 4 Pages Today

Cablefax Daily™

Thursday — March 5, 2015 | What the Industry Reads First | Volume 26 / No. 042

Thorny Matters: Walden, Sohn, ACA Opine on Title II

It sounds like **House Communications** subcmte chmn *Greg Walden*'s side is pretty sore. The latest thorn from the **FCC** came with last week's Title II vote, but he's also had a few prickly encounters with the agency from his past life as a radio station owner. If he had his way, the Commission would get "back in the box to do the things they're supposed to do," he told small and independent operators attending **ACA's** annual Summit in DC Wed. His comments came shortly before his hearing on reauthorization of the FCC, promising to do due diligence on an agency that he said hasn't been reauthorized since 1990. The Title II thorn is obviously a big one, with Walden remarking that FCC chmn *Tom Wheeler* had indicated he was leaning toward a light tough net neutrality approach until he has "this epiphany" last summer—a notion he called "absurd." "It's fiction that the FCC is an independent agency anymore," he said. The **House Oversight** cmte has launched an investigation into whether the White House influenced the FCC's Title II vote. The Congressman said companies are telling him the decision could impact investment by 20-30%. On the other hand, he said Europe is cheering the verdict as it sees that money moving to investments there. Walden hasn't given up on the idea of a legislative fix for net neutrality, and while no Democrats have stepped up to co-sponsor, he's holding out hope, saying he believes they were held in "abeyance" until the Commission's vote. While the ACA crowd shares his discontent over last week's vote, Walden told them they aren't alone. "Every industry is feeling this federal government is putting such regulation on them, it's choking them," he said, saying the pains can be felt all the way down to onion growers. Wheeler's special counsel *Gigi Sohn* took the hot seat later in the day, telling the audience that they may have to agree to disagree on Title II. Still, she praised ACA for having some of the best advocacy out there. "You didn't always agree with us, but it was intelligent, based in fact and evidence, and it was civil," she said. The bad news is that Wheeler believes "light touch Title II" is going to affect small ops' business in any negative way. "What we have applied [from Title II] are things like privacy protections… consumer protections against billing fraud. Protections for the disabled." She downplayed rate regulation concerns as a "scare tactic," saying the order forebears "every single administrative mechanism that would make rate regulation possible." Operators have their doubts. *Bob Gessner*, **MCTV** pres and ACA chmn, said that just like Congress believes that ISPs will not be able to resist the temptation to act like monopolies by blocking and degrading service, "I don't think government regulators will be

CABLEFAX DAILY (ISSN 1069-6644) is published daily by Access Intelligence, LLC ● www.cablefax.com ● 301.354.2101 ● Editor-in-Chief: Amy Maclean, 301.354.1760, amaclean@accessintel.com ● Associate Publisher: Michael Grebb, 323.380.6263, mgrebb@accessintel.com ● Editor: Joyce Wang, 301.354.1828, jwang@accessintel.com ● Sr Community Editor: Kaylee Hultgren, 212.621.4200, khultgren@accessintel.com ● Advisor: Seth Arenstein ● Dir. of Business Dev.: Rich Hauptner, 203.899.8460, rhauptner@accessintel.com ● Jr. Acct. Exec: Olivia Murray, 301.354.2010, omurray@accessintel.com ● Dir of Market Dev: Laurie Hofmann, 301.354.1796, lhofmann@accessintel.com ● Production: Joann Fato, jfato@accessintel.com ● Diane Schwartz, SVP Media Comms Group, dschwartz@accessintel.com ● Group Subs: Laurie Hofmann, 301.354.1796, lhofmann@accessintel.com ● Sub Questions, Client Services: 301.354.2101, clientservices@accessintel.com ● Annual subscription price: $1,649/year ● Access Intelligence, LLC, 4 Choke Cherry Road, 2nd Floor, Rockville, MD 20850

able to resist the temptation to regulate our rates." Another big concern by ACA is why edge providers get a pass in the order that allows companies like **Viacom** to block access to its free sites to **Cable One** and other operators who are no longer carrying their networks. "I think it fell of the rails once the President made Title II an issue," ACA pres/CEO *Matt Polka* said in a briefing with reporters. Small ISPs do get one carve out in the order, which hasn't yet been released. Providers with fewer than 100K subs are exempt from the additional transparency rules that are included in the order (transparency rules actually didn't get struck down from the FCC's 2010 order). The FCC's Consumer & Govt Affairs Bureau must decide by Dec 15 whether that exemption should be permanent or extended. As for the order, Sohn said it can't be released until the agency addresses in the body of the order each item of dissent from the Republican Commissioners. That's happening now, and she expects it to be ready soon.

FCC Outlook: What's the **FCC** working on besides Title II? Broadcast incentive auctions, Lifeline modernization and a proposal to change the definition of MVPD to include OTT services that are not facilities based are at the top of the list, according to *Gigi Sohn*, special counsel to FCC chmn *Tom Wheeler*. She explained that there's 2 reasons behind the MVPD update—to give new services an opportunity in the market, but "also to make sure incumbents don't start online services to evade the rules for MVPDs." It's not an ACA Summit without some talk about programming costs, though the issue was trumped by Title II and the proposed **Comcast-Time Warner Cable** merger this year. "We are very mindful of the effect of constantly increasing programming costs," Sohn said, adding that the Commission is looking at broadcaster's 40-year-old non-duplication and exclusivity rights. She briefly addressed ACA's push to have program access rules updated so that NCTC qualifies as a buying group, something the agency had tentatively concluded in 2012. "It's a little more complicated than we initially thought," she said to explain why nothing has happened. She encouraged members to explain to the Media Bureau what problems such a move would solve.

NCTC Doings: Unfortunately, the deal couldn't stop a snow storm headed to DC and expected to disrupt **ACA** members' visits to Capitol Hill Thurs, but at least many of their subs won't have to worry about losing **Weather Channel**. **NCTC** head *Rich Fickle* told the ACA crowd that the co-op, which reps many ACA members, had just reached an agreement with Weather Channel. No details, but he described it as a "very reasonable deal." The year ahead looks a bit lighter when it comes to programming contracts, so NCTC really wants to focus on technology services, he said. "The technologies [**Comcast** is] developing with 7K engineers on staff is for Comcast primarily You can't fault them for that," he said. "We have to figure out our destiny."

Merger Watch: Wed's **ACA** Summit included a panel debating the proposed **Comcast-Time Warner Cable** and **AT&T-DirecTV** mergers. Not surprisingly, critics of the proposals thought they would be blocked, while supporters felt they'd get the thumbs up. The Comcast-Time Warner Cable merger could actually invigorate competition, argued *Jon Liebowitz*, partner at **Davis, Polk & Wardwell** and counsel to Comcast, as it creates "a heightened sense of urgency for competitors to compete, and that benefits the consumer." But **DISH** svp/deputy general counsel **Jeffrey Blum** countered that Comcast "has an incentive and an ability to stifle over the top" because OTT content competes with its linear TV business. "Comcast doesn't necessarily want over the top to be successful," he said. DISH, of course, just launched its own OTT content package **Sling TV**. When Blum said that the Comcast-NBCU merger conditions "failed," evidenced by the subsequent 3 years of litigation between Bloomberg TV and Comcast over the news neighborhooding provisions, Liebowitz noted that founder *Michael Bloomberg* actually supports that Comcast-TWC merger. "There doesn't seem to be a reason—although some people would like there to be—to block the merger," he said. ACA govt affairs vp *Ross Lieberman* said to disregard Comcast's assertion that the deal will close early this year, saying it's "not going as Comcast planned." He doesn't expect the govt to decide the deals until the summer, with one of the hold-ups being a court ruling on programmers' challenge of 3rd party access to confidential documents, including carriage agreements.

Fox Out of the Box: **21st Century Fox** is looking at various direct-to-consumer programming services, COO *Chase Carey* said at a **Morgan Stanley** investor conference Wed. "We want to play a role in leading and shaping those offers for consumers… It will be a range of things from add-on products to different types of content offerings that will give the consumer more choice." And having direct-to-consumer services is especially important when TV Everywhere "is not anywhere near where it should be. The promise of a more effective engagement with the consumer is a good thing and we should be developing that and in reality, that is a real opportunity for us," Carey said. However, despite the growing number of OTT

BUSINESS & FINANCE

offerings from companies like **HBO, CBS** and **Sony**, the traditional programming model isn't going away, at least not anytime soon. "If you've got great content, and great franchises and great brands, there is real opportunity there, but it will take time… The traditional bundle will have tremendous resilience and will continue to be a mainstay in the vast majority of homes out there," said Carey. That said, the industry needs to think about how to play a more proactive role in the direct to consumer experience, he said. Meanwhile, don't expect Fox to be on the M&A table anytime soon. And "if we were to do something, it will be based on an opportunity that was compelling, not a need," said Carey.

Netflix's View: It turns out that the **FCC's** Title II net neutrality order didn't please **Netflix**, a vocal advocate of strong open internet rules. "Were we pleased it pushed to Title II? Probably not…We were hoping there would be a non-regulated solution," CFO **David Wells** said at an investor conference Wed. The company previously supported Title II approach, but also has asked the FCC not to implement overreaching regulation. On the business side, Netflix has been in global expansion mode. The service will launch in Australia and New Zealand on March 24. The company is even eyeing non-English speaking countries such as Japan, a market that's "famously difficult for American media companies to figure out," Wells said.

Cablefax Daily Stockwatch

Company	03/04 Close	1-Day Ch
BROADCASTERS/DBS/MMDS		
DIRECTV:	88.28	(0.2)
DISH:	75.60	(0.25)
ENTRAVISION:	6.58	(0.18)
GRAY TELEVISION:	10.91	(0.07)
MEDIA GENERAL:	14.89	0.15
NEXSTAR:	55.20	(0.3)
SINCLAIR:	27.18	(0.78)
MSOS		
CABLEVISION:	18.97	(0.2)
CHARTER:	185.74	(1.22)
COMCAST:	60.43	0.47
COMCAST SPCL:	59.90	0.45
GCI:	14.26	(0.13)
GRAHAM HOLDING:	1053.44	49.28
LIBERTY BROADBAND:	52.90	(0.79)
LIBERTY GLOBAL:	54.86	(0.77)
SHAW COMM:	23.37	0.29
SHENTEL:	29.30	(0.35)
SHENTEL:	29.30	(0.35)
TIME WARNER CABLE:	157.49	0.75
PROGRAMMING		
21ST CENTURY FOX:	34.97	(0.67)
AMC NETWORKS:	74.23	(0.25)
CBS:	62.46	(0.34)
CROWN:	3.41	(0.03)
DISCOVERY:	33.80	(0.2)
DISNEY:	105.57	(0.78)
GRUPO TELEVISA:	34.46	(0.26)
HSN:	68.85	0.53
LIONSGATE:	33.04	0.19
MSG:	77.54	(0.97)
SCRIPPS INT:	73.63	(0.44)
STARZ:	34.04	(0.27)
TIME WARNER:	83.08	(0.08)
VIACOM:	71.20	(0.74)
WWE:	17.16	(0.1)
TECHNOLOGY		
ADDVANTAGE:	2.35	0.02
AMDOCS:	52.30	(0.16)
AMPHENOL:	58.24	0.92
AOL:	42.13	0.48
APPLE:	128.54	(0.82)
ARRIS GROUP:	29.22	(0.4)
AVID TECH:	15.51	0.05
BLNDER TONGUE:	1.80	0.07
BROADCOM:	45.20	(0.23)
CISCO:	29.33	(0.21)

Company	03/04 Close	1-Day Ch
COMMSCOPE:	26.32	0.04
CONCURRENT:	6.12	(0.01)
CONVERGYS:	22.25	(0.07)
CSG SYSTEMS:	30.16	0.51
ECHOSTAR:	53.43	(1.55)
GOOGLE:	573.37	(0.27)
HARMONIC:	7.71	(0.01)
INTEL:	34.12	0.03
INTERACTIVE CORP:	68.46	0.04
JDSU:	13.19	(0.32)
LEVEL 3:	54.70	(0.2)
MICROSOFT:	43.05	(0.23)
NETFLIX:	469.77	(4.94)
NIELSEN:	44.67	(0.16)
RENTRAK:	57.32	(1)
SEACHANGE:	7.35	(0.12)
SONY:	27.89	0.06
SPRINT NEXTEL:	5.21	(0.03)
TIVO:	11.55	0.30
UNIVERSAL ELEC:	56.39	(0.71)
VONAGE:	4.54	(0.02)
YAHOO:	43.99	1.37
TELCOS		
AT&T:	34.00	(0.41)
CENTURYLINK:	36.25	(0.89)
TDS:	24.49	(0.36)
VERIZON:	49.07	(0.48)
MARKET INDICES		
DOW:	18096.90	(106.47)
NASDAQ:	4967.14	(12.76)
S&P 500:	2098.53	(9.25)

Think about that for a minute...

The Power of Porn

Commentary by Steve Effros

It took almost 45 years for the lobbying in favor of changing the regulatory structure for broadband to finally succeed. The mass hysteria, mass filings, pot banging and so on which are now cited as the successful "netizen" movement to call broadband a common carrier or public utility took that long to create a political tilt sufficient (three to two) to carry the day. The government will now have far more power to regulate the Internet. I suspect even if the "new order" succeeds in surviving legal challenges, it won't be fully in place before it too is replaced. Remember, it took less than five years for active rate regulation of cable television at the federal level to collapse and be legislatively replaced. So 45 versus 5? Not bad.

But the success of the latest mass "save (or regulate, depending on how you see it) the Internet" campaign fueled by Google, Netflix and the "edge" providers and power users doesn't really hold a candle to what happened to Google when it decided to "regulate" on its own last week. That lasted for just over two days!

On Tuesday, Google announced that its very successful and widely used blog site, Blogger, would be shutting down any account that had material it considered too explicit, or had sexual content or nudity. Google is all for "regulating" the Internet, so long as it's regulated the way they want. But that didn't go over very well with all the folks who use Blogger for just that type of content and always have. The net neutrality catch phrase about the Internet always having been "free" suddenly was aimed directly at Google rather than the other way around.

We don't know what the numbers are of the complaints, emails, tweets and so on that spewed forth, but it's safe to guess that it was more than the number of "comments" generated at the FCC by those who wanted "net neutrality," whatever that meant. In this case you can be darn sure that there was no ambiguity about what the commenters were saying: keep your hands off my porn! The power of porn, which we all know has fueled the acceleration of the web, just as it has the early development of every other medium, proved just how impressive it is. Google had announced that as of March 23 all of those unacceptable sites were no longer going to be publicly available. By Friday, the next Google announcement came: "never mind."

Yup, it only took two days for Google to get an unambiguous message that their attempt at regulating the web was simply not going to be accepted quietly. I would guess that a quick calculation was made that by its very nature, the web would allow a whole lot of folks to "leave" Google and go elsewhere for what they wanted, and intended to get whether Google likes it or not. And if there is anything that Google doesn't want to happen, it's for folks to roam from the interlocking suite of programs and services Google provides as a lure for their pervasive, and obviously very profitable distribution of advertising.

So now we have a real world demonstration of what it's going to look like for the "edge" providers, now freed from any fear of having to pay for the costs of distribution of their product, exercising any restraint regarding what they distribute; if it's profitable, they're going to do it. The power of porn just proved it.

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)