniques. Charles Buchwalter, Symphony Advanced Media CEO, cited his company’s smartphone-based app that can track “every media thing that a consumer does in a day,” including TV, video, online, social media, music, email and texts, along with geolocation. “If someone gets media stimuli and they go to Taco Bell or they get an auto ad and go to a showroom, we have the ability of tracking that.”

In Q&A, an audience member asked about privacy implications of data tracking. Buchwalter and others said data is “anonymous” down to users and households.

One of the reasons the current TV measurement system has endured is the proprietary watermark used in all content for Nielsen measurement tools, said Clarke of CIMM. One of CIMM’s projects has been to develop an open standard that will embed content and ad identifiers in programming. The standard will lead to innovation including second-screen syncing and “a lot of different ways to interact with content and ads,” Clarke said. CIMM has been working with the Society of Motion Picture and Television Engineers and hopes to have a solution early next year, she said. — *Rebecca Day*

Unanimous, With Conditions

CPUC OKs Frontier/Verizon California

The California Public Utilities Commission unanimously approved with conditions Frontier Communications’ proposed acquisition of Verizon’s wireline operation there. The transaction has already received all other necessary regulatory clearances (see [1509140066](#)), including those from the FCC, the U.S. Department of Justice and the Texas Public Utility Commission. The \$10.54 billion acquisition includes Verizon’s wireline, broadband and video operations and FiOS networks in California, Florida and Texas. The transaction is expected to close at the end of March.

The transaction is an important decision that’s a “generational transfer,” said Commissioner Catherine Sandoval during the CPUC meeting Thursday. It affects 2.2 million subscribers who will now be Frontier customers and also “sets the genesis of what we hope to be the expansion of the network and a vast improvement of the network,” she said. The deal also lets Frontier harness the copper that’s already there, Sandoval said: “We found that the transaction does meet the public interest with the conditions that are proposed.”

The conditions proposed by an administrative law judge (see [1511090061](#)) in November included that Frontier be required to offer broadband connectivity to all Lifeline-eligible Verizon California customers at the rate and on the terms contained in its memorandum of understanding with the California Emerging Technologies Fund. Before closing, Verizon California is also required to repair all known general order (GO) 95 nonconformances within its California service territory, the [proposal](#) said. If those repairs aren’t possible then, Verizon will “escrow with the Commission in accordance with the terms of this decision the balance of funds necessary to complete the repairs,” the proposal said.

The takeover “represents a significant transformation for Frontier,” said Frontier CEO Daniel McCarthy. “We will transition our revenue to a more diversified mix, improve our growth prospects, create sustainable value for our shareholders and provide a great experience for our new Frontier customers in California, Florida and Texas.”

The CPUC OK shows the deal is in the public interest and will benefit those wireline customers in California, said Chris Creager, Verizon West region senior vice president-operations. “Having secured all required regulatory approvals, both companies are working to provide Verizon’s customers and employees in California, Florida and Texas a smooth transition to Frontier Communications when the transaction is completed at the end of the first quarter 2016.” Verizon will continue to have a presence in California, Florida and Texas, through other Verizon businesses that aren’t included in the sale, such as Verizon Wireless and Verizon Enterprise Solutions, Verizon said. — *Samantha Madison*

Capitol Hill

Rep. Jared Huffman, D-Calif., introduced HR-4160 Wednesday to amend the Rural Electrification Act “to increase regional telecommunications development,” its title said. He had two Democratic co-sponsors. The legislation is referred to the Agriculture and Commerce committees. Huffman posted the [text](#) Thursday.

The House Oversight and Government Reform Committee scheduled a Wednesday [hearing](#) on “A Casino in Every Smartphone—Law Enforcement Implications” at 1 p.m. in 2154 Rayburn.

FCC Chairman Tom Wheeler will prioritize the question of RF emission safety for workers in proximity to cell antennas, he told Sen. Richard Blumenthal, D-Conn., and House Communications Subcommittee ranking member Anna Eshoo, D-Calif., in a [letter](#) dated Nov. 24 that the agency released this week. The FCC Office of Engineering and Technology briefed staffers for the lawmakers, Wheeler said. “While the Commission is actively considering how its rules can better protect these other classes of workers, the Commission’s Enforcement Bureau is instrumental in ensuring compliance with its existing safety rules,” Wheeler said of others who may be in the vicinity of RF radiation, including roofers and electricians. “After the OET Chief briefed your staff, the Commission released two Notices of Apparent Liability proposing forfeitures of \$60,000 and \$25,000 against T-Mobile and WirelessCo. respectively, for failing to adequately prevent public access to areas near rooftop stations that exceeded general population radiofrequency emission limits.”

T-Mobile CEO John Legere stopped by Capitol Hill during a visit in Washington this week. He posted photos Wednesday of himself and Sen. Angus King, I-Maine, on Instagram and Twitter. Legere tweeted the following about his photo with King, showing them in a magenta-tinted office: “Busy, but productive day in #DC! I think my #magenta went over well! Or, at least Sen. King approved! ;)”

Agencies

FCC Wireline Bureau Chief Matt DelNero outlined nine key proceedings his bureau is working on, though he said the list isn’t exhaustive. First on his list is a draft order that would partially approve a USTelecom forbearance petition for ILEC relief, which is on the commission’s Dec. 17 tentative meeting agenda.

Speaking at the Practising Law Institute conference Thursday, DelNero said he is personally involved every day in working on separate efforts to overhaul rural rate-of-return USF mechanisms. Asked about the timetable in light of signals from a key senator that the FCC could go beyond a year-end commitment for solving the “stand-alone broadband problem” for rural carriers, DelNero said the agency is eager to complete the rulemaking but also wants “to get it right.” He also invited interested parties to provide input on commission efforts to craft an NPRM on broadband privacy under Title II of the Communications Act. Among the other draft items in proceedings he cited are: a Connect America Fund Phase II reverse auction framework order, which is circulating; an order to reform Part 32 accounting rules; the 2016 broadband progress report; a Lifeline modernization order; special-access reform actions; and orders on industry transactions, including Charter Communications’ proposed buys of Bright House Networks and Time Warner Cable, and Altice’s proposed buys of Cablevision and Suddenlink. On a subsequent panel at the conference, a Netflix official sparred with officials of CenturyLink and Cox Communications over the net neutrality order. Corie Wright, Netflix director-global policy, said she believes the FCC would be upheld in court, as did Washington Utilities and Transportation Commissioner Phil Jones. Jennifer Hightower, Cox senior vice president-law and policy, said the net neutrality order is discouraging broadband investment and that her company is “more cautious than ever” due to uncertainty from the order. Melissa Newman, CenturyLink senior vice president-federal policy and regulatory affairs, agreed, saying her company doesn’t know what is allowed under the Internet conduct rule’s prohibitions against broadband ISP practices that create “unreasonable interference” or “unreasonable disadvantage” for other parties. Wright disputed the criticisms, which she said were contradicted by the statements and actions of industry executives and Wall Street investors. Jones also said he hadn’t seen any drop in broadband investment in his state. —**DK**

The FCC is again delaying the U-NII-3 deadline for certifying broadband equipment. The Dec. 2 deadline for National Information Infrastructure (U-NII) devices to meet revised Section 15.407 rules in order to be certified is being pushed to March 2, the full commission said in an [order](#) Thursday. That three-month delay in implementation follows comments by the Wireless Internet Service Providers Association and others (see [1511250037](#)) requesting that extension as part of broader review of out-of-band-emission rules adopted for the U-NII-3 band, the agency said. The deadline initially was to be June 1 (see [1507010044](#)). The FCC said it will continue to follow the previous Section 15.247 guidelines through March 2 when certifying U-NII-3 band devices.

Public Knowledge’s FCC push on Communications Act Section 333 rules and Part 15 devices “is nothing more than a ploy designed to limit the competitive roll-out of LTE-U products under the guise of protecting the Wi-Fi/unlicensed commons,” MediaFreedom said in [comments](#) posted Wednesday in docket 15-105. Beyond “help[ing] its corporate supporters compete in the marketplace,” MediaFreedom said, PK also is “recklessly invit[ing] the agency’s novel and potentially deleterious participation in the Part 15 device development process—a process that has thrived precisely because the Commission has not been actively involved in it. Section 333 cannot presently be reconciled with Part 15 permission-less innovation.” Public Knowledge last month submitted comments asking the agency to make clear unlicensed and licensed spectrum are on equal footing (see [1511200036](#)). The effect of that would be compatibility and coexistence requirements for Part 15 devices that give them interference protections “that well exceeds their Part 15 status,” especially since the FCC hasn’t ever required interference-free operation between Part 15 devices, MediaFreedom said. Public Knowledge didn’t comment Thursday. When asked about MediaFreedom’s own financial funding, Director Mike Wendy emailed that the nonprofit has taken direct corporate support

in the past from the cable and telecom industries, but in the past two tax cycles it hasn't received direct corporate support from the cable, telecom, or information and communications technology industries. "I presently operate on two small, private grants. The rest comes out of my pocket," he said.

Wireless and particularly its data services is the reason for overall telecom growth, in a "regulatory environment [that] remains mostly constructive" except for scrutiny of large mergers and acquisitions and risk under Title II of the Communications Act, said a debt-ratings firm in a news release and longer report. It's an "otherwise benign environment," regulation-wise, said Moody's. "M&A activity will be limited until the broadcast spectrum auction is completed," and the March 29 start could be delayed, it said. "Without the entrance of non-traditional bidders, the auction could disappoint broadcasters who may expect high prices." Wireless data revenue "will fuel overall telecom growth, driven by the increasing use of smart-phones, tablets and other connected devices, as well as the growing popularity of mobile video that has made larger data plans more alluring," said Senior Vice President Dennis Saputo. U.S. telecom profit will rise 2 percent in 2016 as wireless revenue grows 3-4 percent, said Moody's Wednesday. "Mobile video is a potential growth catalyst, but probably 2-3 years from now."

Courts

Internet companies shouldn't have to choose between engaging in necessary communication with their users and the threat of class-action litigation, Internet Association CEO Michael Beckerman said of the FCC's recent Telephone Consumer Protection Act (TCPA) order. The Internet Association filed an [amicus brief](#) with the U.S. Court of Appeals for the D.C. Circuit, urging the court to overturn the FCC's TCPA order. The FCC declaratory ruling interpreted the TCPA in a way that expands its scope beyond any reasonable interpretation of Congress' original intent, a news release from the association said. The ruling exposes any company using a modern phone system, including Internet companies simply attempting to communicate with their users, to a dramatically increased risk of frivolous litigation, it said. "In an unlawful attempt to respond to changing technology, however, the Commission has interpreted the TCPA in such a way that it now potentially reaches almost any form of electronic communication—a far more sweeping (not to mention unconstitutional) and ambitious rule than Congress's much more modest focus on the specialized automated dialing equipment that telemarketers used in 1990 [T]he Commission's Order rolls out the welcome mat for lawsuits threatening the innovative approach to communication that the Internet Association members promote and on which their business models depend," the brief said.

International

"U.S. businesses and workers in the information and communication technology goods sector will be positively impacted by the elimination of many barriers once TPP is enacted," Stefan Selig, U.S. undersecretary of commerce for international trade, said in a [statement](#) as he released a report identifying the potential economic benefits to be gained from the Trans-Pacific Partnership. Highlighted in the report are several country-specific cases where U.S. ICT companies could benefit from TPP's institution, such as the complete or partial elimination of import taxes on American ICT exports in Japan, Malaysia, New Zealand and Vietnam.

Google signed agreements to add 842 megawatts of renewable energy capacity to power its data centers, the company said in a [blog post](#) Thursday. Google called the deal “the largest, and most diverse, purchase of renewable energy ever made by a non-utility company.” As a result of the agreements, which boost the company’s clean energy across three countries, including Chile and Sweden, Google nearly doubled the amount of renewable energy it has bought, and is now up to 2 gigawatts, it said. The new contracts range from 10 to 20 years, it said.

Privacy

The Electronic Frontier Foundation said it will investigate similar data practices of other companies, a day after it filed a complaint with the FTC that Google was tracking, collecting and mining student data without permission (see [1512010068](#)). EFF wants parents, teachers, school administrators and students at least 13 years old with “first-hand knowledge of other cloud-based education services” to fill out a survey to help the privacy group gather more information about such practices, it said in a Wednesday [blog post](#). While Google has said its tools comply with the law and it abides by a pledge not to track students, EFF said in the post the company is “abusing its position of power as a provider of some educational services to profit off of students’ data.” But Future of Privacy Forum Executive Director Jules Polonetsky said in a [statement](#) Tuesday that EFF’s complaint doesn’t have any merit. He said the Chrome “sync” setting, which EFF says is the heart of the problem, can be controlled by a school administrator or parent and is a general feature. “We don’t believe the complaint raises any issues about data use that are restricted by the Student Privacy Pledge,” he said. Google is among the forum’s top 10 corporate donors, its [website](#) said.

Security

VTech hired FireEye’s Mandiant cyber forensic team to help investigate the recent cyberattack that resulted in the theft of more than 11 million parent and children’s records (see [1512010041](#)). VTech said in a Thursday [news release](#) that Mandiant will review how the toy company “handles customer information and clearly define ways in which the group can further strengthen the security of its user data.”

Industry Notes

It wasn’t just Cyber Monday that broke sales records this holiday season (see [1512020033](#)), comScore [said](#). The day leading into Cyber Monday was the first billion-dollar online shopping Sunday, while Saturday e-commerce sales topped \$1 billion for the second consecutive year. Some 107.8 million U.S. online shoppers visited e-commerce sites Cyber Monday using a desktop computer, smartphone or tablet, a 23 percent increase from 2014, comScore said. Amazon had the most visitors, followed by Walmart, eBay, Target and Best Buy, comScore said in a news release Wednesday. “Some web sites experienced unfortunate server problems on Cyber Monday that appear to have been caused by heavy mobile traffic,” comScore Chairman Emeritus Gian Fulgoni said. Shutterfly and Target were two of the retailers suffering setbacks and outages Monday. Target [attributed](#) “delayed access” to traffic overload. And Discover said 73 percent of millennials plan to shop on a mobile device this holiday season, vs. 32 percent of nonmillennials. Thirty-six percent of millennials surveyed use mobile wallet technology, and 80 percent of those plan to use it for holiday shopping, compared with 69 percent of nonmillennial mobile wallet users, it said. The survey was conducted among 1,508 U.S. adults Oct. 30-Nov. 2. —RD

A Ford software update made available to Sync-equipped vehicle owners Thursday adds Apple Siri capability for hands-free access to iPhone features, Ford [said](#). Siri Eyes-Free allows drivers to activate Siri with a long press of the voice recognition button on the steering wheel that's similar to activating Siri on an iPhone, said the carmaker. Voice requests drivers can make to Siri include calling contacts in the address book, looking up phone numbers for points of interest, setting a reminder or alarm, getting weather information, selecting and playing music, sending and receiving text messages by voice and getting directions from Apple Maps, it said. The update is compatible with vehicles dating back to 2011, Ford said.

SiriusXM "won't stand still" on connected vehicles, Chief Financial Officer David Frear told the Bank of America Merrill Lynch Leveraged Finance Conference webcast Wednesday from Boca Raton, Florida. SiriusXM believes there's a "content offensive that we can do with connected vehicle," Frear said. "There is also a direct marketing offensive that we can do with connected car," which the company thinks is "a great upside for the business," he said. Frear sidestepped mention of the company's SXM17 connected-car initiative, which in the past has been described as a multiyear project to bring two-way connectivity to the vehicle using satellite delivery and streaming (see [1504280044](#)). SiriusXM CEO Jim Meyer has said the company would have more to say about SXM17 at CES (see [1509170042](#)).

The Information Technology Industry Council (ITI) outlined strategies agreed to by its member companies to address and respond to climate change, ITI said in a [statement](#) Thursday. The statement highlights three main commitments—reducing the carbon footprint of operations, reducing the carbon footprint of products over their lifecycles and delivering ongoing innovations to transition to a "sustainable low-carbon global economy"—to be undertaken by members. The statement also identified a commitment to supporting government policies "with the intent of both mitigating and adapting to climate change." The efforts to support certain public policies related to climate change will be done with increased public-private partnership, the statement said. "We are not an industry that is fond of the status quo, and when it comes to climate change the status quo is unacceptable," ITI CEO Dean Garfield said in a [blog post](#). "We are determined to use our innovative minds to find solutions to these challenges and to identify the opportunities that lie ahead to reduce carbon emissions."

Small and mid-sized video providers likely will jump onboard Amazon's rumored plans to offer third-party video services as part of its Amazon Prime Instant Video offering, because they're the ones facing the biggest travails in setting up their own distribution networks, wrote The Diffusion Group Senior Adviser Joel Espelien in a [blog](#) Wednesday. Being an add-on to Instant Video wouldn't be enticing to a major multi-channel network since Amazon solely would be in charge of the app's home screen and such related issues as placement of third-party content and user experience, TDG said. The provider also would cede to Amazon the consumer billing relationship and control of consumer usage data from the app, it said. "It is difficult to imagine a large video provider (i.e. HBO, Hulu) getting very excited about Amazon's offer. These providers have their own brands and their own user bases, and are understandably going to be pretty reluctant to hand over the keys to the kingdom to Amazon," TDG said, saying for small and mid-sized streaming video on demand providers, the chief difficulty is in building a customer base. "For these providers, a large ecosystem platform like Amazon (or Apple or Google or Microsoft) is very tempting indeed." Amazon didn't comment Thursday.

Google's Chromecast Audio and Google Cast could emerge as market leaders for streaming audio platforms despite competition from DTS' Play-Fi, Qualcomm's AllPlay and Apple's AirPlay, ABI Research analyst Michael Inouye said in a [report](#) Thursday. "Both the device and technology have potential to be key influencers in expanding the market reach of networked audio devices by capitalizing on heightened market attention." Google's success with Chromecast showed the importance that pricing plays in consumer uptake of streaming media devices, Inouye said.

The Alliance for Telecommunications Industry Solutions issued a series of new [studies](#) to identify the feasibility and standardization/implementation considerations for multiple possible wireless emergency alert (WEA) enhancements, a [news release](#) from ATIS said Wednesday. The studies aimed to address recommendations from the FCC Communications Security, Reliability and Interoperability Council (CSRIC) and investigated enhancing cell broadcast geo-targeting for WEA alerts; providing supplemental information for a WEA alert; and increasing the WEA alert message length. The first study looked into methods for the delivery of geo-targeted WEA messages to a given geocode, circle or polygon, and concluded that the current wireless infrastructure-based geotargeting continues to be the recommended solution for WEA geotargeting. ATIS also studied the practicality, limitations and effects of providing supplemental information for a WEA alert to a mobile device and enabling a mobile device to display supplemental information. The study said multimedia content can't be supported in today's cell broadcast-based WEA system. The study of WEA message length confirmed that an increase in the maximum displayable characters is technically feasible for an LTE WEA message.

Eighty-one percent of U.S. households get broadband service, up from 26 percent a decade ago, Leichtman Research Group said in a [news release](#) Thursday. LRG said broadband accounts for 97 percent of home Internet service, compared with 91 percent in 2010 and 40 percent in 2005. Overall, 84 percent of U.S. households get home Internet service, and 69 percent of adults go online via a smartphone, it said. Sixty-eight percent of U.S. households get both broadband and pay-TV service, while 13 percent of households get broadband but don't subscribe to TV, LRG said. The data came from a phone survey of 1,223 U.S. households in October, it said.

Internet People

FTC names **Lorrie Faith Cranor**, Carnegie Mellon University, chief technologist, effective next month, succeeding **Ashkan Soltani** ... MailChimp hires **Scott Culpepper**, ex-Robins Kaplan, as general counsel, new position ... Wilson Electronics hires **Bruce Lancaster**, ex-Logitech, as CEO, succeeding **Donald Blohm**, who continues in an advisory role as Sorenson Capital operating partner ... MPAA hires **Chris Ortman**, ex-CreativeFuture and briefly consultant, as vice president-corporate communications/chief spokesperson, succeeding **Kate Bedingfield**, hired in August as communications director for office of Vice President Joe Biden, and promotes **Sam Newton** to deputy director-corporate communications ... Drone operator Measure hires **Chris Moccia**, wireless expert, as vice president-infrastructure ... TVU Networks hires **Jeff Cohen**, ex-Archimedia Technology, as senior sales executive ... Mobile Marketing Association adds to North American board for two years **Jay Altschuler**, Samsung, **Marc Fonzetti**, Verizon, and others ... Lobbyist registration: Square, **The Smith-Free Group**, effective Dec. 1.