

Communications Daily

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Top News

Title I Backers Confident

O’Rielly Wants FCC Action on TCPA Liability, Supports SMS Draft, Eyes ALJ Changes

FCC Commissioner Mike O’Rielly wants to act on liability under the Telephone Consumer Protection Act, possibly in a reassigned phone number draft order targeted for the Dec. 12 commissioners’ meeting. He backed a draft order to classify SMS and other wireless messaging as Communications Act Title I information services, generally supported a draft order to increase rural telco USF funding and suggested he might soon push for changes to the agency’s administrative law judge process. He spoke to reporters after a Phoenix Center event Tuesday at which he discussed his municipal broadband speech concerns, kidvid efforts and broader process proposals. Also there, supporters of the FCC Title I reversal of Title II net neutrality regulation voiced confidence it will be upheld in court.

TCPA liability protection for callers “is very important,” particularly since the FCC draft would authorize a reassigned number database to help curb illegal and unwanted robocalls, O’Rielly told us. The draft currently doesn’t address liability, but he said there’s still time to make changes: “I don’t know if it’s going to be now or later, but I’m definitely interested in addressing it.” The FCC may decide on a possible industry safe harbor in a broader, upcoming TCPA order (see [1811230028](#)).

SMS and succeeding messaging technologies are applications, O’Rielly said. It’s weird “to argue that [you’re] for Title I for the underlying network but the applications that ride over it would be a Title II service,” he said. “That’s wrong, not consistent with the marketplace.” He said instant messaging has more

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users than SMS and “one of the reasons is this quasi-regulatory treatment of SMS makes no sense.” He wants to make sure the draft is “sufficiently broad” to “cover new technologies.” Some oppose the draft (see [1811200048](#)).

O’Rielly is “supportive” of increasing the rate-of-return USF budget, as another draft proposes (see [1811210032](#)). “To the extent we’ve recognized that we can improve the budget and provide more certainty, that’s a wonderful thing.” He’s “working on the particulars of the item” to make sure he understands “how different pieces fit together,” including a new offer of model-based support.

O’Rielly indicated he could tackle revisions to the ALJ process, which he said isn’t working efficiently. He may address the matter in “coming weeks,” he said. O’Rielly said as far as he can tell, there has been no action on the most recent matter sent to the ALJ, the Sinclair/Tribune hearing.

During the event, O’Rielly said he’s a “complete critic of municipal broadband,” with free-speech concerns one of several objections. He said it’s problematic anytime the government offers this service. “Broadband providers have rights in this space” and “the operating of a network by a local government can interfere with the First Amendment, and remains a threat, given the structure of the end-user agreements they have,” he said, noting he plans to say more on the topic soon: “Expect further debate in coming months.”

O’Rielly isn’t interested in harming those who benefit from children’s programming or disrupting the business models of programmers in the kidvid proceeding, he said. “I think there is agreement that can be reached.” He said the proceeding could be completed in Q1 or possibly Q2.

O’Rielly continues to talk with Chairman Ajit Pai about FCC process revisions, and hopes for new action soon. “I’ve put together about 60 items—some big, some small, some tiny—that I think can improve the agency,” he said.

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Panelists expect the FCC to be upheld on its Title I broadband order undoing net neutrality regulation, especially in light of a Supreme Court 2005 ruling upholding cable broadband as Title I. “This is *Brand X* all over again and it’s hard to imagine how we get to a different result” on challenges to the current order in the U.S. Court of Appeals for the D.C. Circuit, said attorney Matt Brill of Latham and Watkins. He said even the D.C. Circuit’s *USTelecom* affirmation of the prior FCC’s Title II net neutrality order was helpful because it gave the agency much deference, which will again come into play: “From a *Chevron* perspective, I think it’s quite straight forward.”

Wilkinson Barker’s Bryan Tramont agreed *Brand X* made it likely the Title I classification gets vindicated. Mayer Brown’s Angela Giancarlo said the commission just has to provide a reasoned explanation. Panelists believe the current FCC’s basis for its action was much stronger than the prior commission’s. Maureen Ohlhausen, ex-acting FTC chair, believes the FCC will get deference: If the record for the 2015 order can withstand review, she didn’t see how the record for the current order wouldn’t. She said the FTC is well-equipped to handle broadband consumer protection and, with DOJ, antitrust concerns.

“They’re wrong,” emailed John Bergmayer, Public Knowledge senior counsel, about panelists’ confidence the agency will win. Other net neutrality advocates didn’t comment. — **David Kaut and Monty Tayloe**

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Next Suit in Michigan?

Settlement Possible in Local Lawsuit Against Texas Small-Cells Law

Talks with the telecom industry could resolve a McAllen, Texas, lawsuit challenging the state’s small-cells law, local officials told us this week. Texas is defending the 2017 law pre-empting local governments in the right of way (ROW) from a state court challenge by McAllen and a federal court challenge by Austin (see [1710040044](#)). A Michigan bill awaiting gubernatorial clearance could be the next state small-cells law to be challenged in court by localities, said Kitch local government attorney Mike Watza.

With discovery nearly finished in McAllen’s lawsuit at the Texas District Court of Travis County, the city is “still attempting to work with the wireless infrastructure providers and telecommunications companies to reach an amicable solution,” Assistant City Attorney Austin Stevenson said. “If an agreement is reached, a trial would no longer be necessary.” Stevenson declined to give more details of talks he said are “highly confidential.” Texas, AT&T and Crown Castle declined comment.

“They are looking to negotiate some type of settlement,” emailed Texas Municipal League General Counsel Scott Houston. “We haven’t put anything specific on the table, but it would need to be something that garnered a rental payment that gets closer to the actual fair market value of the city rights-of-way/facility placement.” One possible outcome would be an agreement to throw out the current law for constitutional reasons, with consensus on how to move forward, he said: “If cities and industry wanted to come up with a new, state-mandated fee structure, that would require legislation.”

Austin’s separate challenge to the Texas law in U.S. District Court in that city could see movement soon. The court last month [referred](#) (in Pacer) the state’s motions to dismiss to U.S. Magistrate Andrew Austin. He was counsel to AT&T with the since-dissolved firm Sheinfeld Maley in two lawsuits, decided in [1998](#) and [1999](#)—prior to the SBC/AT&T merger, by the carrier against Dallas related to municipal franchises for access to ROW.

Michigan passed a small-cells bill last week that needs signature from outgoing Republican Gov. Rick Snyder (see [1811290035](#)). While the Michigan Municipal League is neutral on the measure, some communities remain opposed. “There’s strong support to continue fighting,” even if the bill is signed into law, said Watza, representing [Protec](#), a group of Michigan municipalities and utilities.

Michigan localities could cite the state’s home rule in a possible legal challenge to the small-cells law, if signed, Watza said. “We have an exceptionally powerful home-rule Constitution here that tells the state point blank these rights of way are ours. You cannot diminish our authority.” Recent elections may affect enforcement of the law next year because Democrats flipped governor and attorney general seats, the attorney said. Incoming Gov. Gretchen Whitmer (D) will appoint utility commissioners who may have to interpret the law, while the next AG Dana Nessel (D) would have to defend any suits.

Protec usually agrees with the Michigan Municipal League, but MML made its own agreement with carriers and ended up declaring itself neutral on the state bill, Watza said. Protec continued grassroots work opposing the bill and peeled off 35 votes from both parties, he said. “We just couldn’t get everywhere we needed to be on our own to fight this bill successfully.” MML didn’t comment.

Watza predicted industry will “pick and choose” parts it likes from the state bill and the FCC September order, taking lower application fees in the order and “deemed granted” and lower annual rates from the Michigan measure. That’s how industry behaved when there was overlap between FCC rulings on the federal Cable Act and state video service bills from 2006, he said. Cities also are suing over the FCC order (see [1812030037](#)).

The Wireless Infrastructure Association praises the bill as a big step to bringing 5G there. WIA and CTIA didn’t comment Tuesday. Watza said nothing enforceable in the bill can require industry to bring broadband to rural areas that need it most: “Rural Michigan isn’t going to see 5G in our lifetime, and this bill does nothing to improve that.” — *Adam Bender*

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'Overhaul' Not Needed

Expect Updated National AI Strategy in Early Spring, White House Official Says

The administration will soon publish public comments on the update to the National Artificial Intelligence Research and Development Strategic [Plan](#) expected in early spring, White House Office of Science and Technology Policy Assistant Director-Artificial Intelligence Lynne Parker said Tuesday. The administration is pleased overall with the strategic plan inherited from the previous administration, Parker told an Information Technology and Innovation Foundation event. The overwhelming majority of comments are positive, she said: “We don’t need to overhaul the original plan.” The federal government can’t ignore significant AI investment from industry and R&D gaps, she said.

The National Science and Technology Council’s Select Committee on Artificial Intelligence met Friday, Parker said. Led by co-chairs OSTP Deputy Assistant to the President Michael Kratsios, National Science Foundation Director France Cordova and Defense Advanced Research Projects Agency Director Steven Walker, the panel will ensure the U.S. is leveraging resources properly across the government, Parker said. That includes making sure the U.S. is investing and spending tax dollars wisely on AI, she added.

Parker was asked about the White House's expected meeting with tech executives Thursday (see [1811300036](#)). Citing lack of involvement, she didn't say what the White House hopes to gain from the meeting.

Leading up to the event, ITIF's Center for Data Innovation called for a national AI strategy. The [report](#) proposes a data-sharing framework between government, industry and academia. Firms need access to data because it's the key input for AI technology, said Center for Data Innovation Senior Policy Analyst Joshua New.

New noted the U.S. government isn't funding half the "AI research we know would be beneficial." The U.S. has an early lead on AI advancement, he said, but China, Canada, France and others have developed national strategies to be more competitive in an AI-driven economy. He said China is projected to overtake the U.S., with the goal of becoming an international AI hub by 2030. China published six times more AI-related patents than the U.S. in 2017, he said.

The American startup ecosystem is the envy of the world, Engine Policy Director Rachel Wolbers said. That means the U.S. can take more risk and be more disruptive in different sectors, she said, arguing the U.S. is "still winning the race."

Taking American AI leadership into the next generation will depend on R&D, said Accenture Managing Director-Government Relations in North America Robert Hoffman. The U.S. needs to direct research in the areas of the economy where AI will most benefit society, and it's unclear whether that's healthcare, energy, autonomous technology or something else, said Software & Information Industry Association Senior Vice President-Public Policy Mark MacCarthy. — *Karl Herchenroeder*

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Pai Hopes Dig Once 'Becomes the Law of the Land,' Praises Satellite Broadband

FCC Chairman Ajit Pai hopes dig once to lay fiber conduits "becomes the law of the land," suggesting it's critical to increasing backhaul capacity to support 5G wireless. He said low-earth-orbit satellite constellations promise to expand rural broadband and lower latency. "Satellite innovation is really coming along well," he told a Geeks Without Frontiers conference Tuesday. The difficult broadband business case in high-cost areas is worsened by unnecessary rules, he said, vowing to continue deregulatory remedies: "We've made a lot of progress. There's still a ways to go." He said the Connect America Fund Phase II reverse auction saved \$3.5 billion, allocating \$1.5 billion in broadband subsidies over 10 years for connecting over 700,000 locations estimated to need \$5 billion. He plugged FCC "technological neutrality" letting wireless providers, electric utilities and Viasat be among new CAF recipients competing to serve rural customers. Pai highlighted other efforts to push broadband, including plans to auction 5 GHz of commercial spectrum over the next 18 months, and opening the 6 GHz band to Wi-Fi use. The FCC is looking at unlicensed opportunities from low-band spectrum to the 95 GHz band, he said. Pai said there are "exciting times to come" in broadband-enabled "vertical" applications like telehealth, and IoT and artificial intelligence have potential upsides for healthcare. —*DK*

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Heavy-Handed Tech Regulation 'Wouldn't Be Prudent,' Pai Says, Invoking Bush

Communications regulators ought to follow prudence ascribed to President George H.W. Bush and show skepticism about pre-emptive regulation of new technologies, FCC Chairman Ajit Pai said at an International Institute of Communications event Tuesday, according to prepared [remarks](#). “Not gonna do it. Wouldn’t be prudent.” That’s a catchphrase of *Saturday Night Live* cast member Dana Carvey in his Bush parody. Pai said an example of that prudent approach is the rulemaking launched in October about dealing with orbital debris (see [1811150028](#)), plus work in the Americas to advance regional proposals for the 2019 World Radiocommunication Conference.

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Signs Point to Economics' Resurgent Importance in FCC Decisions, AEI Says

Consumers and industry benefit from economists “again hav[ing] a voice” at the FCC, American Enterprise Institute visiting scholar Mark Jamison [blogged](#) Tuesday. The role of economics dwindled in recent years, judging by the number of working papers and economic symposiums from the Office of Strategic Planning, he said. That decline in economic analysis shows up in the 2015 net neutrality order and 2016 set-top box proceeding, Jamison said. A [paper](#) in this month’s *Review of Industrial Organization* by FCC economists about the role economic analysis played in the Communications Act Title II rollback, the “hedonic pricing model” in the international broadband data report and formation of the Office of Economics and Analytics is a signpost of returning “to the days when FCC economists made the regulatory community uncomfortable by pointing out where present practices and forward-looking economics are out of step,” he said.

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Capitol Hill

Pallone Disagrees With FCC IG That Pai White House Contact on Sinclair/Tribune OK

House Commerce Committee ranking member Frank Pallone, D-N.J., does “not agree” with the FCC inspector general’s finding there’s no evidence Chairman Ajit Pai acted improperly by not volunteering he had been called by then-White House Counsel Don McGahn on Sinclair’s since-abandoned deal for Tribune (see [1812030046](#)), a Palone spokesperson said. Pai discussed the conversation during an August Senate Commerce Committee hearing but didn’t disclose it during an earlier House Communications Subcommittee hearing (see [1808160071](#)). “As Democrats move into the Majority, the Committee will expect witnesses to follow through on their commitments and respond fully to the questions asked by its members,” Pallone said. Pallone and House Communications ranking member Mike Doyle, D-Pa., want more critical FCC oversight when they take over the committee and subcommittee (see [1811070052](#)).

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House Judiciary Sets Google Hearing for Dec. 11, FTC/DOJ Dec. 12

The House Judiciary Committee will hold its rescheduled hearing with Google CEO Sundar Pichai at 10 a.m. [Dec. 11](#) in 2141 Rayburn. The House Antitrust Law Subcommittee plans a separate rescheduled

hearing at 2 p.m. [Dec. 12](#) in the same room with FTC Chairman Joe Simons and Assistant Attorney General Makan Delrahim.

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Senate Commerce Committee Leaders Question Timing of Marriott Breach

Senate Commerce Committee leadership asked Marriott for answers on its recently disclosed data breach affecting up to 500 million guests (see [1811300038](#)). Chairman John Thune, R-S.D.; likely incoming Chairman Sen. Roger Wicker, R-Miss.; and Sen. Jerry Moran, R-Kan.'s letter dated Monday [asked](#) Marriott when it discovered the breach, which dates back to 2014. They sought specifics on a security alert Marriott [received](#) Sept. 8 concerning an attempt to access its Starwood guest reservation database. Marriott didn't comment.

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Wireline

Windstream Seeks Dismissal From Iowa Call Routing Probe

Windstream asked to be dismissed from an Iowa Utilities Board probe of call completion and least-cost routing issues involving Mahaska Communication. Windstream doesn't provide long-distance services to Mahaska and was unable "to recreate any of the calling or voice issues" that company described, the carrier [said](#) Monday in docket INU-2018-0003. "Windstream will cooperate fully," it pledged, but "does not provide long-distance service to these customers and therefore has little, if anything, to offer in this investigation."

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Wireless

Bidding in 28 GHz Auction Climbs to \$558 Million; Stage 2 Begins Thursday

Bid commitments increased to \$558.2 million in the 28 GHz band auction Tuesday, with provisionally winning bids on 2,720 of 3,072 licenses, FCC [results](#) show. The bid total was at \$526.3 million and PWBs were at 2,718 Monday (see [1812030057](#)). The auction takes a break Wednesday as agencies close to honor the late President George H.W. Bush (see [1812040014](#)). Bidding resumes Thursday and transitions to stage 2. "To meet the activity requirement in Stage Two and avoid using an activity rule waiver or having its eligibility reduced, a bidder must be active on at least 95% of its current bidding eligibility in each round," the agency [said](#).

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C Spire Calls T-Mobile an Uncooperative Roaming Partner

C Spire urged the FCC to reject T-Mobile buying Sprint, it [said](#) Monday in docket 18-197 on a meeting with an aide to Chairman Ajit Pai. T-Mobile wrongly says C Spire made false claims about refusing to meet

(see [1811200040](#)), C Spire said. “Serious concerns about the negative competitive impacts of the Proposed Transaction have been exacerbated by the refusal of T-Mobile to meet with C Spire in the period since the Petition was filed.” Rules don’t prevent the companies from negotiating agreements or settling differences, it said. T-Mobile is spreading a “false narrative that it has been a cooperative roaming partner,” said C Spire, saying it roams there only “because of the lack of a reasonable alternative in the respective geographic area, not because the T-Mobile offering is fair and competitive.” If the FCC OKs the deal, require fair and reasonable wholesale roaming and MVNO agreements, C Spire asked. T-Mobile didn’t comment Tuesday.

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FCC Allows WEA Tests Near Virginia Power Stations

The FCC Public Safety Bureau granted waiver to the Virginia Department of Emergency Management for wireless emergency alert tests in Williamsburg, Newport News and several counties within range of two power stations (see [1811300008](#)). The [order](#) conditions waiver on full implementation of outreach described by VDEM.

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MF-II Challenge Window Closes With 20.8 Million Broadband Speed Tests in 37 States

Mobility Fund Phase II challengers submitted data for 20.8 million broadband speed tests in 37 states and certified challenges to grid cells containing 122,980 square kilometers presumptively ineligible for support before the process closed Nov. 27, said an FCC public [notice](#) in docket 10-208 and Tuesday’s *Daily Digest*. It said 21 entities submitted and certified valid challenges. A window for responses will be announced later.

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WISPA, UTC Ask FCC to Give 3650-3700 MHz Licensees to 2023 to Finish CBRS Shift

Two groups asked the FCC to waive requirements that 3650-3700 MHz licensees complete the transition to Part 96 citizens broadband radio service rules by April 17, 2020. “In light of the delays in opening the 3550-3700 MHz band for commercial service under the CBRS rules and the uncertainty created by the subsequent and ongoing rulemaking proceeding, Licensees will require more time,” [petitioned](#) the Wireless ISP Association and the Utilities Technology Council, posted Monday in docket 18-353. They requested extension through Jan. 8, 2023, when “the last 3650-3700 MHz license expires.”

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Internet

Treasury Tells USPS to Hike Some Package Prices, Seize on E-Commerce Growth

The U.S. Postal Service should seize on e-commerce growth and charge market-based prices for mail and package items not deemed “essential postal services,” the Treasury Department [said](#) Tuesday. The

long-awaited report was prompted by President Donald Trump's criticism of Amazon (see [1804130059](#)). Between 2010 and 2018, USPS package volume doubled from 3.1 billion pieces to 6.2 billion pieces, and revenue grew from \$10.3 billion to \$21.5 billion, said Treasury. The increase in package revenue hasn't allowed the USPS to make up for dramatic declines in mail delivery. "Packages have not been priced with profitability in mind," the report said. Charging market prices for package delivery will "allow the USPS to optimize its income in order to fund its operations, capital expenditures, and long-term liabilities," the department said.

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Oath Agrees to Record \$5 Million Settlement Over COPPA Violations

Verizon's Oath agreed to pay \$4.95 million for advertisements targeting youngsters under 13, New York Attorney General Barbara Underwood (D) [announced](#) Tuesday. Oath, formerly AOL, "conducted billions of auctions for ad space on hundreds of websites the company knew" were used to target underage users, the announcement said. The settlement requires Oath adopt "comprehensive reforms to protect children from improper tracking." It's the largest penalty in Children's Online Privacy Protection Act enforcement history, Underwood's office said. "We are pleased to see this matter resolved and remain wholly committed to protecting children's privacy online," an Oath spokesperson said.

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Amazon, Netflix, Walmart Among Top Brands in Morning Consult Survey

Amazon repeated as No. 1 brand in net favorability with a 78.7 rating, Morning Consult [reported](#) Tuesday. The brand most people told friends about was Netflix, with 74 percent "very likely" to recommend it. Of 18-21-year-olds and millennials, 77 percent would be "very likely" to recommend the streaming service vs. 75 percent of Gen Xers and baby boomers (69 percent). Of retailers, 69 percent of survey respondents across household income levels said they had bought or were very likely to buy something from Walmart. Survey questions were fielded with over 1.5 million U.S. adults Q1 to early Q4.

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State Telecom

Alaska Commission Closed Due to Earthquake as Broadcasters, GCI Faces Some Impact

The Regulatory Commission of Alaska closed Monday and Tuesday due to Friday's magnitude 7.0 earthquake, an RCA spokesperson said Tuesday. There didn't seem to be a significant impact for telecom networks, she said. When power went out Friday, most voice services were out as well, but both were back by Saturday, she said. Some GCI Communications "facilities sustained damage," but "all of our employees and their families are safe," a spokesperson emailed. "GCI's core network, wireless network, and internet and cable TV services were largely unaffected, except instances related to regionalize[d] power outages." Some broadcasters were temporarily knocked off air by the earthquake, but only one AM station remains

down, said Alaska Broadcasters Association Executive Director Kathy Hiebert in an interview. Several stations suffered expensive damage to their buildings and equipment, Hiebert said. —**AB**

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8th Circuit Denies En Banc Hearing in VoIP Classification Case

The 8th U.S. Circuit Court of Appeals denied en banc rehearing of a ruling Charter Communications' interconnected VoIP is an information service not subject to state regulation by the Minnesota Public Utilities Commission (see [1811140003](#)). Tuesday's [order](#) (in Pacer) also denied rehearing by the same panel. Chief Judge Lavenski Smith would have granted en banc rehearing; Duane Benton and Jane Kelly didn't participate in consideration or decision. Charter and the PUC didn't comment.

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CPUC to Weigh Extension in Text Messaging Classification Case

Commissioners plan to vote Dec. 13 on extending to June 29 the statutory deadline for its proceeding on whether text messaging is a telecom service subject to state USF and other surcharges (see [1805250033](#)), said a California Public Utilities Commission [proposed decision](#) posted Tuesday in rulemaking 17-06-023. At the [meeting](#), CPUC members plan to vote on a draft [decision](#) in that docket to affirm text messaging is subject to the surcharges and open a second phase of the proceeding. The statutory deadline was Dec. 29, but CPUC wants to give "sufficient time to consider comments on the PD and issue a final decision," it said. The Nov. 9 draft "finds it has authority to collect Public Purpose Program surcharges under the Commission's All End User Surcharge Mechanism and Point of Sale Mechanism," and "intrastate text messaging services revenue is subject to user fees." Phase two is meant "to increase the consistency, transparency, and competitive neutrality of the Commission's surcharge mechanisms, as well as to consider methods to update the list of surchargeable services in a timely manner," it said. The meeting is one day after the FCC plans to vote on classifying wireless messaging as an information service (see [1811200048](#)).

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Ohio AG, Consumer Counsel Back State Bill to Stop Caller ID Spoofing

Ohio lawmakers should make it illegal to spoof caller ID to knowingly defraud customers, the Ohio Attorney General and the Ohio Consumers' Counsel said. In written [testimony](#) for a Tuesday hearing in the House Criminal Justice Committee, Assistant Consumers' Counsel Terry Etter supported [HB-597](#) and Senate companion [SB-290](#). Ohio law stops telemarketers only from blocking their calling ID information. "This intention in the law for Ohioans to see Caller ID information from telemarketers is undermined when the Caller ID information is spoofed," Etter said. Lawmakers should amend HB-597 to add spoofing to prohibited telemarketing, he said. Ohio AG Mike DeWine (R) sees "no legitimate business reason to use a fraudulent telephone number," he [testified](#), supporting HB-597. "My office is looking forward to having this additional tool to combat consumer fraud."

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Pa. PUC Should Wait to Reverse Pre-Empt FCC, Says Cable Group

The Pennsylvania Public Utility Commission should wait to reverse pre-empt the FCC on pole attachments until the dust settles on two recent FCC infrastructure orders taking effect early next year, [replied](#) the Broadband Cable Association of Pennsylvania, posted Monday in docket L-2018-3002672. If the PUC must proceed, adopt all current and future FCC pole-attachment rules, it asked. Some want the state to adopt the FCC regulations including those orders and future ones, while others want the PUC to take parts of the federal rules, BCAP said. “To evaluate these proposals properly, the Commission would need to undertake a careful weighing of the costs and benefits,” it said. “Without data on the impact of the FCC’s recent amendments to its pole attachment rules, it would be premature for the Commission to attempt to resolve these disputes over the effectiveness of the FCC’s new regime overall or the benefits and drawbacks.” Reconsideration petitions and court appeals could mean the federal rules change again, the association noted.

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International Telecom

Rep. Brady Lauds EU Dropping Digital Services Tax Proposal

The EU abandoning a proposal to tax digital services means the region won’t be singling out a “key global industry dominated by American companies,” [said](#) House Ways and Means Committee Chairman Kevin Brady, R-Texas, Tuesday. Instead of pursuing similar “double taxation,” other countries should con-

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tinue working through the Organisation for Economic Co-operation and Development “framework on the important global dialogue regarding the digital economy,” he said.

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Telecom Notes

Native Nations Task Force Meeting Compressed to 1 Day

The FCC Native Nations Communications Task Force, which was to meet Tuesday and Wednesday, canceled Wednesday’s portion, said a [public notice](#) in Tuesday’s *Daily Digest*. The agency is closed Wednesday in honor of the late President George H.W. Bush (see [1812030032](#)).

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Consumer Electronics

83% of Smart TVs Connected to Internet, Up From 70% in 2014, Says Parks

Eighty-three percent of smart TV owners connect their set to the internet, up from 70 percent four years ago, Parks Associates [reported](#) Tuesday. Smart TV ownership grew from 34 to 53 percent. “Rise of direct-to-consumer offerings and the blurring of lines between pay-TV and [over the top] are leading to increased fragmentation in the viewing experience, where consumers are having to face complex self-curating systems,” said Anthony Smith-Chaigneau, Nagra senior director-product marketing, ahead of a Parks video conference in Marina del Rey, California, next week. Service providers should embrace the cloud, act as aggregators and leverage data, he said.

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Broadcast

FCC Online TV-Set Rescanning Guide Comes as More Stations Repacking

The FCC posted an online guide to rescanning TV sets for consumers affected by the post-incentive auction repacking. “If you watch free over-the-air television with an antenna, you will need to rescan your TV set each time a station moves to a new frequency to be sure your TV recognizes the new frequency when you tune to that channel,” the [page](#) says. Though the agency has other online rescanning guides, the new page was released to coincide with the beginning of repacking’s phase 2, which began Saturday.

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Cable

2nd Circuit Crossed State Action Doctrine Line, PEG Petitioner Tells Supreme Court

The Supreme Court wants careful adherence to the “state action” doctrine, which separates purely private conduct from governmental action, but the 2nd U.S Circuit Court of Appeals “did not adhere—let

alone carefully,” said Manhattan Community Access, aka Manhattan Neighborhood Network (MNN), in a Supreme Court docket 17-1702 petitioner [brief](#) Tuesday. It said a 2nd Circuit decision earlier this year should be reversed since respondents haven’t alleged MNN is a state actor under any Supreme Court tests for holding a private entity subject to the First Amendment. It said the 2nd Circuit’s analysis on the pleadings “flies in the face of Supreme Court precedent” by determining public access channels are a constitutional public forum and thus its operators are state actors. Respondents didn’t comment. The 2nd Circuit reversed a lower court dismissal of a suit brought by two public access content producers suing MNN and staffers for First Amendment violations after they were banned from MNN facilities. The appellate court concluded public access channels are public forums and MNN a state actor since it was designated by the Manhattan borough president to run the public access channels there (see [1810170027](#)).

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Massachusetts Arguments Against Charter Petition ‘Too Clever by Half,’ NCTA Says

Massachusetts Department of Telecommunications and Cable’s argument that DirecTV Now doesn’t offer channels of service and its service isn’t comparable to Charter Communications’ cable as effective competition with Charter Communications (see [1810260026](#)) is a “ ‘gotcha’ argument [that] is too clever by half,” NCTA said in a docket 18-283 [posting](#) Monday. It said no statutory definition or policy rationale MDTC cited applies to the LEC test, and that statutory test doesn’t include the word “channel” but instead looks at comparable video programming service issues. Congress said an LEC-owned service offering comparable video service would exempt cable systems from rate regulation, and DirecTV Now obviously fits that bill, it said. Charter seeks a determination of effective competition in Massachusetts and Hawaii based on AT&T’s DirecTV Now virtual MVPD (see [1809170020](#)).

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Media Notes

‘Plenty of Room’ in Streaming for Disney to Succeed Without Harming Netflix, Says Sarandos

If Disney is “successful” with its [direct-to-consumer streaming service](#) launching in late 2019, it won’t be to the “detriment” of Netflix, Ted Sarandos, Netflix chief content officer, [told](#) a UBS investors conference Monday. “There’s plenty of room in this business for other players to be successful.” Sarandos doubts a live-sports offering, like that of ESPN Plus, would be conducive to Netflix, he said. “On-demand” is part of the Netflix “core proposition,” he said. With live sports, on-demand “adds almost no value to it,” he said. “People want to watch sports now. They want to know who won.” Should live sports ultimately become “the next best place to spend \$10 billion, I would look at it,” said Sarandos. “Relative to the business today and how we’re growing around the world, professional, scripted and unscripted programming is the best place to spend that money.” —PG

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Satellite

FTC Signs Off on Northrop Grumman/Orbital ATK, With Conditions

The FTC approved with conditions Northrop Grumman buying Orbital ATK, the agency [said](#) Tuesday. Under the modified final order terms, Northrop must make its solid rocket motors and related

services available on a nondiscriminatory basis to all competitors for missile contracts and must separate the SRM business from the rest of its operations. The settlement lets DOD appoint a compliance officer to oversee Northrup conduct related to the settlement. Commissioners OK'd the order 4-0-1, with new Commissioner Christine Wilson not participating. The deal, announced in September 2017, reflects defense contractor consolidation and isn't expected to affect the commercial space sector. (see [1709180041](#)).

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D-Orbit Suggests Means for Tackling Orbital Debris

A reduction in the 25-year rule, more work toward active space debris removal solutions and a dedicated and autonomous subsystem for satellite decommissioning would help reduce orbital debris proliferation, space services company D-Orbit said in an FCC docket 18-313 [posting](#) Monday. Satellites at orbits above 600 kilometers should be required to have propulsion capabilities for station-keeping and collision avoidance maneuvers, plus autonomous systems like propulsive modules for de-orbiting, it said. It urged requiring phasing between satellites when a number are deployed in the same orbit. Ideas to incentivize practices that would minimize orbital debris include a tax for every launch or object in orbit for every year of operations, or a deposit to licensing authorities, returned after end-of-life operations.

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Flat Panel Antenna Market, LEO Demand Not Headed in Same Direction, NSR Says

Low earth orbit (LEO) mega constellations are particularly focused on consumer broadband as a key market, but to reach those markets they need cheap flat panel antennas, even as FPA developments are headed in other directions with higher revenue potential, Northern Sky Research analyst Lluc Palerm-Serra [blogged](#) Monday. He said FPA mass production would help reduce costs, and as LEO constellations ramp up in the mid-2020s, FPAs could start having enough traction to lower prices.

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Communications Personals

Sen. Roger Wicker, R-Miss., names **John Keast**, ex-Cornerstone Government Affairs, staff director, Senate Commerce Committee ... ATIS names **Brent Struthers**, ex-Neustar, director, Secure Telephone Identity Governance Authority ... Entercom's **Eugene Levin** stepping down as principal accounting officer-controller; Assistant Controller-Treasurer **James Hamill** named interim principal accounting officer-controller.

Roku's **Chas Smith**, senior vice president and general manager-TVs and players, retiring end of Q1 ... Silver Peak appoints **Ken Laversin**, ex-Jasper Technologies, chief revenue officer; **Rick Valentine**, ex-Symantec, chief customer officer; and **Kathleen Swift**, ex-Ruckus Wireless, senior vice president-human resources.

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