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TODAY'S NEWS

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MEDIA OWNERSHIP RULE STASIS surprised Furchtgott-Roth, while Tate has observed radio deconsolidation and Copps fears more M&A. (P. 7)

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Congress Not Motivated to Fix USF, Hopes FCC Can Figure It Out, Walden Aide Says

Congress is more than happy to let the FCC sort out the USF mess on its own, a House Communications Subcommittee Republican aide said Wednesday. "There is no motivation currently on the Hill to delve into these issues," said Ray Baum, aide to Subcommittee Chairman Greg Walden, R-Ore. Even if there were motivation, "there is really no consensus," he said, pointing to a schism between free-market proponents who'd like to see the fund disappear, and some who want it to grow. To Baum, Congress's role at the moment is to seek input from interested parties and pass it on to the FCC to come up with a workable solution. "If this issue doesn't lend itself to agency expertise, there isn't one that does," he told a Catholic University conference. "We're really wishing them the best."

The FCC is working to prioritize the many petitions for reconsideration it has received following the reforms approved in October's USF/intercarrier compensation order, said Wireline Bureau Deputy Chief Carol Mattey. Those raising issues regarding implementation aspects occurring this year will go to "the front of the line," she said, noting "there's a very high bar for reconsideration." Companies that simply repeat the arguments they made before are likely to get little help, she said; the commission is looking to see whether companies are making fresh arguments and providing new evidence.

Mattey discussed the sequence for implementation of the order: Determine how much support to award to price-cap carriers; get the Mobility Fund up and running; and set benchmarks for capital and operational expenditures. The bureau is also examining the four waiver requests it has received, she said. The commission is actively working out procedures for September's Mobility Fund Phase I auction, Mattey said. Auction 901 will award

\$300 million to carriers that commit to provide 3G or better mobile voice and broadband services in areas where such services are unavailable. After that, the commission will work on procedures for Phase II, which will provide \$500 million annually for ongoing support of mobile services, Matthey said. “It would be surprising if there were no public-interest obligations” in order to receive Phase II money, Matthey said.

Access charges on VoIP traffic don't make any sense for IP networks, Google telecom policy counsel Adrienne Biddings said when asked about the biggest failings of the USF/intercarrier compensation order. These kinds of subsidies impede monetization and disincentivize investment, she said, and “delay our nation's transition to all IP.” Matt Wood, policy director at Free Press, said he wants to see universal availability of broadband at affordable rates. He said he's also concerned about the USF contribution factor and its burden on consumers, and the “asymmetrical nature of some of these burdens,” in which USF contributions from the legacy telephone system “are being channeled to fund a broadband expansion and adoption program.” — *Matthew S. Schwartz*

FCC 'Real Busy'

Clyburn Says Details Matter in FCC Public File Proposal

The FCC should carefully consider broadcaster concerns as the commission moves forward with an order requiring public political files to be posted online, Commissioner Mignon Clyburn said Wednesday. Speaking at a Catholic University conference, Clyburn outlined an agenda for the rest of the year including work on spectrum, USF reform and accessibility. Clyburn and a later wireless industry panel urged rules to spur competition in the mobile market.

The FCC is still reviewing the political files draft order, scheduled for a vote at the commission's April 27 meeting, Clyburn said. If the commission decides to require broadcasters to post the files online, “we must decide how much information should be disclosed and exactly how broadcasters should make such disclosures,” she said. Placing the documents online will make the files more accessible to the public, but “the proverbial devil is in the details,” she said. “I am aware of many concerns of the broadcasters and feel compelled to reiterate that a transition to a digital system needs to be handled carefully and in a manner sensitive to the capability of differently situated broadcasters.”

The commission has no plans to slow down, even in an election year, Clyburn said. “The spring and summer stretch will be overwhelmed by the hurricane of presidential politics and followed by the calming cricket sounds of Washington hallways come late July,” Clyburn said. “While it is always tough to predict how much we'll get done in years like this, the FCC will no doubt be real busy.”

Adopting rules for voluntary incentive auctions “is at the top of the FCC's priority list,” Clyburn said. The Democratic commissioner said she's concerned that many Americans are served by two or fewer mobile providers. The FCC should promote greater competition in wireless backhaul and consider mandating interoperability in the lower portion of the 700 MHz band, she said: “I am eager to see either an industry solution or an order mandating interoperability ... by the end of this calendar year.” Also, Clyburn wants to make it easier for smaller carriers to obtain roaming agreements with the larger companies, she said. In addition, the FCC “should urge the industry to consider sharing spectrum through dynamic spectrum access technologies for greater resource efficiency,” she said.

USF and intercarrier compensation changes will busy the bureaus for the next few years, Clyburn said. The FCC must address several reconsideration petitions, she said. Also, the commission will work on implementing the first two phases of the Connect America Fund, complete a regression analysis for rate-of-return changes and conduct an auction for Mobility Fund phase-one support, she said. On the prospects for contribution and rural healthcare support reform, Clyburn said she expects “that we will continue on this endeavor this year.”

Clyburn said her staff continues to review rules on special access. In addition, Clyburn has “asked that the agency commit the necessary resources to complete our review of two inmate payphone petitions that have been pending for far too long.”

During the wireless panel discussion, current and potential rivals to AT&T and Verizon Wireless urged immediate FCC action to bolster wireless competition. T-Mobile USA is trying to roll out LTE service but is constrained by limited spectrum, said T-Mobile Vice President Kathleen Ham. Dish Network seeks FCC action to remove S-band regulations that are keeping the satellite company from using its spectrum to enter the wireless market, said Dish Senior Vice President Jeffrey Blum. An interoperability mandate in the lower 700 MHz spectrum would expand 4G mobile coverage to one-third of the U.S. population, said Rural Cellular Association General Counsel Rebecca Thompson.

T-Mobile can “undercut” the big carriers’ LTE pricing, Ham said. “You want us there.” Ham urged the freeing up of government spectrum and rejection of the Verizon deal to acquire cable spectrum. Verizon is sitting on spectrum it already has, whereas T-Mobile would put additional spectrum to immediate use, she said. Dividing the 700 MHz band into “islands” was poor policy because it ruined LTE’s potential for full interoperability across the wireless market, Ham said. Public safety won’t have much choice for roaming, and T-Mobile faces increased costs for LTE roaming since each potential roaming partner requires a different chipset installed in T-Mobile devices, she said.

“Until the FCC completes the rulemaking for the S-band spectrum, we’re on the sidelines,” Dish’s Blum said. The current regulatory uncertainty prevents Dish from investing, he said. Blum said the FCC could complete the rulemaking as soon as August. No one has argued the network will cause interference, and many of the other potential issues have been “vetted,” he said. T-Mobile has opposed Dish’s entrance before but is still considering the satellite company’s latest proposal. It’s tough to disagree that getting more spectrum in the market is important, she said. — *Adam Bender*

Substance 'Only Half'

Strickling Suggests 'U.N. Model' for Defining Consensus in Privacy Discussions

NTIA has no interest in pushing a particular view of privacy rules for the private sector in the multistakeholder meetings it plans to convene around the Obama administration's Consumer Privacy Bill of Rights (CD April 4 p4), NTIA Administrator Lawrence Strickling told a Hudson Institute gathering Wednesday. NTIA will have to "resist the impulse" to lead the discussion, even at the prompting of participants, he said: "People are going to be looking for those handholds" — what the government thinks should happen.

The agency is focused on getting stakeholders to decide what will constitute "consensus" for applying the White House's "Privacy and Innovation Blueprint" to particular business contexts, Strickling said. Strickling twice called the government proposal "the least regulatory approach" possible.

"I personally don't like" the idea of a voting model for establishing consensus in the discussion groups, because that's just a matter of "how many can show up and vote" for one side or another, Strickling said. But he's also not keen on requiring unanimity from all parties, which could give one or two groups a "veto" over the process, he said: A better idea is a "U.N. model" where "if nobody is objecting too hard, then you have consensus." The discussions must have open participation, because every online transaction probably includes three or four parties in addition to the consumer, and they will have to be involved, Strickling said. Some businesses told NTIA in comments they're afraid the agency is requiring all discussions to be public, he said, but "of course we're not saying that" parties can't have closed-door discussions: NTIA simply wants to ensure "the output of the process has the full confidence" of all.

NTIA isn't a regulatory agency and so was careful to write up the proposed baseline privacy rules so as to "avoid making them read like regulations," Strickling said. They come from "a set of values that have stood the test of time and frankly are shared in most countries in the world," and aren't intended to define all practices and cover "every contingency," he said. Though NTIA wants Congress to enact a law based on the principles, legislation wouldn't have to be "complicated," perhaps just a 10-15 page bill, he said.

If the discussions result in "strong and flexible" codes of conduct, it will be a "powerful example" to U.S. trading partners who are also eyeing Europe's ongoing proceedings on privacy regulation, Strickling said. He specifically mentioned Singapore as one country considering various privacy approaches: The U.S. is "quite anxious" to talk to such countries.

NTIA and stakeholders will set the "rules of the road" at the first meeting, Strickling said: The eventual substance of codes is "only half" of the work. Many comments to NTIA boiled down to "we have to be able to walk before we can run," meaning the agency should not try to impose rules on every sector right off the bat, he said: "I'm quite worried about doing that at the outset."

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One area where NTIA is mulling whether to scrap existing sector-specific privacy rules is telecom, Strickling said. Phone companies are competing with a broader group of rivals now who aren't subject to rules such as for customer proprietary network information, he said: NTIA suggests "replacing that FCC model with the regime that we provide" for baseline rules. Other sector-specific rules for health and financial information should remain, he said.

The agency has been careful not to "plow ground that's already been well-plowed," such as weighing in on do-not-track practices that industry and the World Wide Web Consortium have been developing, Strickling said: NTIA would just be "an additional oar in the water." A "good topic to consider as the first one out the door" in discussions is transparency in mobile applications, he said, but cautioned that the approach taken on mobile apps won't dictate how future topics will be approached.

TechFreedom President Berin Szoka asked Strickling from the audience to provide evidence of "generalized harm" that justifies the NTIA wading into territory traditionally overseen by the FTC. Surveys cited by NTIA don't answer "what consumers would choose in the real world if given a tradeoff" between stronger privacy rules and the services made possible by broad data collection, Szoka said: The agency implies "there's some cliff we're about to fall from" without regulation.

The surveys show that lack of enforceable codes of conduct "could lead to something happening fundamentally to the trust consumers have on the Internet," just as content owners may not release works online if they can't be effectively protected from piracy, Strickling said. (See related report in this issue.) And unless "everybody is playing from at least a basic playbook," legitimate companies won't know "they aren't being hurt in the marketplace" by unscrupulous competitors, he said.

Trying to devise privacy rules that mesh better with the EU's more regulatory stance could backfire, suggested Dan Brenner, a telco lawyer for Hogan Lovells. "We've had a decade or more in which the Europeans have looked askance" at U.S. privacy practices, he said from the audience, admitting he was being "contrarian." As cloud computing becomes big business, isn't there an argument that companies will store consumer data in countries that "give them the least amount of hassle" with privacy rules? he asked. But EU nations, for example, won't let companies get access to that consumer data in the first place without acceding to privacy rules, Strickling said. Hudson's Harold Furchtgott-Roth, a former FCC commissioner, said that's easier said than done, because a given company may not know where a third-party provider is storing data.

Strickling dismissed the possibility that stakeholders could refuse to adopt enforceable rules after coming to consensus: "It would suggest to me that something went wrong in the actual process itself." Industry participants won't "capture" their own prerogatives over those of consumer groups and then enshrine them in law, because every step will require consensus, he said: If the process gets "railroaded" by business groups, for example, then consumer groups will "decamp from the process" and it will be a failure.

Strickling also rejected a comparison of the failed Stop Online Piracy Act (SOPA) to the forthcoming privacy discussions. Georgetown University Prof. Mike Nelson, a former IBM Internet director, said there are privacy implications in fighting online piracy and that the administration's push for "SOPA two" could conflict with NTIA's baseline proposal. The administration isn't pushing for antipiracy legislation again this year, Strickling said. Rather it's convening stakeholders to reach agreement on antipiracy measures, such as overcoming privacy hurdles to identify bad actors who register domain names for malicious purposes, he said. That was the problem with SOPA, he added — one set of interested parties didn't feel represented equally from the start. — *Greg Piper*

500,000 Jobs So Far

Apps Economy Driving the Larger U.S. Economy, Say Speakers at Stevens Institute Event

The apps economy has created nearly 500,000 jobs just since the introduction of the iPhone, Michael Mandel, chief economic strategist at the Progressive Policy Institute, said Wednesday, at an event sponsored by the Stevens Institute of Technology in Hoboken, N.J. Sen. Frank Lautenberg, D.-N.J., and FCC Chairman Julius Genachowski also spoke at the event, which focused more narrowly as well on jump starting the state's economy.

"The U.S. has entered the early stages of a communications-driven boom," Mandel said. "We're getting genuine economic growth but it looks very different than any time in the past. Today growth is measured in apps downloaded and gigabytes used, rather than cars sold and homes constructed."

The apps economy is "about new ways that people and businesses can communicate, act, buy, look," Mandel said. "Just like every other innovation boom in the past the app economy is creating jobs. ... The people who write apps, the people who market them, the people who run the wireless networks and the people who repair the equipment." The apps economy is "an entirely new eco-system coming into being, one that only has an upside," he said. "What does this mean for New Jersey?" he asked. "New Jersey and Bell Labs were once the hub of the communications universe. It can happen again." Mandel said research he will publish soon ranks New Jersey among the top states in the country in terms of jobs created by the apps economy, behind only such traditional high-tech powers as California, Washington and Massachusetts. "This is a great sign for the future," he said.

Genachowski said "next-generation networks" are expected to add \$151 billion to the U.S. economy and 770,000 new American jobs in the next four years. The FCC understands the importance of the new app economy, he said. "That's why we've been pushing universal broadband adoption, because we need both universal deployment and universal adoption," he said. "Right now, and this is a surprise to people, a third of our population doesn't have broadband at home. They can technically get it but they don't subscribe."

Lautenberg said he will soon introduce the America Innovates Act, which would create an American Innovation Bank to "leverage federal investments in science into new products, companies and jobs." The proposed legislation also would fund industry training for graduate students in science and expand existing fellowship programs so students can perform research working with industry, Lautenberg said. It also would support the development of new academic curricula to train science graduate students for careers in industry. Lautenberg and Genachowski also unveiled a New Jersey Apps Challenge, a competition at various universities in the state to create the best mobile app. The contest is open to students, faculty and recent alumni affiliated with the New Jersey Institute of Technology, Rutgers and Stevens.

"From Thomas Edison to Albert Einstein to Bell Labs, New Jersey has long been the birthplace of new ideas that have transformed our economy and our world," Lautenberg said. "By bringing the brightest minds in business and academia together, we can help ensure that New Jersey continues to build on its rich tradition of innovation."

Genachowski credited the FCC's net neutrality rules, approved in late 2010, with helping speed the expansion of the Internet economy. "In 2011, overall investment in network infrastructure was up 24 per-

cent from 2010," he said. "Internet start-ups attracted \$7 billion in venture capital in 2011, almost double the 2009 level and the most since 2001." Getting more spectrum in play for broadband is also critical, he said. "Mobile apps that we're using everyday on our smartphones and our tablets ... rely on our spectrum," he said. — *Howard Buskirk*

Tate Wants 'Humble' Regulation

Media Ownership Rule Stasis Since Telecom Act Surprised Furchtgott-Roth

That the FCC has made such incremental changes to media ownership rules since 1996 was a surprise to Harold Furchtgott-Roth, who became a Republican commissioner the next year. Just-departed Democratic member Michael Copps worries more mergers and acquisitions will continue.

Ex-GOP Commissioner Deborah Tate agreed with Copps at a Catholic University event that minorities own a small slice of broadcast properties, but she said that appears to be because of investment decisions rather than regulations favoring incumbents. Former Media Bureau Chief Donna Gregg, who moderated Wednesday's event, said her recent contact with executives and regulators from other countries points up how the U.S.'s media business is unlike most of the rest of the world in that it's largely privatized.

A decade ago, Furchtgott-Roth would never have predicted the status quo of media ownership regulations would be largely unchanged now, he said. "Here we are, 11 years later" after two terms of a Republican administration and three years into a Democratic presidency, "and media ownership rules are still here, largely unchanged. Who would have thought?" said the economist who often opposes government regulation. He said he agrees with Copps' observations about the "bleeding of journalism, a debase-ment of journalism" and loss of jobs in the industry. Unlike Copps' view, Furchtgott-Roth doesn't blame the state of journalism on "a failure of the commission to have tougher ownership rules," he said. Lack of deregulation has meant "fewer opportunities, it has made the media environment much less vibrant, and frankly I think competitive than it should be," he continued.

The FCC is "asking pretty much the same questions we've been asking for 10 years" on media ownership, Copps said of the current quadrennial review of rules that was due to have been completed in 2010. "We're still talking about the same newspaper/broadcast cross-ownership rule that Chairman [Kevin] Martin was pushing when he was chairman" and "so we haven't made a lot of progress," Copps said. Furchtgott-Roth noted the "tenuous" state of media ownership law under the 1996 Telecom Act, since the FCC sets limits that aren't dictated by the legislation.

It's curious that the FCC holds field hearings and pays for studies on media ownership but doesn't do that on most other proceedings, Furchtgott-Roth said. "There should be field hearings," Copps responded, because the commission gets "a lot of valuable information out of the hearings we've had" from people of color, those with disabilities and others who don't usually participate in the agency's rulemakings. Furchtgott-Roth replied that he thinks "getting commissioners outside of Washington is very, very healthy," so his objection is that it was only done for media ownership. Tate said speakers at field hearings in Nashville, Tenn., where she's lived, were "bused in" from other areas, which she said reduced opportunities for locals to speak.

Like in Tennessee, where Gov. Bill Haslam wants to scale back the Tennessee Regulatory Authority, Tate said of the FCC that "we also need to be humble regulators." On the low portion of radio and TV

stations owned by people of color, "we can't always say that the percentages mean everything," she continued. "Is it a business which people want to invest in?" she asked. In radio, the market worked to counter the effects of consolidation, with listenership at chain-owned stations declining in some cases and Clear Channel Communications shedding many properties, Tate said. "People were starting to vote with their buttons or their knobs or their feet, so all of those conglomerates are half the size they were when I was at the FCC." Clear Channel's divestitures meant the Minority Media and Telecommunications Council got stations to use for training purposes, Tate said. "Conglomerates got large, radio stations got large, and the market spoke."

Recent broadcast and cable consolidation worries Cops, who cited Scripps and Sinclair buying TV stations, Cumulus buying Citadel, and Comcast buying control of NBCUniversal. There's no question consolidation continues, he said. Shared services agreements among separately owned TV stations in the same market means ownership limits "are kind of being worked around" and SSAs are "just another word for media consolidation," Cops said. "I see disturbing signs new media is traveling down the same road" as cable and broadcasters, he said in recommending there be a discussion of public-interest responsibilities but not rules for Internet companies. "How can we let the Internet go down the same road: Control by gatekeepers or tollbooths" as traditional U.S. media, he asked. "What does the public interest mean in terms of the Internet?" — *Jonathan Make*

35 Percent of GDP

IP-intensive Industries Created 40 Million Jobs in 2010, Says Commerce Report

Business and labor groups joined Obama administration officials in stressing the need for enforcing intellectual property rights as a Department of Commerce report showed that IP-intensive industries supported at least 40 million jobs and contributed more than \$5 trillion to the economy in 2010, accounting for 34.8 percent of the U.S. gross domestic product. "When Americans know that their ideas will be protected, they have greater incentive to pursue advances and technologies that help keep us competitive, and our businesses have the confidence they need to hire more workers," said Commerce Secretary John Bryson.

The report, released at a White House event Wednesday, showed that 75 industries that use patent, copyright or trademark protections "most intensively" were the direct or indirect source of 40 million jobs in 2010. Ranking high among IP-intensive industries are those making computer and computer peripheral gear, audio and video equipment, newspaper and book publishers, makers of semiconductor and other electronic components, and pharmaceutical and medicines. IP protections are also central to exports, "another key driver of our economy," said Bryson. IP-intensive industries supported more than \$775 billion in U.S. goods exports in 2010, about 61 percent of all merchandise exports, he said.

As part of efforts to ensure "our intellectual property system is strong and sound," his department is modernizing and streamlining its patent review process, "so that businesses can get their ideas to market faster," Bryson said. Besides hiring more experts to reduce patent backlogs, "we're doing more than ever to target counterfeiting and piracy both here and abroad," he said. The department this year is also developing a "long-term IP strategy" to ensure that "our patent system continues to serve [as] the world's gold standard in IP."

The study on IP and the U.S. economy, done jointly by the Economics and Statistics Administration and the U.S. Patent and Trademark Office, does not offer policy recommendations and "is not in-

tended to directly advance particular policy issues." The most IP-intensive states in the country are California, Minnesota, Wisconsin, New Jersey, Massachusetts, Rhode Island, Vermont and New Hampshire, Commerce Deputy Secretary Rebecca Blank told the meeting.

The U.S. Chamber of Commerce is "pleased" that the Obama administration has taken "important steps" to address IP rights, said President Thomas Donohue. The report "fundamentally proves" that "40 million jobs also hinge on the proper and adequate enforcement of IP rights, that are frequently threatened by criminal organizations overseas," he said. "It's a challenge we must tackle together." U.S. protection for American IP "simply does not effectively address foreign rogue websites that steal movies, TV shows and music," said AFL-CIO President Richard Trumka: "The need to address foreign rogue websites remains urgent as they continue to profit at the expense of U.S. jobs and income."

Meanwhile, Intellectual Property Enforcement Coordinator Victoria Espinel said she would take steps to encourage the "expansion of voluntary best practices" for online advertising with the aim of cutting off "revenue to websites distributing counterfeit and pirated goods." In a letter to President Barack Obama and Congress, she said she would also work with Congress to make sure that federal agencies have the "necessary enforcement tools" they need to effectively combat intellectual property theft. "We are [also] focused on increasing international cooperation and enhancing capacity building through training, deployment of U.S. personnel overseas and diplomatic engagement with foreign nations." — *Dinesh Kumar*

Capitol Hill

Four House members asked the FCC to find an answer allowing the LightSquared network to move ahead. "Whether through a swap of spectrum or a transition to better technology, a solution should be sought," said Reps. Brian Bilbray, R-Calif.; Joe Pitts, R-Pa.; Jim Moran, D-Va.; and Gerald Connolly, D-Va., in a letter Tuesday to FCC Chairman Julius Genachowski. "As a matter of public interest, it would be beneficial to examine all potential paths forward before closing the door on what could be an opportunity to increase competition and access in the nation's wireless providers." Federal agencies approved the company's plan "on several occasions" and the network would expand wireless broadband to unserved parts of the country, the members said. LightSquared has already invested \$4 billion of \$14 billion planned, they noted. "Unfortunately, the concern about potential overload of GPS receivers was not brought up until late in the process." Senate Communications Subcommittee Chairman John Kerry, D-Mass., and Sen. Lindsey Graham, R-S.C., sent a similar letter March 29. "We understand your decision but urge you to work with the company and other spectrum holders, including federal agencies and the NTIA, to locate and identify alternate spectrum that LightSquared could use for a nationwide 4G LTE wireless broadband network," the senators wrote.

The FCC and wireless industry's cellphone theft agreement (CD April 11 p1) won kudos from House Communications Subcommittee Ranking Member Anna Eshoo, D-Calif., and Rep. Ed Markey, D-Mass. Eshoo and Markey last month requested information on cellphone theft from 19 carriers, handset makers and operating system developers. "The FCC's planned database takes a smart approach to mitigate theft of cellphones by utilizing the latest mobile technologies and partnering with wireless carriers," Eshoo said. Markey also praised the agreement but said he still expects responses from the companies queried.

Sponsorship identification requirements for TV and radio stations and cable and satellite providers is the subject of an upcoming report to Congress by the Government Accountability Office, a GAO spokesman said Wednesday. He didn't provide more details.

Wireline

It remains technically infeasible for AT&T to offer pay-per-call service for Internet Protocol Relay Services, the telco told the commission in its annual status report Tuesday (<http://xrl.us/bm3ftb>). Because the company and other IP relay service providers have no billing relationship with users and “no reasonable prospect of such a relationship in the near future,” pay-per-call service is not feasible, and the commission should further extend the current waiver for such services, AT&T said. It also asked for a continued waiver on the requirement for handling one-line voice carry over or hearing carry over relay services. AT&T also said it could not offer carrier of choice features, operator assisted or long distance calls to IP relay service users, because of the “significant costs” it would take to establish a billing relationship to allow this. AT&T has also been unable to release a communications assistant from an IP relay service call without the call also terminating, the filing said. “AT&T has no current solution.” The company was recently accused by the Department of Justice of improperly handling and billing \$16 million worth of IP relay calls made by Nigerian scammers (CD Mar 23 p6).

A fake debt collection scheme was halted by a U.S. District Court in response to allegations by the FTC, the agency said Wednesday. The northern California court placed a temporary restraining order (<http://xrl.us/bm3fvd>) on an operation that allegedly collected loan debts that consumers didn’t actually owe. According to the FTC's complaint, defendants made more than 2.7 million calls to at least 600,000 phone numbers nationwide, fraudulently collecting more than \$5.2 million from consumers. Defendants allegedly worked with callers in India to pretend to be American law enforcement agents and harass consumers with back-to-back calls threatening arrest if they didn’t pay up. The complaint alleges several violations of the FTC Act and Fair Debt Collection Practices Act. The court case is ongoing, and the commission is seeking refunds for consumers, the agency said.

Wireless

TracFone asked the FCC for clarity on the Puerto Rico Telecommunications Regulatory Board's policy on whether the company can contact customers there who were de-enrolled from the Lifeline program for receiving duplicate service, in violation of commission rules (<http://xrl.us/bm3ehh>). The low-cost wireless carrier said the board has sent different messages. Directives issued in January and early February instructed eligible telecom carriers to "de-enroll all duplicates on March 1, 2012, and April 1, 2012, respectively, and that such de-enrolled duplicates would be prohibited from receiving Lifeline benefits for prescribed periods of time." That led to complaints filed at the FCC by TracFone and others, the filing said (CD Feb 24 p13). But in a March 7 order, the board "revised its prior debarment of de-enrolled duplicates from receiving any Lifeline-supported service for four months by allowing such de-enrolled customers to re-enroll without waiting four months," TracFone said. "However, such de-enrolled customers may only re-enroll in the Lifeline program of the ETC to whose service the Lifeline ‘subsidy was first applied.’" That was followed by a March 26 letter to those de-enrolled. The letter said in part "those who received the communication informing them that their subsidy service would be suspended by March 1, 2012, can immediately request, with the company of their preference, only one subsidy for wireline or wireless service per person, as long as they comply with the criteria for eligibility," TracFone reported. It also informed customers that "if your wireline or wireless provider does not inform you correctly, you may visit the Telecommunications Board of Puerto Rico offices personally or you may request information by sending a letter to [the Board]." The carrier said the messages from the board had left it confused. "By indicating that consumers may now request immediate re-enrollment with the company of their pref-

erence, the Board's March 26 notice would appear to contradict the Board's March 7 Order which expressly limited re-enrollment to the Lifeline service of the ETC who served the customer first," the company said. "Also, the notice's statement about contacting the Board if the consumer's wireline or wireless company does not inform the consumer correctly seems to suggest that wireline and wireless ETCs may communicate with their de-enrolled Lifeline customers."

Verizon Wireless will charge subscribers a \$30 upgrade fee when they buy a new phone at a discounted price with a two-year contract, the carrier said Wednesday. The fee kicks in April 22. The other major carriers already charge an upgrade fee. AT&T recently raised its fee from \$18 to \$36. Charging the fee could add as much as \$1 billion to Verizon's annual earnings and 150 basis points to its wireless margin, BTIG analyst Walter Piecyk said. "The incremental fee by itself is hardly going to be enough to materially curtail upgrade activity but it is yet another step by a major operator to recoup the margin reducing impacts of phone upgrades."

The state of Hawaii and the counties there planning to build an early network for first responders in the 700 MHz band will issue a request for proposals this quarter to "procure technical services to further research and define numerous technical, procurement, operational, and site specifications required for the successful deployment of an LTE Public Safety Network in Hawaii," the state said. Hawaii's quarterly report filed at the FCC said the state still hasn't decided how it will pay for the network (<http://xrl.us/bm3ei7>).

Internet

Three of the top music publishing organizations inked an agreement to set royalty rates for five new categories of digital music services, the groups said Wednesday. The agreement aims to resolve the Copyright Royalty Board's mechanical royalty rate proceedings under Section 115 of the Copyright Act, said the Recording Industry Association of America (RIAA), the National Music Publishers Association and the Digital Media Association, in a joint statement. The settlement, which has not been approved by the Copyright Royalty Board, establishes a royalty rate category for mixed service bundles, paid locker services, purchased content lockers, limited subscription-based service offerings, and bundled music products. RIAA Chairman Cary Sherman said the agreement will make it easier for entrepreneurs to develop and "launch cutting-edge business models and streamline the licensing process."

State Telecom Activities

California state Sen. Mark Leno introduced legislation that would require police to obtain a warrant before acquiring a person's location information from an electronic device, including a cellphone. SB-1434 also limits such warrants to 30 days. "Our modern day smartphones and gadgets make it easy to get directions to just about anywhere, but they also track our every move and the people we connect with in our daily lives," said Leno, a Democrat. "Unfortunately, California's privacy laws have not kept up with the electronic age, and government agencies are frequently accessing this sensitive information without adequate oversight. SB-1434 carefully balances privacy concerns to safeguard Californians against improper government intrusion while ensuring that law enforcement officials can still use this technology when it is needed to protect public safety," he said.

Broadcast

A broadcast attorney questioned why a recent FCC Media Bureau filing lacked letterhead and a signature when it went into the FCC's docket for its online public inspection file proceeding (CD April 10 p11). "In addition to being dropped into the record right before the holiday weekend, the Submission itself is an unusual document," Scott Flick, a partner at Pillsbury Winthrop, wrote on the firm's blog (<http://xrl.us/bm3fdt>). "It is not on letterhead, it is not dated and it is not signed. If it were not for the fact that the FCC's filing system indicates that it was submitted by the Media Bureau, you might well wonder where it came from." In short, it resembles the type of one-page submissions most docket-watchers don't see when taking advantage of the FCC's "brief comments excluded" option for searching its comment database, he said. "Those using the search filter would not see it," he said. But he was wrong. The bureau's submission appeared Friday on an RSS feed of all comments filed with the FCC's electronic comments filing system that excludes such brief comments. The bureau's filing disclosed that it requested copies of the public inspection files at each broadcast station in the Baltimore designated market area and that it counted the number of pages in each. Still, the timing of the vote on the order bodes poorly as well, Flick said. "It is a long-standing FCC tradition to schedule votes on orders that are favorable to broadcasters so they can be released just before the NAB Show, ensuring that FCC commissioners speaking at the NAB Show will receive a warm reception," he said. "Conversely, FCC orders that broadcasters are not going to be happy about tend to be delayed until after the NAB Show concludes," he said. The item is set for a vote at the FCC's April 27 meeting, about a week after the NAB show concludes.

Cable

Comcast clarified it owns a minority stake in TV One, a network it included in a list of independent programmers that have found expanded distribution on its system since the cable operator bought control of NBCUniversal (CD April 11 p9). TV One is "an independently programmed diverse network in which Comcast has a minority ownership interest," Comcast said.

Comcast petitioned the FCC to exempt it from rate regulation in four more California local franchise areas (LFA) (CD April 11 p13). Filings posted Tuesday to docket 12-1 were for Scotts Valley (<http://xrl.us/bm3emu>), Albany, El Cerrito and Pinole (<http://xrl.us/bm3ems>). As with recent requests for findings of effective video competition for other LFAs in the state, the cable operator cited availability of DBS service and the contention that more than 15 percent of households buying TV service purchase it from multichannel video programming distributors other than Comcast.

Charter said it refinanced its \$1.3 billion extended revolving credit facility due 2015 with a new \$1.15 billion revolving credit facility due 2017 and closed on \$750 million in term loans due 2019.

BlackArrow said it's selling new software to pay-TV operators that will let them deliver more dynamic VOD ads. "The new products enable use of third-party ad systems ... for fulfillment of programmers' national ads across a service provider's multiple platforms," it said. The Ad Router and Business Suite software tools are already deployed and in trials with major operators, BlackArrow said.

Mass Media Notes

The FCC should ask Mediacom to open its books so the commission and public and see where its subscription fees are spent, Sinclair Broadcast Group General Counsel Barry Faber wrote in a letter to the

FCC. The letter was in response to an earlier letter from Mediacom CEO Rocco Commisso (CD March 23 p18) to FCC Chairman Julius Genachowski about retransmission consent (RTC). “It would be helpful for the FCC to examine Mr. Commisso’s claim that the RTC price escalation is responsible for the exorbitant cable rate increases imposed on the public over the last several years,” Faber wrote. “While some truth may exist in Mr. Commisso’s claim that smaller systems are being charged higher fees than the largest cable companies, this results not from broadcasters asserting leverage on small cable companies, but rather from broadcasters being forced to accept below-market rates from these large companies which enjoy tremendous leverage over most broadcasters,” Faber said.

The American Cable Association wants the FCC to "immediately require that formal or informal agreements between separately owned, same-market broadcasters that facilitate the coordination of retransmission consent negotiations" be placed in those stations' public files and be put online. That's what ACA reported an executive told an aide to Commissioner Mignon Clyburn, in a filing Tuesday in docket 00-168 (<http://xrl.us/bm3ekr>). FCC members are to vote April 27 on a draft Media Bureau order that now excludes such retrans negotiating agreements and other deals between multiple stations in a market with different owners from going in the public file (CD April 11 p3).

Adoption of mobile TV and multiscreen video services is increasing, a survey by QuickPlay Media found. Among respondents, 57 percent said they're interested in multiscreen video services, up from 48 percent a year earlier. And 35 percent said they had tried a mobile TV or video service; 27 percent said they use one. Among current mobile video users, 72 percent said they had only been using the service for a year or less. “As the market matures, consumers are increasing both their consumption of mobile video and the number of devices on which they access entertainment,” said Wayne Purboo, QuickPlay’s CEO.

Nielsen’s smaller estimate for the total universe of TV viewers is an overlooked factor in this year’s lower TV ratings, Sanford Bernstein analyst Todd Juenger wrote in a note to investors. With Nielsen estimating a 1 percent reduction in total TV households and a 2.7 percent reduction in viewers 18-49, a show’s total projected audience would drop by that factor even if the percentage in a Nielsen TV panel watching it remained the same as a year earlier, he said. “This effect has been compounded in Q1 because total consumption of TV is down ~1% as well,” he said. Why the drop? “The cause for the decreased addressable universe is debatable,” he said. “We believe it is primarily due to a lack of household formation and poverty. Others argue it is evidence of cord-cutting,” he said. But while ratings fell during Q1, demand from advertisers to buy spots remained high, leading to higher pricing, he said.

Satellite

Space Systems/Loral (SS/L) urged the U.S. District Court in San Diego to dismiss ViaSat claims of patent infringement and breach of contract. ViaSat sued SS/L in February over proprietary technology designs (CD Feb 6 p4). In a memorandum, SS/L called the plaintiff's direct infringement allegations "nonsensical" and said the contract breach claims are "particularly implausible in light of plaintiffs' allegations that the purported 'proprietary information' was disclosed by ViaSat in patent applications." Defendants “should not have to guess at what confidential information they are alleged to have misappropriated or when they purportedly misappropriated it” and they shouldn't have to defend themselves against “frivolous claims of misappropriating non-confidential information that was never designated as ‘proprietary information’ and was published in patent applications years ago,” the memorandum said. SS/

L said the plaintiffs haven't pleaded sufficient facts "to state a claim against Loral under either a direct infringement or an alter ego liability theory." ViaSat also should be denied leave to replead their claims against Loral, SS/L said: ViaSat's contracts reveal that it "plainly knew that it was transacting with SS/L and not Loral." SS/L took ViaSat's ideas as its own "by not only attempting to patent those ideas but by also incorporating them into its satellite designs, including a satellite currently being built for one of ViaSat's key competitors," ViaSat's complaint said. The satellite provider's pattern of using the proprietary information of other companies for its own benefit extended to ViaSat's subsidiary WildBlue, the complaint said: The exploitation of ViaSat's and WildBlue's technologies by SS/L "was in disregard of the strict confidentiality agreements signed by SS/L."

The launch of the SES-2 satellite with an experimental Commercially Hosted Infrared Payload (CHIRP) sensor could lead to more timely and affordable access to space through hosted payloads, satellite professionals said Wednesday during an SES webcast. CHIRP, led by the Air Force, is performing "exceptionally well," said Doug Loverro, executive director of the Air Force Space and Missile Systems Center. Going forward, he said, "we don't want this to be serendipitous ... We want this to be planned." The government must put together a payload development activity "and match it up with the predictable timelines that the commercial world has" in order to produce payload on a more predictable pattern, he said. Effective and simple interfaces are needed "to accommodate these payloads as they come along," said Mike Hamel, Orbital Sciences Corp. senior vice president. "It's important to sync up the path of payload in its development with commercial communications satellites," he said: "You need to have readily available payloads if you're going to take advantage of commercial satellites as host vehicles." The jury's still out on how the effort should be funded, Loverro said: "As we look toward the future, we're looking for a greater variety to meet our mission needs." The Department of Defense would establish a program to be funded over a long period of time, he added. Science Applications International Corp. (SAIC) is analyzing the data that comes from the payload, said Tom Taverney, SAIC senior vice president. It's simple to build, "it doesn't weigh much and it allows you the advantage of steering," he said. The military satellite community needs payloads, Loverro said: "We don't know which satellites the payloads are going to be on, but through innovation and willingness to move down this path, we can make the match work." — *KL*

Gilat said it completed a project in support of Russia's March presidential elections. Gilat provided very small aperture terminal connectivity to more than 1,600 of the voting sites to allow "the secure and reliable transfer of broadcasting data from the election venues to central servers located around Russia," Gilat said. The company's satellite-based connectivity helped serve a Web-based system of live video streaming to provide visibility of the sites, registration tables and ballot boxes, it said.

Communications Personals

Todd Bertson, ex-Senate Commerce Committee, hired by SNR Denton as senior managing director-public policy and regulation practice ... MPAA promotions: Named senior vice president and associate general counsel are **Linda Kinney** in Washington office and **Dan Robbins** in Los Angeles office, where **Karen Thorland** becomes senior vice president and global content protection counsel and **Kelly McMahon** is named vice president and corporate counsel; **Ben Sheffner** promoted to vice president of legal affairs, moving to Washington office ... Dish Network names **James Moorhead**, ex-Procter & Gamble, chief marketing officer ... Samsung Electronics America hires **Tod Pike**, ex-Canon USA, as senior vice president responsible for Enterprise Business division.