

# Cablefax Daily™

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What the Industry Reads First

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## High Court: SCOTUS Case Could Have Implications beyond Online Shopping

The US Supreme Court is set to hear arguments Tuesday in South Dakota vs Wayfair, which could result in overturning a 1992 decision that found states can't impose a sales tax on out-of-state retailers that don't have a physical presence in the state. While there's plenty of talk about what this could mean for online retailers such as **Wayfair** or **Overstock.com**, some believe it could have implications for OTT services. Under the 1992 decision (Quill vs North Dakota), states can't collect sales tax from OTT customers, even if the state does impose tax on streaming or downloadable video programming services similar to OTT. Of course, cable operators with multiple touch points in a state are required to remit sales and use tax on all taxable services in a state which it has subs. Overturning Quill could help level the playing field between the two. "We continue to see the laws change as states get more aggressive about collecting tax, and with the Wayfair hearing, we're only going to see that pace increase. If South Dakota wins, we can expect other states across the country to adopt similar laws, impacting OTT providers as well as other businesses," predicted *Toby Bargar*, an attorney and senior tax consultant at **Avalara** for the communications sector. Even if South Dakota doesn't prevail at the Supreme Court, he doesn't think the issue will go away. "States have been pushing for a legislative solution for a decade or more. And in the absence of national legislation many have passed their own laws attempting to collect taxes from remote sellers. It is likely that states will double down on all the things they have been doing before," said Bargar, noting that almost every state is looking to stem the tide of falling transaction tax revenues. There could be some interesting takeaways here for traditional cable and telecom companies that have long dealt with various taxes and fees on bills—to the point that they now provide detailed line-item descriptions of taxes on bills. In fact in February, the **FCC Media Bureau** denied a request from the Charleston, WV, city treasurer who sought to have a "Charleston Municipal Business and Occupation" tax struck from customers' bill, arguing that it's a tax for gross receipts of most businesses in the city, not a tax levied on a transaction between a customer and the cable operator. The FCC said it didn't matter, pointing to the 5th Circuit's affirmation in 2003 of an FCC decision halting Local Franchise Authorities' efforts to hide from subs franchise fees they collect from

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cable ops on ancillary revenues. Cable has long sought parity with other technologies, including seeking tax parity for DBS over the years. "Wayfair may not represent an advantage, but you can be confident that they will continue to advocate the position that OTT services should face the same impositions they are under," Bargar said.

**Netflix Numbers:** Netflix subs hit 125mln by the end of 1Q, with revenue growing 43% YOY thanks to a 25% increase in average paid streaming memberships and a 14% rise in ASP. International continues to be strong, with nearly 5.5mln of its 7.4mln new subs coming from outside the US. International now accounts for 50% of rev and 55% of memberships. US adds of 1.96mln were still ahead of Netflix's forecast of 1.45mln. "Netflix's record Q1 revenue and subscriber growth, and better than expected margin improvement, is consistent with slow but steady credit improvement as reflected in our recent credit rating upgrade. We expect 2018 will be the negative cash flow trough, global subscribers to reach 200 million by the end of 2021, and cash flow breakeven in about five years," **Moody's** svp *Neil Begley* said. Netflix chief product officer *Greg Peters* said the recent bundle arrangements announced with **Comcast** and **Sky** are very beneficial in terms of acquisition and retention. "We love the fact we can work with these partners to access whole new groups of consumers, make it easy for them to find out about Netflix... then have a great way to access the service," Peters said. For Q2, Netflix expects 6.2mln global net additions (1.2mln in the US and 5.0mln for the international segment) vs. 5.2mln in the year ago quarter. Revenue for 1Q totaled \$3.7bln with net income at \$290mln.

**Joining the Team:** ESPN+ is available on **Roku** players through the new **ESPN** channel on the platform. The new streaming service from **The Walt Disney Company** and ESPN will be available to subscribers for \$4.99/month or \$49.99 a year. The subscription service debuted Thursday on iOS, Amazon and Google platforms. Since the post-close announcement, Roku has seen stock prices rise 6%.

**FCC Fine:** The **FCC** and **T-Mobile** reached a \$40mln settlement following an investigation into whether the wireless provider failed to correct ongoing problems with delivery of calls to rural consumers. Also at issue is whether T-Mobile violated the FCC rule that prohibits providers from inserting false ring tones with respect to hundreds of millions of calls. In addition to the money, T-Mobile entered into a compliance plan aimed at preventing future violations. It marks the FCC's sixth rural call completion settlement.

**More Repack Money:** The **FCC** is freeing up an additional \$742mln to reimburse eligible full power and Class

# Corporate Licenses

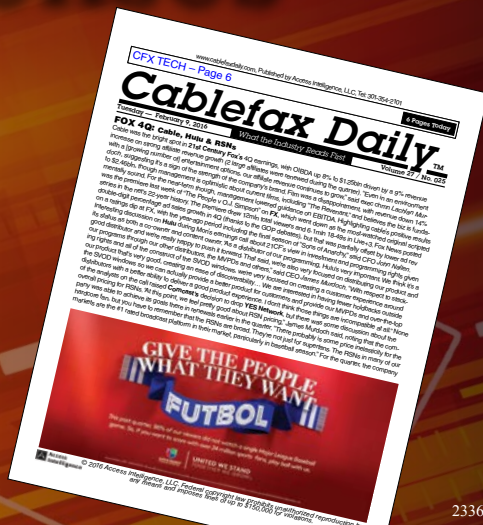
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A broadcasters along with MVPDs for expenses related to construction of station facilities on reassigned TV channels as a result of the spectrum auction. This brings the total funding available to \$1.742bln, which the FCC said represents about 92.5% of currently verified cost estimates.

**To A Windows Device Near You:** **Insight TV** revealed plans to create a Windows Store application that will allow true 4K UHD content to be streamed to any Universal Windows Platform device. The app will be built on 8th generation Intel Core processors and will be available in 2Q18.

**Commercial Breakdown:** **Viacom** had the most commercial share for March, with a 16% 18-49 share among national media owners in C3 commercial impressions, **Pivotal Research** said. **NBCU** had the highest share of viewing of rated national TV programming (P2+, L+7), with 14.7% of the industry's total in March 2018.

**Less Big Ten:** **Comcast** customers not living in states with Big Ten conference schools are losing the **Big Ten Network**. It will continue to be carried in IL, IN, MD, MI, MN, NJ, OH, PA and WI, as well as DE, DC and Northern VA. Comcast doesn't have any systems in NE and IA. Big Ten Net tweeted the news out last week, adding that "all of their competitors still carry BTN everywhere" and encouraging fans to let the MSO know how they feel.

**Beyond Scientology:** **A+E Networks** is building upon its current relationship with *Leah Remini* for an overall, exclusive first-look development deal to collaborate on and produce unscripted projects for the network's portfolio. This is the first overall deal for A+E Originals, the in-house nonfiction division of the company. The two-year deal will focus on documentaries, while her series "Leah Remini: Scientology and the Aftermath" has been renewed for an eight-episode third season and 5 specials for **A&E Network**.

**Back to School:** **The Cable Center** will welcome 19 rising stars for the spring semester of its Intrapreneurship Academy. Running from April 17-June 14, the second run of the future-focused development program will teach early and mid-career professionals how to innovate within their companies using similar methods to entrepreneurs using innovation to launch new business methods. The program culminates in a two-day capstone event at The Cable Center.

**Open Call:** **WICT** is calling for nominations for the 2018 Woman of the Year and Woman to Watch honorees. The awards will be given at the Touchstones Luncheon on October 15 in NYC during the WICT Leadership Conference, a part of Diversity Week. The deadline for nominations is June 15 at 5pm. Visit [wict.org](http://wict.org) for more info.

**Distribution:** SVOD services **Quark** and **XiveTV** are now available on **Comcast's X1** platform thanks to a collaboration between **Zone TV** and independent programmer **Alliant Content**. Quark and XiveTV are available for \$4.99/month each.

**Ratings:** **BBC America's** spy drama "Killing Eve" debuted to 1.2mln total viewers on the network, and has reached over 2.6mln viewers on linear and digital platforms to date.

**Programming:** **Starz** acquired several series that initially debuted on the now defunct **NBCU** comedy SVOD service **Seeso**, including "Take My Wife," "Night Train with Wyatt Cenac" and the "Sklar Brothers: Hipster Ghosts." They'll be available on the Starz app and Starz On Demand come May 1. -- **Oxygen Media** will add to its crime programming slate with "Abuse of Power" on May 12 at 7pm. Journalist *Lauren Sivan* is set to examine true stories where people in positions of power use it to commit criminal acts. -- **truTV** is ready to bring the laughs this spring with new seasons of original comedies "Comedy Knockout," (May 2 at 11pm) "The Carbonaro Effect" (May 17 at 10pm) and "Rachel Dratch's Late Night Snack." (June 1 at 11:30pm) -- **Outdoor Channel** is presenting the US premiere of the five-part miniseries "Mutiny" starting on Monday, April 10 at 10pm. The event recreates the boat voyage of Captain Bligh and his crew after the mutiny aboard the "Bounty" in 1789.

**People:** **FremantleMedia North America** hired *Kevin Blanchette* as svp, marketing and communications. Based in its Burbank headquarters, Blanchette will guide the strategic development and implementation of all marketing, publicity and corporate public relations.

**FAXIES Deadline:** Midnight ET tonight (April 16) is the deadline for those FAXIES nominations. The FAXIES Awards, held June 5 in NYC, will honor the best and brightest in marketing and PR. Enter at [Cablefax.com](http://Cablefax.com).

## CFX TECH

### Following in the EU's Footsteps

The US could learn a few lessons from European regulators when it comes to customer privacy and data protection in the age of big data. At least, that was the consensus at a Hill panel discussion hosted by the **Internet Innovation Alliance** on the need for comprehensive federal legislation in order to properly govern the internet. While politicians from both sides of the aisle debate next steps in the aftermath of Congressional hearings featuring **Facebook** CEO *Mark Zuckerberg*, the EU is preparing to begin enforcing two key reforms giving users greater protection over their personal data: the General Data Protection Regulation and the Data Protection Directive.

Becoming widely enforceable by May 25, GDPR marries a collection of data privacy laws across Europe, giving citizens not only the right to greater privacy, but also allowing them to completely erase his/her personal data to stop third parties from processing their data. First being approved and adopted by the EU Parliament in April 2016, GDPR will supersede the UK Data Protection Act of 1998 and apply to both organizations located in the EU as well as those located outside of its borders if they offer goods or services to, or monitor the behavior of, any person in the EU. Organizations can be fined up to 4% of annual global turnover for breaching the regulation, or €20mln.

Adopting a unified approach like the GDPR is the only way to bring about a stability and consistency to a policy addressing the issue, according to former **FTC** commish *Jonathan Leibowitz*.

"If you are European and you are traveling outside of the EU, your data is protected at an EU standard," Leibowitz noted, addressing the growing movement in individual states to pass their own net neutral-

ity and privacy laws. "You don't want a crazy quilt patchwork of state privacy laws chafing against each other and being inconsistent. It's just bad policy."

Former **FCC** chmn *Robert McDowell* agreed wholeheartedly, as it is meaningless to try and place physical boundaries on something as global as the Internet. "The Internet being a network of networks... and the way it's designed, there aren't any borders," McDowell said, with the only exceptions being countries such as North Korea.

As far as adjustments to targeted advertising go following the involvement of Facebook in the **Cambridge Analytica** data collection and questions of suspicious ad behavior and manipulation on the site during the 2016 election season, there may not be as much change as one might expect. Rather than changing the rules currently in place, IIA co-chairwoman and former **MMTC** pres/CEO *Kim Keenan* believes that the changes that need to occur lie in more transparency regarding how the ads were created and how the data harvested was manipulated to create the ad.

"People aren't even clear about why this is important because it's not that the people went online and said 'Vote for X,' Keenan said. "What they did was manipulated what you're interested in and what you like in a way that made you vote in a way that you would not have voted if you hadn't been targeted in that way." Anything that blocks the ability of a company to deliver an ad could become an issue of free speech.

"If you're saying you can no longer target, you've got a big first amendment problem," McDowell said. "It would be the government saying you as a speaker cannot speak to a certain audience, so disclosure historically has been the way we try to deal with that. That's probably the best way going forward."

-- *Sara Winegardner*

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