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## Out in Front: Charter Takes the Opt-In Lead on Data Privacy

There are plenty of headlines out there about Wednesday's **Senate Commerce** data privacy hearing featuring execs from **Amazon, AT&T, Google, Twitter** and **Apple**, but what cable should pay close attention to is how **Charter** conducted itself. When Sen *Catherine Cortez Masto* (D-NV) asked the companies whether they would support a default opt-in, it was a no from everyone except Charter. "We believe that a default opt-in is the right approach. This is the best way to empower consumers and increase their confidence, and we think that's really good for business," said *Rachel Welch*, Charter's svp, policy & external affairs. "If consumers believe that their data will be protected, we believe that they will participate more." Execs from other companies on the panel expressed concerns that such a policy could hamper innovation. "I think it restricts the use of non-sensitive data that would restrict the benefits to consumers," said **AT&T** global public policy svp *Len Cali*, who added that he does support an opt-in for personally identifiable, sensitive information. Unlike net neutrality/Title II, where cable has found itself in the unpopular public position of objecting to the 2015 **FCC** rules, privacy could be the industry's chance to don the white hat and ride in as the good guy. Charter has taken the lead on this front, with CEO *Tom Rutledge* penning a blog in April after the **Facebook-Cambridge** Analytica scandal that called for all entities to receive opt-in consent to collect and share data for purposes other than the actual service they engage in. Essentially, cable's stance seems to be that consumer choice is critical and opt-in is generally appropriate (emphasis on generally...). In calling for Congress to create strong privacy legislation, **NCTA** pres/CEO *Michael Powell* has said consumers should have more control over their personal data, including "requiring opt-in consent for using or sharing personal data with limited exceptions." Of course, one could argue that cable can take a stronger stance here because data isn't as profitable for it as some of the other companies represented as Wednesday's hearing. *Gabe Greenberg*, CEO and co-founder of advertising buying conference **GabbCon**, said cable has growing audience-based businesses, with its data neither more nor less valuable than others. "My personal belief is that the Charter leadership likely believes that if they get ahead of the privacy discussion and are, rightfully, viewed as leading this charge that consumers will value them higher when selecting a provider or partner. I think more companies should take this position," he said. "At the end of the day with the CA privacy legislation coming and GDPR behind us that companies should be taking the high road and

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approach that Charter laid out anyway." GabbCon is holding a conference in November that actually delves into some of this, including building data strategy in a post-GDPR world. One thing all the parties did agree on Wednesday's is that a federal framework is needed—rather than a patchwork of state privacy bills, such as California's law that goes into effect in 2020. Sen *Brian Schatz* (D-HI) said he knows businesses want a federal law that will preempt state privacy laws, but warned that "you're only going to get that if it's meaningfully done." Sen *Richard Blumenthal* (D-CT) threw out that none of these companies are exiting Europe or CA because of the privacy bills in place. "The opposition that you've expressed to these rules, recognizing that the devil may be in the details, is one that can nonetheless accommodate the kinds of rules we've seen in the GDPR and in CA."

***5G Milestone:*** Wednesday's **FCC** open meeting marked another milestone in the march to 5G as the Commission approved a wireless infrastructure order that established shot clocks for state and local approvals in the deployment of small wireless facilities. Clarifying the scope and meaning of Sections 253 and 332 of the Communications Act, the order also offers guidance on streamlining state and local requirements on wireless infrastructure deployment. Republican commish *Brendan Carr* noted that the approval of the order would cut $2bln in red tape, or $8K per small cell, while stimulating $2.4bln in new small cell deployments. "That will cover 1.8mln more homes and businesses without a penny in new taxes," Carr said, adding that 97% of those would be in rural or suburban communities. Cable's comments on the order have centered on its belief that the FCC should streamline state and local regulatory obstacles for all technologies, not just wireless. That includes, among others things, making sure that cable operators cannot be subjected to additional franchise requirements or franchise fees for broadband—an issue that was teed up by the LFA NPRM adopted Tuesday. Democratic commish *Jessica Rosenworcel*, who approved the 5G order in part and dissented in part, found fault with its implementation of extreme federal oversight over 5G deployment. She said the decision "irresponsibly interferes with existing agreements and ongoing deployment all across the country." She also expressed concern over litigation that could come from Washington wanting to run the deployment instead of local and state authorities, and worried that the potential litigation could actually slow 5G deployment. **Public Knowledge** echoed those sentiments with senior policy counsel *Phillip Berenbroick* calling the vote a missed opportunity. "The Commission is rightly focused on removing obstacles to deployment of next-generation wireless networks and reducing barriers to entry," Berenbroick said. "However, rather than finding consensus between industry and state and local government stakeholders, the Commission's Declaratory Ruling and Order overwhelmingly sides with industry on nearly every issue, resulting in a vote that will almost certainly be challenged in the courts and create uncertainty, rather than predictability for small cell wireless deployments."

***Other FCC Happenings:*** Also on the **FCC's** agenda Wednesday was a presentation on the Connect America Fund Phase II auction, which involved 173 placed bids. Bids started high and went down, with 103 winning bidders representing WISPs, electric co-ops, cable operators, LECs and satellite. At the meeting, the FCC voted unanimously to eliminate Form 325, relieving an unnecessary burden for cable operators. Form 325, the Annual Report of Cable Television Systems, required data about subscriber numbers, equipment information, plant information, frequency and signal information and programming information. The form has become increasingly obsolete, as much of the information collected can be found through alternative sources. "The record was unmistakably clear that the public benefits of Form 325's data collection no longer outweighed the significant burdens that the requirement imposes," **ACA** pres/CEO *Matt Polka* said in a statement.

***Skyfall:*** **21CF** will sell its 39% stake in **Sky** to **Comcast** at the £17.28/share price that Comcast offered for the rest of the company. Comcast will now have complete ownership over the UK satellite company. **Disney** supported the decision, saying that proceeds will reduce Disney's overall debt in acquiring 21CF media assets while allowing for more investment in **Hulu**, **ESPN+** and its DTC offering coming in late 2019. Although many are speculating as to the future of Hulu, there is still no news on Comcast making any move to sell its 30% stake to Disney.

***CBS Shuffles:*** *Dick Parsons* has been named interim chairman of **CBS's** board. The former **Time Warner** CEO was unanimously approved to replace ousted chief *Les Moonves,* whose departure came following multiple allegations of sexual misconduct. Parsons was appointed to the board earlier this month along with five other people as the company independently investigates Moonves. CBS also announced Wednesday that board members *Bruce Gordon* and *William Cohen* will be stepping down. The two had been on the board since CBS became a stand-alone public company in 2006.

***NAMIC News:*** When **NAMIC** kicks off its 32nd Annual Conference next month, it will do so with a brand new pres/CEO. The organization tapped *A. Shuanise Washington* for the role, effective immediately. Her name is familiar in the Beltway, as she has led the **Congressional Black Caucus Foundation** for five years, overseeing public policy, research, educational and fundraising initiatives. Before that, she was the founder and CEO of **Washington Solutions**, providing strategic counsel to businesses, governments and non-profit organizations. "As our industry continues to evolve at a rapid pace and the demographic landscape becomes increasingly diverse, it is important for NAMIC to be at the forefront of that evolution. We are thrilled to have someone of Shuanise's caliber leading the organization during this time," said NAMIC chair and Cox exec *Joiava Philpott.* Former NAMIC CEO *Eglon Simons* announced in January that he was retiring after more than three years as pres/CEO.

***Kavanaugh Hearing:*** The country will be watching Thursday when *Christine Blasey Ford* is slated to testify at a Senate Judiciary Committee hearing focused on the sexual assault allegations against SCOTUS nom *Brett Kavanaugh*. **CNN** will lift its paywall and live-stream the hearing starting at 8:30am. Plenty of other newsers, including **C-SPAN, Fox News, PBS NewsHour, MSNBC** and **Vice News** will have live coverage on their nets and online. Fox News' coverage will begin at 9am hosted by "Special Report's" *Bret Baier* and "The Story's" *Martha MacCallum*. C-SPAN also announced coverage on its radio platform for on-the-go listening. **CBS News** will broadcast live from DC during "CBS This Morning" and "CBS Evening News" with special coverage beginning at 10am and additional coverage on **CBSN**. Streamers can also watch the hearing live on **Facebook** and **YouTube**. On Monday Kavanaugh spoke with MacCallum, where he strongly denied the allegations and claimed he "did not have sexual intercourse" in high school or for many years after.

***Promo Time:*** **fuboTV** launched a multi-month promotion in which new subscribers can get the fubo Extra Bundle by prepaying for two months at $34.99 a month. It comes with the Extra package and upgrades to DVR Plus and Family Share, along with two months of Showtime. Fubo Extra usually comes with a price tag of $49.99 a month. The company also began rolling out a new feature on **Apple TV** that it calls 'dynamic discovery.' Users are now able to browse content while having a live preview directly on the home screen, and fubo says it's the first vMVPD to launch such an interface.

***Advertising:*** **iSpot.tv** raised $30mln in investment capital in a Series C round of fundraising led by **Insight Venture Partners** and **Madrona Venture Group.** This brings the total investment in the company to $57.8mln to help accelerate TV ad measurement innovations.

***Programming:*** The new season of "Doctor Who" will premiere on Oct 7 at 1:45pm (timed with the UK broadcast) on **BBC America**. At the same time, NY Comic Con attendees will watch the episode with star *Jodie Whittaker* followed by a panel. The ep will also broadcast at 8pm and will run at that time for the remainder of the series. -- **Fox Sports Carolinas** and **Fox Sports Southeast** will air 81 Carolina Hurricanes regular season games during the 2018-2019 **NHL** season. Coverage kicks off with the home opener on Oct 4 against the NY Islanders.

# Think about that for a minute...

## Dangerous Talk

*Commentary by Steve Effros*

It used to be called "regulation by raised eyebrow," and it was decried even back then. This was a description of the tendency or at least the fear that the government was attempting to influence reporting, journalism or corporate conduct by "raising an eyebrow" about the conduct or reporting they didn't like rather than actually taking the position that something was being done improperly, against the law, or violated any particular rule.

It was not a very subtle way of trying to impose political will by implicit threats. If the president (in that case Mr. Nixon) did not like what some networks were reporting about him, the next thing you knew there was the suggestion that one or more of that network's stations might find itself challenged at the next license renewal at the FCC. I know this example isn't so implicit, but you get the idea. No television license was ever pulled by the FCC based on content, but the threat was always there. The "Fairness Doctrine" gave a great deal of leeway for those regulators and politicians who wanted to raise an eyebrow. They often did.

Now, however, we're in a much more boorish era. The pretense of implicit threat has been abandoned in favor of the blunderbuss approach of calling out whichever media are disfavored at the moment and making essentially direct threats to their very existence. That's what has been happening in the last few weeks as Google, Facebook and the like, which are, whether they like it or not, media, were warned in no uncertain terms that investigations were likely to start regarding their antitrust status by multiple agencies of the federal government. A purported White House document is circulating to that effect.

Not to be outdone, the Attorney General called together a meeting to look at the "bias" and supposed unfairness of the search results and priority positioning of tweets and Facebook material. The alleged anti-conservative weighting of search and selection algorithms is suggested as one possible culprit. There are also some politicians complaining that some major companies, like Google, (Alphabet) have a preponderance of liberals as employees, and that somehow is something the government should take a look at.

This is all getting into very dangerous territory. As anyone who has read this column for a while knows, I have long suggested that the "edge" providers were and are as powerful if not more powerful than the infrastructure providers. I have often suggested that additional regulatory oversight take place, particularly in the use of the antitrust laws. But that has to do with economic power and the ability to adversely influence competition, not government oversight of "bias," "balance," and "fairness." Those are things that the government should simply not have anything to do with. It's a very, very dangerous rabbit hole to go down.

To be sure there are valid questions about whether some of these companies are getting so large, and so wealthy that they can simply buy up any potential new competitor, or make it very hard for them to compete. All valid avenues of investigation. Even that could be considered "regulation by raised eyebrow" since you know those companies will start to be much more cautious about what they do, and that may not be bad.

But when politicians and regulators start down the path of saying they may want to regulate against "bias" (which, like it or not, is totally legal...see Fox News or MSNBC) it is absolutely the wrong, and very dangerous path to take.

Steve

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*(Steve Effros was President of CATA for 23 years and is now an advisor and consultant to the cable industry. His views do not necessarily reflect the views of Cablefax.)*