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What the Industry Reads First

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Net Neutrality: What's Next After Court Upholds Rules?

The FCC won a major victory Tues as the DC Circuit, in a split decision, upheld the agency's enhanced Open Internet rules, which reclassify broadband as a Title II service. Disappointed net neutrality opponents vowed to appeal the ruling. Analysts also expect future litigation and Congressional efforts to handicap the FCC's authority granted by the net neutrality order. In addition, the ruling clears the way for the FCC to move forward on broadband privacy. The **House Communications** Subcmte held a hearing on the issue on the same day, with former Democratic **FTC** chmn *Jon Leibowitz*, currently co-chair of the **21 Century Privacy Coalition**, slamming the FCC's privacy NPRM. In its ruling, the court noted that the FCC concluded in its order that consumers perceive broadband service both as a standalone offering and as providing telecommunications. "These conclusions about consumer perception find extensive support in the record and together justify the Commission's decision to reclassify broadband as a telecommunications service," according to court documents. The ruling covers both wired and wireless services. **Wells Fargo** analysts noted the court has no issue with the FCC's forbearance of certain Title II provisions, which is good for cable. Without forbearance, ISPs would be subject to unbundling and tariff requirements, the analysts said. **NCTA** said it's reviewing the decision before determining next steps. While it's disappointed in the ruling, "we are particularly gratified by Judge Williams' recognition of the 'watery thin and self-contradictory' nature of the FCC arguments used to justify the imposition of common carriage laws on Internet networks." Suggesting that the fight isn't over, NCTA is counting on legislative efforts to end "ongoing uncertainty, promote network investment, and protect consumers," the group said in a statement. **ACA** said while it needs time to review the ruling to assess the need for further litigation, it expects to seek review of the decision. **AT&T**, one of the challengers of the FCC's order, reacted quickly. "We have always expected this issue to be decided by the Supreme Court, and we look forward to participating in that appeal," said *David McAtee*, svp/general counsel, in a statement. **TechFreedom** joined the lawsuit as an intervener challenging the order. "We and other petitioners will ask the full D.C. Circuit to rehear the case en banc and press on to the Supreme Court if necessary. That legal process could take years," pres *Berin Szóka* said. Like NCTA, the group sees Congressional action as the solution. "The only way to end this madness is a legislative solution that gives the FCC clear but narrow authority over the core of its rules—but stops the FCC's other power grabs," it said. Republican FCC commish *Ajit Pai* offered

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his support: “I hope that the parties challenging them will continue the legal fight.” Fellow GOPer *Michael O’Rielly* sang a similar tone. The appeal process could take years, **MoffettNathanson** analysts said. They also expected anti-reclassification forces in Congress to propose legislation curtailing the FCC’s newly-cemented authority. “Expect the saber-rattling to begin almost immediately,” they said. However, in an election year, any such legislation would stand little chance of making it to the President’s desk as it would be viewed as “overwhelmingly partisan.” Meanwhile, the ruling is likely to encourage the FCC to move forward with its broadband privacy NPRM. The FCC said it has jurisdiction over broadband privacy issues under the Title II net neutrality order. Less clear is whether the ruling will embolden the FCC to push forward even more aggressively its set-top box NRPM, **MoffettNathanson** analysts said. The analysts did wonder whether the DC Circuit decision might pause **Verizon** and AT&T’s pursuit of **Yahoo** because either’s ability to monetize Yahoo’s content through targeted advertising may now be impaired relative to non-ISP buyers. **New Street Research** analysts said “this issue is now on the ballot: a Trump FCC would likely overturn the classification, or a combination of Trump and a Republican Congress would likely result in a re-writing of statute that would not subject wireline and wireless carriers to the full Title II jurisdiction.”

More Open Internet Reax: Tues’ court decision drew praise from Democratic presidential candidate *Hillary Clinton*.

Clinton tweeted “today’s #NetNeutrality decision is a big win for consumers, innovation, and freedom of expression on the internet.” In a statement, **FCC** chmn *Tom Wheeler* said “today’s ruling is a victory for consumers and innovators who deserve unfettered access to the entire web, and it ensures the Internet remains a platform for unparalleled innovation, free expression and economic growth.” On the Hill, Dems generally praised it as Republicans hoped for a successful appeal.

Burke’s Warning: NBCU CEO Steve Burke warned of a winnowing of “weaker channels,” not excluding his own nets. “We own 2 to 3 channels that don’t make a lot of money that we’re constantly going back” to distributors and asking for more money for, he said at a **Guggenheim Securities** symposium Tues. “If we can get an extra dime from **DISH**, I’d rather have it on **USA**” than a network without a lot of traction. It’s clear from the nearly hour-long discussion that Burke is moving NBCU squarely out of the traditional box. Talk used to be about producing a show with high enough ratings, but now it’s increasingly about creating something that **Netflix** or **Amazon** will find attractive, he said, adding that USA’s “Mr Robot” gets \$1.5mln per ep just based on its SVOD deal. Similarly, NBCU is making “tens of millions” off digital content with embedded ads such as *Jimmy Fallon’s* “Tonight Show” shorts. This modern approach is on full display with the decision to pay **Buzzfeed** to produce content for NBCU’s Olympic Snapchat channel. “NBC Sports is unlikely to do that well,” Burke said, dismissing the idea of NBC Sports’ style of up-close, personal 2-min long bios on the channel. The result is something totally outside NBC Sports’ comfort zone, with first stories including “how many people hook up in the Olympic Village” and “how much would you weigh if you ate like Michael Phelps.” “The risk is that you’re not relevant” if you’re not there, said Burke, who also emphasized the importance of driving millennials to the Games. Speaking of Rio 2016, he predicted ratings will surpass the numbers for London with so many events being telecast live on the East Coast. “We’ll make a lot of money in Rio,” he said, identifying the Olympics and the **NFL** as 2 of the few sports properties whose ratings haven’t declined in the past 20 years. “The reason why that’s the case is that America for 17 days puts other things aside and focuses on the Olympics.”

OVDs as MVPDs: There’s a new group in town... **The TV Neutrality Alliance** bills itself as a group of OTT service providers and broadcasters focused on “advancing the causes of innovation and competition in the distribution of multichannel video programming.” It was formed by the **Telletopia**, which is trying to launch an OTT broadcast streaming service using nonprofit status. The alliance—which includes **BitTorrent**, **BiggyTV**, **Pluto TV**, **Cocola Broadcasting** and others—has asked the **FCC** to move forward its proceeding to classify online video distributors as MVPDs. The group proposes that only those OVDs wishing to benefit from retrans consent and program access rules should be required to comply with the FCC regulations associated with those rules. In other words, OVDs with multichannel content offerings but no broadcast station signals—such as **Amazon**, **Netflix** and **YouTube**—wouldn’t be subjected to existing MVPD regulations. The MVPD definition proceeding has been quiet in 2016 following pushback from some edge providers.

Ratings Wins for Fox News, Univision Deportes: With the **NBA** Finals on broadcast, the elections shined on cable last week. **Fox News**, which was the most-watched cabler in both prime and total day, had a sizable lead in prime, averaging 2.1mln viewers. Runner-up **HGTV** averaged 1.6mln followed by **USA’s** 926K. **Univision Deportes** has a smaller footprint/delivery, but when you look at its P2+ rating of 0.7, it was tied for 2nd place in prime with HGTV (both lag Fox News’ 0.9).

BUSINESS & FINANCE

Privacy Hearing: The FCC's current broadband privacy proposal "would create inconsistent standards across the internet, harm and confuse consumers, and undermine innovation," *Jon Leibowitz*, co-chair of the ISP-backed **21st Century Privacy Coalition**, told the **House Communications Subcommittee** during its hearing examining the proposed rules Tues. The former Democratic **FTC** chairman urged the FCC to adopt the FTC's privacy approach. **Georgetown University** law professor *Paul Ohm*, a former senior FTC advisor, defended the FCC. The rise of the FTC as a privacy regulator "doesn't mean we should discourage the FCC from protecting privacy under Section 222 using its distinctive approaches and capabilities," he said at the hearing. He also urged stronger privacy rules for online actors other than broadband providers: "To this end, the FTC does not have all of the authority or resources required to solve all online privacy problems."

Carriage on DISH: Z Living renewed its distribution deal with **DISH**. The multi-year pact makes the healthy living net available on the America's top 120 programming package—a big step up from the 250 package it previously was on. The net also has carriage through **Verizon FiOS, Cablevision, GCI, RCN** and **Buckeye**. Z Living recently forged a deal with women's website **Popsugar** that has the 2 creating Popsugar-branded content to air on the net.

Cablefax Daily Stockwatch

Company	06/14 Close	1-Day Ch	Company	06/14 Close	1-Day Ch			
BROADCASTERS/DBS/MMDS								
DISH:	52.44	0.06	HARMONIC:	2.70	(0.03)			
ENTRAVISION:	6.98	0.07	INTEL:	32.14	(0.03)			
GRAY TELEVISION:	11.41	0.36	INTERACTIVE CORP:	55.11	1.80			
MEDIA GENERAL:	17.85	0.15	LEVEL 3:	51.16	(0.15)			
NEXSTAR:	50.80	0.22	MICROSOFT:	49.83	(0.31)			
SINCLAIR:	30.86	0.41	NETFLIX:	94.12	0.27			
TEGNA:	22.33	0.41	NIELSEN:	54.35	0.45			
MSOS								
CABLE ONE:	495.41	4.94	SEACHANGE:	3.29	UNCH			
CABLEVISION:	34.73	(0.04)	SONY:	27.67	0.15			
CHARTER:	222.24	(1.04)	SPRINT NEXTEL:	3.68	0.06			
COMCAST:	62.64	0.25	SYNACOR:	3.11	0.05			
GCI:	14.80	0.13	TIVO:	9.89	0.11			
LIBERTY BROADBAND:	58.44	(0.31)	UNIVERSAL ELEC:	68.99	2.69			
LIBERTY GLOBAL:	34.81	(0.26)	VONAGE:	5.34	0.60			
SHAW COMM:	18.83	(0.1)	YAHOO:	37.40	0.93			
SHENTEL:	34.73	0.49	TELCOS					
PROGRAMMING								
21ST CENTURY FOX:	28.87	(0.04)	AT&T:	40.38	0.19			
AMC NETWORKS:	60.07	0.02	CENTURYLINK:	26.68	(0.21)			
CBS:	52.82	0.71	FRONTIER:	4.83	(0.04)			
DISCOVERY:	25.67	(0.3)	TDS:	27.70	0.27			
DISNEY:	98.40	0.83	VERIZON:	52.99	0.42			
GRUPO TELEVISIA:	24.39	(0.54)	MARKET INDICES					
HSN:	48.75	(1.16)	DOW:	17674.82	(57.66)			
LIONSGATE:	21.26	0.01	NASDAQ:	4843.55	(4.89)			
MSG NETWORKS:	16.35	(0.23)	S&P 500:	2075.32	(3.74)			
SCRIPPS INT:	62.95	0.06						
STARZ:	25.95	(0.06)						
TIME WARNER:	72.76	(0.37)						
VIACOM:	45.94	(0.07)						
WWE:	17.60	0.16						
TECHNOLOGY								
ADVANTAGE:	1.77	(0.06)						
AMDOCS:	56.62	(0.23)						
AMPHENOL:	58.56	(0.09)						
APPLE:	97.46	0.12						
ARRIS GROUP:	22.75	(0.35)						
AVID TECH:	5.89	0.05						
BLNDER TONGUE:	0.39	(0.01)						
CISCO:	28.96	0.12						
COMMSCOPE:	31.45	(0.1)						
CONCURRENT:	5.71	(0.17)						
CONVERGYS:	26.84	0.05						
CSG SYSTEMS:	41.90	0.35						
EHOSTAR:	38.37	(0.21)						
GOOGLE:	718.27	(0.09)						

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