

Communications Daily

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Top News

Innovation Month

'Spectrum Horizons,' Section 7 Rules Among Items Teed Up for Feb. 22 FCC Meeting

Chairman Ajit Pai proposed an NPRM on flexible rules for spectrum above 95 GHz, what the FCC calls “the outermost edge of usable spectrum,” for a vote at the Feb. 22 commissioners’ meeting. That and other items on a [tentative agenda](#) Thursday were expected (see [1801310065](#)). Pai [blogged](#) that February is “innovation month” at the agency. It would also examine rules implementing Section 7 of the Communications Act, which requires the FCC to respond to petitions or applications proposing new technologies and services within a year, and resolve petitions to reconsider USF Mobility Fund rules. Three other draft items aim to roll back “outdated and unnecessary regulations” on broadcasters, cable companies and payphone service providers, Pai said.

A fact sheet accompanying the “Spectrum Horizons” rulemaking said the agency is starting to see “an uptick” in interest in very high-frequency bands. It has no rules permitting licensed or unlicensed communications use of the bands “other than by amateur operators or on an experimental basis,” [it](#) said. “The time has come to let go of the reins with respect to these very high bands and start empowering U.S. innovators to test their ideas,” Pai [blogged](#). “The goal of this Spectrum Horizons proceeding would be to enable innovators and entrepreneurs to develop technology that can make effective use of this spectrum.”

The NPRM was in the works for months and initially looked ready for the December meeting (see [1711130059](#)). “Throughout its history, when the Commission has expanded access to what was thought to be the upper reaches of the usable spectrum, new technological advances have emerged to push the boundary of usable spectrum even further,” the notice says.

The draft proposes rules for fixed point-to-point use of up to 102.2 GHz of spectrum in different bands, based on existing 70/80/90 GHz rules “under which licensees obtain a nationwide non-exclusive license and register each link with a database manager.” It proposes to make 15.2 GHz of spectrum available for unlicensed use and a new category of experimental licenses for bands from 95 GHz to 3 THz. The docket is 18-21.

Pai also proposed rules on Section 7. Congress added the requirement for a decision within a year in 1983, but the FCC never approved implementing rules. In a speech early in his chairmanship, Pai said the commission would “breathe life” into the section (see [1703150020](#)).

“Establishing clear guidelines and procedures for Section 7 implementation would ensure that new technologies and services are identified early in the process, and that the FCC takes timely action where approval of these new technologies or services would serve the public interest,” Pai said. “Government shouldn’t be a bottleneck for entrepreneurs looking to design a better mousetrap.” The [NPRM](#) says “the regulatory path from technological breakthrough to authorization of service has been long and arduous.”

The draft rules say there’s no presumption the FCC will approve just because a proposal is filed under Section 7. The draft proposes requirements for those seeking such consideration and factors that will be considered. The draft proposes that the Office of Engineering and Technology, working with other staff, “evaluate the request and determine within 90 days whether the proposed technology or service qualifies for section 7 treatment.” The docket is 18-22.

A Mobility Fund II order addresses seven petitions for reconsideration of rules for the fund, designed to provide up to \$4.53 billion in high-cost support over 10 years for mobile voice and broadband coverage in unserved areas. “Resolving these questions would move us closer to the start of the Mobility Fund II reverse auction, and eventually the end of dead spots in rural America where wireless coverage simply isn’t available,” Pai said.

The draft proposes the FCC mostly deny the petitions, clarifying that the collocation requirement for MF-II applies to all newly constructed towers. The FCC would confirm its decision that MF-II recipients must receive a letter of credit before they get funds but allows them to reduce the value of the letter once a provider has met the 80 percent service milestone for the area covered.

Media, Payphone Items

A draft order would eliminate broadcaster and cable duties to keep paper copies of certain rules, following through on a September NPRM and Pai’s broader “media modernization” efforts. “We received unanimous support for this proposal, given that this information is now available and easily accessible online,” Pai wrote. The requirements “apply to low power TV, TV and FM translators, TV and FM booster stations, cable television relay station (CARS) licensees, and certain cable operators” (with 1,000 subscribers or more), said the [draft](#) for docket 17-231. Affected broadcast and cable entities would still be required “to be familiar” with mandates.

Another item would propose to end broadcaster duties to file “mid-term reports” (Form 397) on their employment practices about halfway into eight-year license terms. Staff reviews the reports and “informs the licensees of any necessary improvements in recruitment practices to ensure compliance” with equal employment opportunity rules, said a summary of a [draft NPRM](#) for docket 18-23. The reports provide “cer-

tain information that, with one exception, is also available in stations’ online public files,” Pai wrote. “In the digital era, it doesn’t make much sense to require someone to file what you can already access online.” He proposed “eliminating this filing requirement, while simultaneously maintaining the mid-term review,” though the draft would seek comment on how to identify stations remaining subject to that review.

Commissioners also will vote to scrap payphone service provider auditing and reporting duties. “As fewer and fewer people use payphones, compliance with these rules now costs carriers a large fraction of, *if not more than*, the total compensation the audits are meant to verify,” wrote Pai. An order would “eliminate the payphone call tracking system audit and associated reporting requirements,” said a summary of the [draft](#) for docket 17-141. It would “permit company officials, including but no longer limited to the chief financial officer, to certify that a completing carrier’s quarterly compensation payments to payphone service providers are accurate and complete” and “eliminate expired payphone compensation rules that no longer apply to any entity.” — *Howard Buskirk and David Kaut*

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'Odd and Disturbing'

4th Circuit's Cox Torrent Piracy Ruling Not Seen Clearing Up Hazy DMCA Areas

The 4th U.S. Circuit Court of Appeals Thursday largely upholding a finding that Cox Commu-nications was liable for willful contributory copyright infringement by ISP subscribers left unanswered questions about Digital Millennium Copyright Act safe harbor issues, experts told us. The lower court and appellate rulings give some guidance on issues like what constitutes repeat infringement, though not as much as many hoped, said IP lawyer Rick Sanders of Aaron Sanders. About the only thing clear for ISPs is

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to make sure they follow their policies—something Cox was blasted for not doing, said Public Knowledge Senior Counsel John Bergmayer.

Cox said it was “pleased” with the 4th Circuit’s docket 16-1972 [decision](#), which reaffirmed a lower court’s denial of a safe harbor defense for the cable operator and remanded the case for a new trial because of jury instruction errors. BMG didn’t comment.

The decision “sends an important message” that any entity relying on DMCA safe harbor protections needs to have a solid policy in place and must enforce it, said Sandra Aistars, director-copyright research and policy, George Mason School of Law Center for the Protection of IP. Sanders said the decision likely won’t result in policy shifts by other ISPs since Cox’s approach wasn’t normal. He said the lower court will come up with a streamlined approach for the remanded case, not allowing for more discovery.

Judge Frederick Motz joined by James Wynn and Dennis Shedd rejected Cox’s argument that repeat infringer means adjudicated repeat infringer. They said the company adopted a repeat infringer policy but “made every effort to avoid reasonably implementing” it, and its 13-strike process showed it was “very clearly determined not to terminate” subscribers repeatedly violating the policy by pirating BMG content via BitTorrent. The U.S. District Court in Alexandria, Virginia, decision (see [1608090047](#)) also didn’t provide much clarity for ISPs since Cox’s implementation of its own policy “was farcical,” Sanders said.

Aistars said Cox can’t muster support for this contention from past cases, and Copyright Act language wouldn’t make sense in other places if the interpretation were correct. She said the reason there isn’t much case law here is because “the law has never been ‘unsettled’ and courts and parties alike have relied on the plain language of the statute.”

Much of the new decision focused on a 2009 email from an executive overseeing the team that addressed subscriber violations, indicating the company’s “unwritten semi-policy” was to terminate customers for DMCA violations, then reactivate them with a clean slate. That “was odd and disturbing” and likely hard for Cox to shake off, said Syracuse University Technology Commercialization Law Center-Director Shubha Ghosh.

The court said ISPs can’t claim DMCA safe harbor protections for terminating customers “as a symbolic gesture” before soon reactivating them. It said a supposed policy change in 2012 that ended reactivations was meaningless because the ISP stopped doing any almost any deactivations.

The ruling offers little guidance on what’s reasonable termination plan, with the court not needing to get into that since it was clear Cox didn’t even follow its procedures, Bergmayer said. DMCA Section 512 gives safe harbor protection for companies with policies for terminating repeat infringers in “appropriate circumstances.” Bergmayer said what’s appropriate circumstances for termination of repeat infringers remains a gray area. He said there’s relatively little DMCA litigation on ISPs liability and repeat infringer policies and much more precedent and clarity on online platforms and takedown notices.

Since the district court ruling two years ago, small ISP clients reviewed their repeat infringer policies, with the \$25 million jury award shocking them and making them want to be sure about compliance, said communications lawyer Anthony Veach. He said Cox practices of not even trying to enforce repeat infringer policies were seemingly out of the norm, but many ISPs share some of Cox’s opinions and that terminating subscribers hurts revenue. Web-service sellers “don’t like being the copyright police for the content industry,” he said. He said ISPs not stripping settlement language out of Rightscorp DMCA notices

likely will now. He said the ruling leaves unanswered how many DMCA notices should result in customer termination, what the relevant time for counting those should be, and how long a provider should wait until restarting service.

Sanders said copyright enforcement firm Rightscorp, a party in interest here, likely wanted the 4th Circuit to rule ISP failure to pass along copyright violation notifications to subscribers meant a failure of reasonably implementing a repeat infringer policy, though the court didn't. He said broadband providers likely now don't think they need to pass those along. Rightscorp didn't comment.

The 4th Circuit agreed with Cox that the lower court erred in telling the jury it could impose liability for contributory infringement if they decided the company knew or should have known about such infringing activity. Citing patent law and the Supreme Court's *Sony* and *Grokster*, the court said contributory infringement requires proof of, at minimum, willful blindness not just negligence.

The appellate court also vacated the lower court's grant of attorney's fees and costs to BMG and its denial of fees and costs to Cox (see [1709110017](#)), saying the jury instructions holding requires vacation of the fees and awards. It wasn't addressing merits of the \$8 million.

Experts say it's unlikely the 4th Circuit decision will be appealed to the Supreme Court. There aren't conflicts among circuit courts this brings to the front, Ghosh said. — *Matt Daneman*

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Noise Floor

Caution Urged by CTA, Others if FCC Considers Spectrum Principles

Commenters raised concerns in comments in docket 17-340 about the nine spectrum policy principles recommended by the FCC Technological Advisory Council. The National Spectrum Management Association (NSMA), T-Mobile and CTIA said the FCC should move with care in further steps. CTA said TAC should further explore how industry itself can help to prevent and resolve interference disputes. The Office of Engineering and Technology asked in December whether the FCC should implement and formalize the recommendations as spectrum policies (see [1801310055](#)). OET asked whether it should more widely adopt “risk-informed interference assessment and statistical service rules.”

The principles reflect growing concerns about the rising spectrum noise floor as more wireless devices are deployed. TAC members said congestion is a threat to the IoT (see [1705040053](#)). Among the TAC principles are: “All [radio] services should plan for non-harmful interference from signals that are nearby in frequency, space or time, both now and for any changes that occur in the future” and “even under ideal conditions, the electromagnetic environment is unpredictable. Operators should expect and plan for occasional service degradation or interruption.” The principles would hold receivers responsible for mitigating interference outside their assigned channels and transmitters for limiting the transmitted energy that's outside their assigned frequencies.

CTA said spectrum is becoming more crowded, raising interference concerns, but FCC regulations often aren't the best answer. “The expertise of incumbent and potential users of a band as well as that of users and potential users of affected adjacent bands positions industry to identify band-by-band interference

limits that incentivize improved spectral efficiency while avoiding solely top-down and potentially innovation-stifling government mandates,” CTA [commented](#). It conceded that “packing more communications into the same amount of available spectrum” will require improved techniques for mitigating interference among systems operating in the same or nearby bands.

The NSMA warned further work is needed before the FCC adopts some of the TAC recommendations. “Further investigations are needed before broad statements of ‘receiver responsibilities’ are to be considered as generally applicable to all classes of receiving devices,” the association [said](#). NSMA disagreed with the principle that the FCC “may apply Interference Limits to quantify rights of protection from harmful interference.” Instead, industry “should be the final source of appropriate interference limits,” a stance reflected in current rules, the association said.

NSMA also challenged the general thrust of the principles. TAC “seems to imply that all services require the same level of protection,” the association said. “That is simply not true. In fact, not all services have the same concept of degradation. Public safety and critical infrastructure services demand a higher level of protection than do streaming movies.”

T-Mobile said spectrum issues are complicated. “Remain mindful that each frequency band has its own unique challenges when considering whether to reallocate spectrum or modify service rules,” the carrier [commented](#). “Each band has its own mix of incumbent users, both within the band and in adjacent bands and the physical properties of each band differs depending on where it falls in the spectrum.” CTIA [urged](#) “regulatory humility” if the agency acts on the principles. Be cautious on “any attempt to establish top-down interference principles or rules, particularly if they were to be applied to commercial mobile services,” CTIA said.

The National Public Safety Telecommunications Council said if the FCC acts on the principles, it must engineering staff. “Setting interference thresholds will be especially complex and challenging, especially for communications systems that support safety-of-life, where any interference could have potentially drastic consequences,” the group [said](#).

The Wireless Broadband Alliance said the recommendations mostly make sense. “While few in number and concise in wording,” they “address some increasingly critical aspects of spectrum management—especially given the growing trend towards multiple services making use of the same frequency bands,” the group [said](#), saying don’t adopt formal rules, only nonbinding principles. “The distinction is critically important, as mandatory rules must be followed unless a rule waiver request—supported by good cause shown—is filed and approved.” — *Howard Buskirk*

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'Political Guidance' Sought

Tussles Over Online Content Monitoring, Publisher's Right Slow EU Copyright Reform

EU efforts to finalize revamped copyright rules have been hampered by lack of consensus among governments and lawmakers on what to do about copyright protection in user-uploaded content and whether news publishers should have a new right to protect extracts of their publications that appear online, stakeholders said. The so-called “value-added” provision and the “snippet tax” are contained in articles 13

and 11, respectively, of the European Commission's [proposed directive](#) for copyright in the digital single market. The provisions are so controversial that the new EU Bulgarian presidency asked for "political guidance" on how to resolve the standoff.

Debate over provisions has been rumbling for some time in the European Parliament, and Council. Parliamentary committees issued reports on the EC proposal (see [1706120005](#)). A vote by the Legal Affairs (JURI) Committee, which has the lead in vetting the draft legislation, was delayed to March 26-27, the committee [tweeted](#).

Governments have made progress toward agreement on some provisions, but the key outstanding issues are protection of news publishers and measures, such as mandatory filtering, to be taken by information society service providers that store and give access to large amounts of content uploaded by their users, noted a Dec. 13 [compromise proposal](#) by the previous (Estonian) presidency. The latter issue raised concerns from some countries about whether the EC proposal is compatible with fundamental rights such as free speech and privacy and the EU e-commerce directive on safe harbor limited liability for internet intermediaries, the document said.

Given the status of the two issues, "political guidance should be sought," the Bulgarian Presidency said in a Jan. 16 memo (available [here](#), document 5284/18). It asked for input on whether Article 13 should clarify that services that store and give access to user-uploaded content aren't eligible for safe harbor protection and would therefore be primarily liable for copyright breaches when their users upload infringing content. On Article 11, the Estonian presidency noted "delegations have acknowledged that press publishers face problems in exploiting and enforcing their rights in press publications in the digital environment but the views diverge as to the underlying reasons for the problems and possible solutions." Options under discussion: Either give publishers exclusive "neighboring right" to enforce copyright in news snippets posted online, or give them presumption of entitlement to license and enforce the rights in their publications, it said. Neither option "as they stand have got enough support so far," the Bulgarian presidency said.

Other European Parliament committees backed the principle of a stand-alone publishers' right, albeit with some proposed tweaking, but the Internal Market and JURI committees oppose it, said Hogan Lovells (London) intellectual property lawyer Alistair Shaw, whose firm represents content owners, publishers and platforms. JURI's draft report proposes a so-called "presumption right: that is a presumption that the publisher represents the author" (copyright owner) and has legal standing to sue, he said. That position is backed by several academic reports, including a September one commissioned by JURI and a recently leaked 2016 economic study for the EC that found no economic basis for creating the new right, he said.

With the JURI vote some way off, supporters of the proposed right might be able to persuade lawmakers to revise the draft, Shaw said. Since the new rapporteur for the JURI report is a member of the European People's Party, which favors the publishers' right, the change could happen, he said.

The request for guidance "means that negotiations on both articles carried out in technical meetings are not progressing, due to important questions about the scope and consequences of these articles as well as strong differences of opinions between Member States," [blogged](#) Computer & Communications Industry Association Europe Public Policy Manager Maud Sacquet Jan. 17. The matter was handed over to governments' deputy permanent representatives for political decisions, she said. A CCIA project opposes targeting news snippets and believes adoption of Article 13 "would be the end of Internet as we know it," forcing websites hosting content created by users to be liable for policing the material and imposing broad censorship online due to mandatory filtering, she wrote.

The European Publishers Council isn't happy with EU Council proposals for a publishers' right, either. Neither a new right as proposed nor a presumption of entitlements "is a compromise," a legal analysis for EPC said. The EU Council version of a new right would, unlike the original EC approach, substantially reduce the scope of protection by not covering short excerpts of news-media products that don't constitute an "expression of the intellectual creation of the author," it said: Both options would fail to strengthen publishers' position on search engines and news aggregators and "would impair it even further" because the "inevitable effect" of either choice would be that the unauthorized exploitation of publications "will be accepted by the law."

The EU Council now appears to be trending toward the publishers' right, JURI to be backing away, Shaw said. But a lot could happen in both bodies, he added. — *Dugie Standeford*

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Industry Groups Say FCC Definition of 'Continuing' Rule Violations Should Exclude 4 Categories

Telecom groups said the FCC should narrow its definition of "continuing violations" of rules to exclude four types of infractions. Noting a petition to reconsider a decision setting treble damages for rule violations on payments to USF and other funding programs, CTIA, Incompas, NCTA and USTelecom said the agency's definition "is inconsistent with the one-year statute of limitations for non-broadcast Notices of Apparent Liability ('NALs') contained in the Communications Act" and with court precedent. The one-year statute of limitations "is intended to create 'repose' and does not continue because the violation either has not been 'cured' or has continuing effects," said their [filing](#) Wednesday in docket 16-330 on a meeting with Enforcement Bureau Chief Rosemary Harold and other staffers. They said continuing violations shouldn't include: "(1) failure to make (or timely make) a required regulatory filing; (2) the inclusion of incorrect information in a regulatory filing; (3) failure to make (or timely make) a required [USF] or other regulatory payment; and (4) failure to return improperly received funds to the USF or other FCC funds." They noted then-Commissioner Ajit Pai voiced views "consistent with our position" in NAL dissents after their petition.

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Innovation Key in Competition Enforcement, Not Behavioral Remedies or Short-Term Prices, Delrahim Says

Competition law enforcement worldwide needs to pay less attention to short-term pricing issues and more to innovation and growth that deliver long-term value to consumers, DOJ antitrust head Makan Delrahim said Thursday at the U.S. Embassy in Beijing, according to prepared [remarks](#). He said remedies to antitrust violations must be approached cautiously, calling himself "generally skeptical" of behavioral remedies "and even more so" of licensing requirements that could disincite technological developments. Innovation "can be unsettling and disruptive," but ultimately it will result in the most consumer benefit, he said: But there can be situations where the exercise of patent rights "should attract antitrust scrutiny," and patent holders aren't immune from antitrust laws. He said China's establishment of dedicated IP courts is

“a very positive step” toward engendering faith in the patent system, and such changes likely are connected Chinese companies moving from implementers of IP rights to innovators and holders of them. As China increasingly becomes an innovation economy, its progress “can be amplified—and its prosperity increased” via promotion and protection of IP rights, he said. The Antitrust Division head’s general skepticism of behavioral remedies makes it less likely to settle so AT&T can buy Time Warner (see [1801260002](#)).

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USF Contribution Factor Could Drop to 18.3%, if Revenue Stays Flat, Gregg Says

The USF contribution factor could drop in Q2 from 19.5 percent to 18.3 percent of carriers’ U.S. international and international (long-distance) telecom end-user revenue, if the revenue holds steady, said industry consultant Billy Jack Gregg’s quarterly email update Wednesday. He based his estimate on the Universal Service Administrative Co.’s projection that adjusted Q2 USF demand would be \$1.97 billion, \$113.4 million less than Q1. “Out of period adjustments,” primarily in the high-cost and school and library funds, are “the primary cause of the decrease in quarter-to-quarter USF demand,” he said. If the industry revenue base stays constant, that will produce a contribution factor of 18.3 percent, but he noted that base has been trending down and a new decline would produce a higher factor. USAC’s revenue base is due out by month’s end, he said.

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Correction

Citizens Against Government Waste is the name of the group that welcomed a proposal by FCC Commissioners Mignon Clyburn and Mike O’Rielly to specify rate-of-return telco expenses that couldn’t be reimbursed through USF support or the rate base (see [1801310057](#)).

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USAC Releases Updated Lifeline National Verifier Plan Noting Launch Delay, Tribal Changes

Universal Service Administrative Co. issued its updated Lifeline national verifier plan for the FCC low-income broadband and voice subsidy program. A 2016 commission order authorized creation of a Lifeline national entity to standardize verification of consumer Lifeline eligibility, and required USAC to report on implementation progress every six months. The plan noted the FCC delayed the national verifier’s (NV) Dec. 5, 2017, soft launch and March 13, 2018, hard launch target dates in six initial states to address issues about Federal Information Security Management Act (FISMA) compliance (see [1712010042](#)). “Functional development of the service provider portal is complete and the FISMA security validation is the final step before the soft launch can occur,” said the [plan](#) posted Thursday in docket 11-42. “At soft launch, service providers in the six states will be able, but not required, to use the NV system. At hard launch, service providers in the six states will be required to use the NV. Consumers in the six states will also be able to use the system at this time.” The six states are Colorado, Mississippi, Montana, New Mexico, Utah and Wyoming. The plan also noted USAC and the FCC are implementing tribal Lifeline USF changes adopted in December that affect NV systems.

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Capitol Hill

Trump, Cohn Reinforce Infrastructure Goals to Lawmakers; Democrats Seek \$40 Billion for Broadband

President Donald Trump again encouraged Congress to move forward on infrastructure legislation once his administration releases a long-anticipated legislative package in coming weeks. Trump's infrastructure message during a speech Thursday at Capitol Hill Republicans' retreat in White Sulphur Springs, West Virginia, echoed what he said during his Tuesday State of the Union. As during that speech (see [1801310071](#)), Trump didn't specifically mention broadband. "We can rebuild our crumbling infrastructure, and we will," Trump told lawmakers: Congress should "streamline the horrible approval process," bringing it down "ideally to one year. Two years is our goal, but one year is our real goal." The overarching goal is to build new infrastructure projects "under budget and ahead of schedule," Trump said. National Economic Council Director Gary Cohn separately told GOP lawmakers Thursday the plan would include federal funding for infrastructure projects in rural areas that would be under governors' control, an official told us. Broadband projects would be eligible for some of the funding set aside in a rural infrastructure program detailed in a set of Trump administration funding principles for the infrastructure package that leaked last week (see [1801220035](#)). Cohn apparently said the administration is open to Congress exploring a range of options for paying for any federal funding included in final legislation. Appropriations Committee ranking member Patrick Leahy of Vermont, Communications Subcommittee ranking member Brian Schatz of Hawaii and 14 other Senate Democrats jointly urged Trump Thursday to include at least \$40 billion in dedicated broadband funding. "In an increasingly interconnected world and global economy, we must include in our discussion of infrastructure not just roads, bridges and waterways, but also high-speed internet access," they [wrote](#) to Trump.

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House Science Demands Full DHS Information on Removal of Kaspersky Products

House Science Committee Chairman Lamar Smith, R-Texas, demanded Thursday the Department of Homeland Security give the committee a full response to its December request for information proving federal agencies are removing Kaspersky Lab software from federal IT systems. The Moscow-based firm is under fire after reports vulnerabilities in its software enabled Russia to breach federal systems (see [1712060045](#)). House Science originally sought response by Dec. 19. The company subsequently sought court reversal of DHS' ban (see [1712180074](#)). The department indicated to House Science it could provide only part of the requested information because of the lawsuit. The committee still “expects a full and complete response” by Feb. 8 and “will consider use of the compulsory process to obtain the information” absent compliance, Smith wrote Secretary Kirstjen Nielsen. The agency didn't comment.

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Wireline

Phoenix Center Report Says 25 Mbps Doesn't Provide Broad Economic Gains Over 10 Mbps

Broadband speeds of 25 Mbps don't appear to offer major economic gains compared to 10 Mbps, the Phoenix Center reported Thursday. “While higher speeds may be of private value to users, there appears to be no broader economic payoff from higher-speed connections, at least when that difference is between download speeds of 10 Mbps and 25 Mbps,” said a release on the report by Chief Economist George Ford. The FCC's fixed service benchmark for broadband-like advanced telecom capability (ATC) is 25 Mbps, and its high-cost USF benchmark is 10 Mbps. Examining data from a national broadband map and the Bureau of Economic Analysis, Ford compared employment, income and labor earnings growth rates of U.S. counties with predominantly 25 Mbps and those with predominantly 10 Mbps. Ford controlled for county differences in population, education and other factors, the release said. Telecom Act Section 706 report on ATC deployment is effectively due Friday (see [1801180053](#) and [1801230027](#)).

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FCC PN Sets CAF II Fixed Broadband/Voice Subsidy Auction Procedures

The FCC released a public notice Thursday setting bidding and application procedures for a Connect America Fund Phase II auction of subsidies for fixed broadband and voice services in areas traditionally served by major telcos. The 111-page PN text in docket 17-182 was approved 5-0 by commissioners Tuesday (see [1801300032](#)).

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Windstream to Offer AT&T's DirecTV Satellite-TV, Streaming Services

Windstream said it will offer AT&T's DirecTV satellite-TV and internet streaming services to residential consumers across its service area. The DirecTV services “will provide a perfect complement to

Windstream's high-speed internet service—Kinetic by Windstream—that will give customers affordable, diverse options for getting the programming they want and watching that content whether they are at home or on the go," said a Windstream [release](#) Thursday.

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Wireless

Motivation 'High' Among Smartphone OEMs to Bow 5G Devices in 2019, Says Qualcomm

The "amended and expanded" long-term licensing agreement Qualcomm signed with Samsung is contingent on Samsung withdrawing its opposition to Qualcomm's appeal of the South Korean Fair Trade Commission's [decision](#) fining Qualcomm \$865 million for violating South Korean competition laws, said Qualcomm CEO Steve Mollenkopf on a Wednesday earnings call. Qualcomm's separate "multiyear strategic agreement" with Samsung applies to "various technology areas and across a range of mobile devices," said Mollenkopf. "This agreement expands the companies' long-standing relationship as technology and business partners into 2018 and beyond as we transition to 5G." On 5G, Qualcomm is "working with a number of OEMs to have smartphone launches in the first half of 2019," said President Cristiano Amon in Q&A. There's "high" motivation among the smartphone OEMs to stage 5G product launches in 2019's first half, and "we're marching towards that date," he said. Amon doesn't see 5G becoming "a significant contributor of volumes" until 2020, but "early launches in '19 are very important" because they "define your competitive position and the ability to have a mature product, so you can ramp volumes in premier devices" starting in 2020. —PG

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New App-Based Connected Car Camera Uses LTE

Backed by \$21 million in Series A funding, including from CSAA Insurance, Owl [launched](#) a car cam Thursday, calling it the first such LTE-connected product. It's designed to capture crashes, break-ins, dents and traffic stops, using video, sensors and intelligent software, including a camera aimed inside the auto. It can alert owners via an app of problems.

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Internet

FTC Reviewing Moran, Blumenthal Request for Probe Into Claims Devumi Sold Fake Social Accounts

The FTC is reviewing a request from Senate Consumer Protection Subcommittee leaders to probe social media marketing firm Devumi's activities, a spokeswoman said Thursday. Subcommittee Chairman Jerry Moran, R-Kan., and ranking member Richard Blumenthal, D-Conn., [seek](#) investigation amid reports Devumi "sells a panoply of social media actions, including followers," on Twitter and other platforms. Devumi claims to "help clients increase their social media presence" but "in reality, the company allegedly uses bots to create fake social media accounts," the senators wrote acting FTC Chairman Maureen Ohlhausen. Those activities constitute a "unique kind of social identity theft" that could mean it's "engaged

in unfair or deceptive practices,” grounds for an investigation under FTC Act Section 5, the senators said. New York Attorney General Eric Schneiderman (D) also promised to investigate whether Devumi engaged in unlawful “impersonation and deception.” The company didn’t comment.

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State Telecom

EFF, State Senator Clash on Net Neutrality Pre-emption Risk

The net neutrality bill passed by California’s Senate is legally vulnerable and leaves money on the table, the Electronic Frontier Foundation [blogged](#) Wednesday. But a spokesman for Senate President Kevin de León (D) Thursday said [SB-460](#) could survive legal challenge. Senators voted 21-12 Monday to pass de León’s bill (see [1801300025](#)). Mandating that ISPs follow net neutrality in California could be pre-empted, while restricting state contracts to net neutral broadband providers doesn’t go far enough, said EFF Legislative Counsel Ernesto Falcon. The state also should restrict state broadband subsidies—worth hundreds of millions of dollars—and utility pole access and local franchise agreements, he said. EFF wants a separate California net neutrality bill ([SB-822](#)) to cover what’s missing in SB-460. The de León spokesman replied that EFF is “in the minority of experts who think the bill has pre-emption issues.” De León’s office is working with Stanford University and University of California, Berkeley law school professors; including Berkeley’s Tejas Narechania, a FCC special counsel 2012-13 who knows pre-emption and net neutrality issues, the spokesman said. “Our experts advise us that while regulating interstate internet activities may be preempted by federal law ... states are permitted to enact laws associated with consumer protection, contracts, and business and advertising practices.” Meanwhile, San Francisco Mayor Mark Farrell (D) [announced](#) a citywide fiber network he promised will follow net neutrality principles and protect privacy. The city Wednesday issued a [request](#) for qualifications. “Trump’s hand-picked FCC and Republicans in Congress have dismantled crucial net neutrality, privacy, and consumer protections,” Farrell said. “We will provide an alternative that favors the general public and San Francisco values, not corporate interests.” The FCC declined comment. In Hawaii, a House committee voted 8-0 Wednesday to clear net neutrality bill [HB-1995](#) that would establish a task force to study creating a state-owned ISP (see [1801260027](#)).

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Tennessee Tees Up Small-Cells Bill

Tennessee Republicans introduced a small-cells bill Wednesday to streamline 5G wireless infrastructure deployment by pre-empting local siting authority. [HB-2279](#) is similar to bills in many other states (see [1801050033](#)). It would cap application fees at \$100 for each of the first five facilities and \$50 for each additional small cell; maximum annual rate for collocation would be \$35. The Tennessee Municipal League is in contact with AT&T, with no negotiations so far, a league spokeswoman said Thursday.

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Colorado Bill Would Spend \$75 Million on Broadband Over 5 Years

A Colorado Senate panel unanimously OK’d a broadband bill ([SB-002](#)) to spend about \$75 million over the next five years to upgrade connectivity in unserved areas to speeds of at least 10 Mbps. The Busi-

ness, Labor and Technology Committee voted 7-0 Wednesday for the bill defining unserved areas as those that aren't receiving federal broadband support and are unincorporated or within a city with fewer than 7,500 people. Legislative Council Staff released a [fiscal note](#) on the bill earlier this week.

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Telecom Notes

FCC Disability Advisory Committee to Meet Feb. 28

The FCC Disability Advisory Committee meets Feb. 28 at 9 a.m. in the Commission Meeting Room, said a Thursday [notice](#). Among items expected to be discussed is a report on best practices for the aural description of visual but non-textual emergency information provided by broadcasters, and updates on emergency communications, technology transitions and relay and equipment distribution.

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Broadcast

\$115,000 Underwriting Violation Fine Levied Against NCEs

The Cesar Chavez Foundation will pay \$115,000, have a one-year moratorium on underwriting from for-profit entities and set up a compliance plan, under a consent decree the FCC announced Thursday. The agency said the settlement is the largest penalty for violations of its underwriting rules. An Enforcement Bureau [order](#) said the foundation FM's KNAI Phoenix and KUFW Woodlake, California, broadcast announcements between August 2016 and March 2017 promoting goods or services of its financial contributors despite being noncommercial educational stations. NCEs can name underwriters but can't promote those underwriters' businesses, products or services. In a statement, the foundation said it "fully cooperated with the FCC and accepts its findings. This has been a learning experience for the organization and as we move forward in polarizing times we will continue being a voice for our community of one million daily listeners across 11 stations in four states."

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ATSC 3.0 Order to Take Effect March 5

The FCC order authorizing ATSC 3.0 voluntary deployment is to take effect March 5, as it's being [published](#) in Friday's *Federal Register*. Commissioners approved the order Nov. 16 in a 3-2 party-line vote (see [1711160060](#)).

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Comcast NBCU's Telemundo Buys ZGS' TV Stations

Comcast NBCUniversal's Telemundo Station Group completed the takeover from ZGS Communications of TV stations in several markets, the buyer [announced](#) Thursday. Most of the acquired outlets

are Class A's, and one full power, KTDO Las Cruces, New Mexico, it noted: "Applications to acquire the stations in Providence and Raleigh will be filed when the channel sharing arrangements in those markets have been finalized." Other ZGS stations Comcast bought include WTMO-CD Orlando and four others in Florida; WZTD-LD Richmond, Virginia; and WDMR-LD Springfield, Massachusetts.

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Cable

Time Warner Sees Record HBO, Cinemax Subscriber Jump in 2017

Time Warner added 5 million U.S. HBO and Cinemax subscribers in 2017, its largest annual increase, said its Q4 earnings announcement Thursday. It said HBO in November started 11 over-the-top services in Central Europe. It said revenue overall rose 9 percent to \$8.6 billion and it recognized \$279 million of costs for the year related AT&T's planned takeover. For 2018, TW expects Turner full-year subscription revenue to be up a mid-single-digit percentage compared to 2017, and programming costs to moderate compared with 2017. It expects Home Box Office—which includes HBO and Cinemax—subscription revenue to be up at a similar rate as 2017, though content and other revenue to be down significantly due to the mix of home video releases and the comparison to international licensing deals done in 2017. AT&T hopes to prevail in court so it can buy TW, AT&T's CEO said on its Q4 call Wednesday (see [1801310074](#)).

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FCC Deems Starz's Altice Complaint 'Permit but Disclose'

The FCC Media Bureau established "permit-but-disclose" ex parte procedures for Starz's complaint against Altice USA, said a docket 18-9 public notice Wednesday. Starz alleges the Jan. 1 blackout of its channels on Altice's Cablevision violated rules requiring 30-day notice to subscribers (see [1801160058](#)).

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Media Notes

CBS, Viacom Say Boards Looking at Possible Combination

The boards of CBS and Viacom set up a special committees of independent directors to evaluate a possible deal, they said (see here and here) Thursday. The companies also looked at combining in 2016, though talks went nowhere (see [1612120060](#)).

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Comcast Defenses in OTT Complaint Ignoring Merits, Wave Says

NBCUniversal and three Comcast regional sports networks rely on procedural defenses and are barely trying to justify their conduct in Wave's carriage and streaming complaint, the smaller operator said

in an FCC docket 17-361 [reply](#) posted Thursday. That they wrongly argue Wave's petition should be treated as an untimely filed program access complaint (see [1801230036](#)) highlights how important it is to address the merits, since such inaction "would green-light egregious and illegal conduct" by cable-affiliated programmers that wait at least a year before signing their programming deals, Wave said. It said the increased distribution of the RSN content via online streaming undercuts NBCU justification of strict enforcement of the minimum distribution requirements in the programming agreements with Wave. Comcast didn't comment.

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Pandora Cuts More Jobs But Savings Won't Go to Bottom Line; Stock Gains

Pandora will cut 5 percent of its workforce in a \$45 million cost restructuring, said an SEC [filing](#) Wednesday. Shifting resources to advertising technology and audience development is designed to prioritize growth initiatives, [said](#) the company. Pandora cut 7 percent of its workforce a year ago, said an earlier [filing](#). It reported 2,488 employees in its most recent annual report, Dec. 31, 2016; the company wouldn't comment further. Growth initiatives include ad and marketing tech, non-music content and device integration. The audio market soon will reach "a major inflection point," said CEO Roger Lynch. With the company planning to use its savings in other ways, "there will be no near-term boost to profitability," noted Dougherty & Co. analyst Steven Frankel. Shares closed up 7.4 percent Thursday at \$5.13. —*RD*

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Roku Now Supports YouTube TV

Virtual MVPD YouTube TV is now available via Roku devices and Roku TVs, Roku [said](#) Thursday.

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Satellite

Boeing Seeks More V-Band Frequencies for LEO ISLs

Boeing wants to add more inter-satellite links (ISL) to its planned V-band constellation. In an FCC International Bureau [filing](#) Wednesday, it sought authorization for ISLs in the 65-71 GHz band. Those would be atop the ISLs pending authorization in the 47.2-50.2 GHz and 50.4-51.4 GHz bands (see [1703020036](#)), it said. The 65-71 GHz band is allocated on a primary basis for geostationary and non-geostationary orbit ISL transmissions, and Boeing said it wants to use the ISLs in the band for transmissions among its proposed low earth orbit satellites. The company said it needs the 65-71 GHz spectrum because of uncertainty about whether it can coordinate sufficient access to V- and Ka-band frequencies for ISL transmissions using just its previously requested ISL spectrum.

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Pointing to IoT Plans, Dish Buys Parking Tech Firm ParkiFi

Dish Network bought connected parking technology company ParkiFi, specializing in IoT-enabled wireless parking sensors, and will continue to operate under that brand, Dish [said](#) Thursday. Dish noted plans to build its own national narrowband IoT network by early 2020 (see [1703080026](#)).

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Communications Personals

Wilkinson Barker hires as senior counsels **Ronald Siegel**, **Richard Helmick** and **Ellen Edmundson**, working on broadcast regulation and ex-Cohn and Marks, ending operations ... Mintz Levin hires new technology/wireless law expert **Laura Stefani** as of counsel, Communications practice, which also adds **Elana Reman Safner** from K&L Gates as associate, working on cable and broadband ... Davis Polk adds intellectual property litigator who has represented streaming-video and cable companies **Ashok Ramani** from Kecker & Van Nest as partner, Litigation Department.

Ex-Alaska Regulatory Commissioner **Paul Lisankie** to assume rest of term of Commissioner **Norman Rokeberg**, [retiring](#); term expires March 2019 ... California Public Utilities Commission appoints from California Air Resources Board **Alice Stebbins** as executive director, effective Feb. 21, succeeding **Timothy Sullivan**, retiring ... New America's Open Technology Institute hires **Sharon Bradford Franklin**, ex-Privacy and Civil Liberties Oversight Board (see [1612270051](#)), as director-surveillance and cybersecurity policy; she had been an OTI senior fellow as she was a nonresident fellow, Georgetown Center on National Security and the Law.

New Enterprise Associates hires **Jeff Immelt**, ex-General Electric CEO, as venture partner, working with technology and healthcare companies the venture capital firm invests in ... Alion advances **Alan Dietrich** to senior vice president/group manager, Rapid Solutions Group ... FCC Disability Advisory Committee (see [1802010044](#)) names **Will Schell** its designated federal officer, succeeding **Elaine Gardner**, retiring from the commission.

E.W. Scripps promotes **Kim Williams** to lead director and nominates to board **Lauren Rich Fine**, Gries Financial, for election by shareholders at the annual meeting; **Marvin Quin**, lead director, to retire from the board when his term ends in May ... Extreme Networks appoints **Maryam Alexandrian-Adams**, ex-Dell, to the board.

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