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Net Neutrality: Title II is Coming... What's Next?

It shouldn't have come as a huge surprise, but the fact that **FCC** chmn *Tom Wheeler* is finally moving forward with his Title II net neutrality proposal despite strong opposition still triggered waves of reactions among ISPs on Wed. Wheeler, who outlined his plan in a column on *Wired*, will circulate his draft this week. The proposal, unlike the initial hybrid model approach he was reportedly considering, covers both retail broadband services and services that ISPs provide to edge providers, including players like **Amazon** and community broadband providers, senior FCC officials said during a press call. As expected, it includes no blocking, no throttling and no paid prioritization rules. Wheeler's precise words are that the proposal "will modernize Title II, tailoring it for the 21st Century." Perhaps most interesting is that for the 1st time the agency will hear complaints on a case-by-case basis and take enforcement action if the interconnection activities of ISPs are deemed unreasonable. That means the FCC would have the authority to intervene if **Netflix**, which has been fighting with major ISPs like **Verizon** and **Comcast** over interconnection issues, files complaints with the agency. The agency's 2010 Open Internet rules, portions of which were vacated by the DC Circuit, had limited applicability to mobile broadband. The new plan, which came 3 weeks before the vote, would extend the rules to all types of Internet access. It also calls for a general Open Internet conduct standard that "ISPs cannot harm consumers or edge providers." Cable, which generally supports no blocking, no throttling, no paid prioritization and transparency rules, isn't happy. The plan, once effective, would "only deliver further uncertainty instead of legally enforceable rules that everyone supports," **NCTA** pres/CEO *Michael Powell* said in a statement. That said, he noted the group needs to look at the final order to fully understand the impact. The good news, at least for now, is that Wheeler makes clear that ISPs wouldn't be subject to rate regulation. That calmed investors and pushed major cable ISPs' stocks up Wed. However, NCTA isn't 100% satisfied. "Despite the repeated assurances from the President and Chairman Wheeler, we remain concerned that this proposal will confer sweeping discretion to regulate rates and set the economic terms and conditions of business relationships," Powell said. The market's positive reaction appears to stem from Wheeler's "relatively conciliatory language" about not imposing rate regulation, **MoffettNathanson** analysts wrote in a research note. "But this, too, simply confirmed what we already knew: indeed, there was never any credible suggestion that he would do otherwise." The question is whether a promise of forbearance

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is enough to deflect the risk of price intervention in the future, instead of whether the chmn would forbear, they wrote. Verizon, which challenged the 2010 order, warned that companies now will need to consider FCC rules before launching new services. Though no one is throwing around the lawsuit word yet, it's just a matter of time. Even so, **New Street Research** analysts believe key elements of the plan will remain intact once the dust has settled. On the merger front, the Title II efforts make approval of the Comcast-Time Warner Cable transaction more likely as the agency would have the authority to "police any negative consequences from the transaction, potentially lessening deal conditions," **UBS** analysts predicted. Opponents of the deal have cited Comcast's "terminating monopoly" within the nearly 50% of the broadband market that it would control post-merger. And no, Title II wouldn't lessen Comcast's desire to complete the deal, especially given the value of the synergies, according to UBS. The agency is expected to pass the proposal 3-2 along party lines.

Watching from the House: The **House Communications** subcmte approved a bipartisan **FCC** report consolidation bill Wed (see below), but not without the chmn first taking some swipes at *Tom Wheeler*'s path for net neutrality. Most of chmn *Greg Walden*'s (R-OR) opening statement was devoted to Wheeler's actions instead of the actual legislation being marked up. "The chairman rejected our request for transparency, wrapping himself in old-school, Washington regulatory mumbo jumbo," said Walden, complaining that no one would see the draft order prior to the vote—and they may not even see it for a long time after the vote, he added, describing how it took the Commission 10 months to release the text last time it voted on net neutrality. About a half hour after the hearing ended, *Wired* published a column by Wheeler very generally outlining the proposal. At the markup, Walden reiterated his call for Dems to work with him and House Commerce chmn *Fred Upton* (R-MI) to craft "durable" net neutrality legislation. Rep *Frank Pallone* (D-NJ) said he's pleased with what Wheeler has proposed, but that he also thinks it would be good to move with a bipartisan bill. **More Reactions:** While Democrat lawmakers applauded Wheeler's plan, Republicans were disappointed. "It's a power grab for the federal government by the chairman of a supposedly independent agency who finally succumbed to the bully tactics of political activists and the president himself," Senate Commerce chmn *John Thune* (SD) said in a statement. Senate tech sbcmte head *Roger Wicker* (MS) implied potential Hill intervention: "I look forward to working with Chairman Thune, our House Republican counterparts, and amenable Democrats to craft an alternative measure that would ensure certainty for consumers and providers while allowing innovation to continue to flourish." Title II advocates are thrilled. "If the full FCC adopts the chairman's proposal, and it's free of any last-minute surprises, then everyone's right to communicate freely online will be secured. We commend Chairman Wheeler's actions and his willingness to listen to the facts in the face of a fiercely dishonest industry lobbying effort," **Free Press** policy dir *Matt Wood* said in a statement.

Streamlining FCC Reports: The **House Communications** subcmte hit the "That Was Easy" button Wed, quickly giving unanimous support to the **FCC** Consolidating Reporting Act and sending it on to the full committee for a vote. The bill was essentially the same as legislation that passed the House unanimously in 2013, but didn't make it out of the Senate (the House also passed a previous iteration in 2012). Similar legislation was introduced last month by Sen *Dean Heller* (R-NV) in the Sen Commerce cmte. The bill would combine 8 FCC reports mandated by Congress, including the report on cable industry prices and the Sect 706 report, into a single, biennial report on the communications marketplace. An amendment was approved at Wed's markup to ensure the FCC met its obligations under the STELA Reauthorization Act to look at the effect of retrans consent fees on cable rates. The legislation is also meant to reduce the burden on the FCC by eliminating outdated and unnecessary reports. As Rep *Steve Scalise* put it, we don't need a report on the telegraph any more. **NCTA** supports the report streamlining, saying it would help to "impose a smaller burden on a vibrant and competitive telecommunications marketplace that is focused on innovation, investment and job creation."

AMC Says Sí to MiTu: **AMC Nets** is part of a $5mln investment round for Latino digital media company **MiTú**. New investors also include **Daher Capital** and **Northgate Ventures**. The company raised $10mln over the summer, led by **Upfront Ventures**.

OTT Study: A new survey of multiplatform viewers by **Horowitz Research** finds than 20% of multiplatform viewers who have multichannel services are likely to cut the cord, while 25% who don't have multichannel service say they're likely to start subscribing. Horowitz defined a multiplatform viewer as someone who watches at least an hour of TV

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content a day and spends more than 20% of their viewing time streaming. The survey found that those with multichannel and OTT services are unlikely to give up easy access to broadcast programming, even when presented with SVOD services like the upcoming **HBO** OTT offering and **CBS** All Access. From the report: 75% rate access to broadcast networks as a top advantage of having multichannel service, and two-thirds (66%) say that broadcast primetime dramas and/or comedies are essential. Conversely, among multiplatform viewers who do not have multichannel service, 38% rate not having access to broadcast networks as a top disadvantage of being OTT-only, and half (50%) say that broadcast primetime dramas and/or comedies are essential.

People: **BBC America** named *Nena Rodrigue* as evp, original programing, acquisitions and productions—a new post for the net. Rodrigue was formerly svp, programming and production of **SundanceTV**, which she'll continue to oversee until a new successor is named. -- **Weather Channel** upped *Brittany Smith* to svp, distribution. -- **Centriply**, a **Cable Scope** company that offers a targeted TV/video solution for advertisers, hired *Rich Kaufman* as vp, business development. A former **NCC Media** exec, Kaufman most recently was vp, ad sales at **Digital Place Based Advertising Association**.

Cablefax Daily Stockwatch

Company	02/04 Close	1-Day Ch
BROADCASTERS/DBS/MMDS		
DIRECTV:	87.96	0.93
DISH:	76.54	1.05
ENTRAVISION:	6.53	(0.01)
GRAY TELEVISION:	10.10	0.17
MEDIA GENERAL:	14.93	0.03
NEXSTAR:	52.17	0.78
SINCLAIR:	25.85	0.32
MSOS		
CABLEVISION:	19.85	0.25
CHARTER:	163.19	5.22
COMCAST:	56.90	1.49
COMCAST SPCL:	56.39	1.38
GCI:	15.01	(0.09)
GRAHAM HOLDING:	960.28	(6.71)
LIBERTY BROADBAND:	48.62	1.59
LIBERTY GLOBAL:	49.05	0.37
SHAW COMM:	23.74	(0.17)
SHENTEL:	28.95	(0.09)
SHENTEL:	28.95	(0.09)
TIME WARNER CABLE:	145.53	2.72
PROGRAMMING		
21ST CENTURY FOX:	34.66	0.06
AMC NETWORKS:	68.10	(0.08)
CBS:	56.74	(0.18)
CROWN:	3.29	(0.06)
DISCOVERY:	30.10	0.53
DISNEY:	101.28	7.18
GRUPO TELEVISA:	33.72	0.11
HSN:	77.96	0.36
LIONSGATE:	28.77	(0.11)
MSG:	77.08	UNCH
SCRIPPS INT:	74.08	0.48
STARZ:	30.08	0.03
TIME WARNER:	80.14	(0.19)
VIACOM:	66.04	(1.09)
WWE:	12.50	0.09
TECHNOLOGY		
ADDVANTAGE:	2.35	0.05
AMDOCS:	49.14	0.26
AMPHENOL:	54.57	(0.01)
AOL:	43.44	(1.33)
APPLE:	119.56	0.91
ARRIS GROUP:	26.59	(0.2)
AVID TECH:	13.01	(0.01)
BLNDER TONGUE:	1.76	(0.01)
BROADCOM:	43.77	1.19
CISCO:	26.69	(0.43)
COMMSCOPE:	26.19	(0.15)
CONCURRENT:	6.03	0.09
CONVERGYS:	20.20	0.03
CSG SYSTEMS:	27.09	1.78
ECHOSTAR:	52.85	(0.52)
GOOGLE:	522.76	(6.48)
HARMONIC:	7.69	(0.09)
INTEL:	33.60	(0.1)
INTERACTIVE CORP:	60.00	(4.06)
JDSU:	12.49	(0.07)
LEVEL 3:	52.50	1.11
MICROSOFT:	41.84	0.24
NETFLIX:	448.71	(8.21)
NIELSEN:	43.75	(0.4)
RENTRAK:	82.08	3.40
SEACHANGE:	7.30	0.02
SONY:	25.94	2.55
SPRINT NEXTEL:	4.58	0.09
TIVO:	10.83	0.01
UNIVERSAL ELEC:	65.00	0.18
VONAGE:	4.52	0.04
YAHOO:	44.05	(0.66)
TELCOS		
AT&T:	34.41	0.07
CENTURYLINK:	39.41	(0.18)
TDS:	24.62	(0.06)
VERIZON:	47.80	(0.03)
MARKET INDICES		
DOW:	17673.02	6.62
NASDAQ:	4716.70	(11.04)
S&P 500:	2041.51	(8.52)

Think about that for a minute...

Paradigm Shifts

Commentary by Steve Effros

A recent comment in an interview with Barry Diller caught my eye, and I think he's pointed to something that we should start paying a lot more attention to. He described a potentially fundamental shift in the financing and reasoning behind video production and delivery. A paradigm shift like that doesn't happen in our business very often, even though the press and the blogs suggest it on a daily basis.

Moving from over the air broadcasting to cable changed the financial base of the business. We moved from a totally advertiser-supported medium to a dual source model that included subscription fees. It had a wonderful effect. Not only were new infrastructures built that then cross subsidized the development of broadband, the financing of multiple channels led to an explosion of new content, some of it (but certainly not all) very good.

Adding broadband streaming to the mix is not going to end the era of bundles and content aggregation, but it allows for even more diversity, although whether there is sufficient financial backing for independent distribution isn't yet clear. Certainly the successful aggregators and marketers in the cable space will also be successful at streaming, if only because they already have scale, name recognition and the ability to cross-market.

The combination of fees and advertising is also still working very well. Netflix, for instance, is just, almost blatantly, building the advertising right into the "commercial free" programs they produce. That's nothing new, "product placement" has happened for a long time, but it hasn't been quite as obvious, or, apparently, lucrative. So be it. The model still works.

But Diller is now pointing to yet another model, complaining loudly that it's "decimating" margins for traditional advertiser- based programming, and it's totally different. Amazon is now getting lots of attention for Prime Instant Video, and the original programming being created that is winning lots of praise, like "Alpha House" and "Transparent." But unlike Netflix or SlingTV (ESPN) or CBS or presumably HBO, Amazon in not charging directly for the programs. They are an "add on" or a "loss leader item" to induce yearly subscriptions to Amazon Prime, which offers "free shipping" and is itself designed simply to induce buying of products through Amazon, which is where they really make their money.

So now, for one of the first times, the programming is not actually the "product" being sold. It, along with the "free" music service, shipping, and other add-ons are just the constituent parts of the "glue" the company is using to keep customers using their core service. Google has done a similar thing with many of its offerings, such as free cloud storage and document and spreadsheet writing programs designed to keep you in the Google ecosystem for totally different purposes.

We have long heard the argument over whether "content is king" or whether delivery is. Now it appears that neither may be the case in the future. That could be a very significant change. If programming is no longer beholden to a model that requires the programming, by itself, to generate sufficient income to justify its continued creation, we could be on the cusp of seeing a whole new spurt in creativity once the producers are set free from the constraints of the necessity to develop "mass" audiences. Niche programming that keeps various constituencies sufficiently interested to stay with a "package" of benefits—all of which are, in turn, designed to simply support the selling of a totally different product—could indeed be a "paradigm shift" worth watching.

Steve

T:202-630-2099
steve@effros.com

(Steve Effros was President of CATA for 23 years and is now an advisor and consultant to the cable industry)