

# Communications Daily

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## Paid Internet Peering on the Rise, Disputes Possible

Paid Internet peering agreements are on the rise, a trend Internet experts told us reflects evolving business models used to deliver content to end-users. Some said disputes over peering connections have become more common and more contentious. The recent Verizon-Cogent disagreement over a deal (CD June 21 p1) is just the latest example of an Internet system still coming to grips with a deluge of over-the-top content that could make traditional peering arrangements untenable, said those we surveyed last week. As disputes become more prevalent and the threat of an Internet slowdown looms, some wonder whether government regulation might have a place as a final backstop to keep the data flowing.

"I think of these disputes mostly as growing pains," said Constantine Dovrolis, associate professor of computer science at Georgia Tech. Dovrolis, who has published several papers on the evolution of peering agreements, thinks settlement-free peering is a vestige from the Internet's early history. "We really need some new ways to think about peering," he said. "Paid peering may actually end up being the norm, rather than the exception."

For several years, interconnections between ISPs were either transit — paying for access to the entire Internet — or settlement-free peering, where different ISPs exchanged traffic between their networks for free. A 2011 survey by Packet Clearing House examined 142,000 peering agreements and found 0.49 percent were formalized in written contracts (<http://bit.ly/12qQuaS>). Tier 1 ISPs often had written agreements and policies, officials say. But the vast majority of peering arrangements were built on handshake agreements, the report said. Akamai has thousands of peering relationships, and most are handshake agreements, Chief Architect Patrick Gilmore told us. "I have signed one peering agreement in the entire time at Akamai," he said. "One piece of paper."

That trust is degrading, said network operators. Fewer service providers are engaging in handshake agreements. Many big

ones, including Verizon, Comcast, Charter Communications and AT&T, all list detailed peering policies online. In "all the discussions I've been in, they've been discussed as contractual," said Charlie Baker, director-product management at caching company PeerApp. In the "good old days" when there were "five or six peering sites across the country," peering agreements were based on loose handshake deals, said Bob Stovall, vice president-network operations and engineering at Merit, an Ann Arbor, Mich.-based non-profit regional ISP with customers including universities. Now, they're frequently spelled out in contracts — contracts that increasingly involve payments, he said.

"More and more ISPs are starting to charge for transit," said Vishal Misra, associate professor of computer science at Columbia University. Misra said he predicted the change in academic papers a few years back. When peering arrangements were established years ago, "the Internet was a very symmetric looking entity," he said, with largely similar amounts of traffic traveling between universities. As the Internet has become more commercial, it has partitioned into different entities, with content providers like Netflix and Amazon on one side, and "eyeballs" on the other side. And traffic has become very asymmetric, he said. Verizon's David Young, vice president-federal regulatory affairs, cited the "unbalanced" traffic load when he accused Cogent in June of violating "one of the basic and long-standing requirements" of settlement-free peering arrangements (<http://vz.to/19VpvsU>).

As the Internet has become more commercial, the traditional roles of various Internet entities have become less clear, researchers said. The roles of access ISPs, transit or backbone ISPs, content providers and content delivery networks used to be fairly distinct, Dovrolis said. Over the last few years, those distinctions have become more and more blurry, he said. "Everybody's basically trying to play all of these roles all the time." This increases the likelihood of disputes, Dovrolis said: Before, the various Internet companies used to complement each other, he said. Now, they're offering the same services, said Dovrolis. "This makes these disputes even stronger."

"I don't think settlement-free peering is going away," said a Tier 1 ISP executive. What's changing is that new charging agreements are becoming available, he said. Paid peering is one of them, but there are others that fall between the extremes of free peering and paying for transit, he said. "It goes beyond just paid peering. The Internet interconnection market is evolving. It's been evolving from day one, and it's going to continue to evolve in order to accommodate the changing requirements of the network."

The shifts in business model reveal an industry that's trying to work out its future, said Craig Labovitz, CEO of the cloud-computing firm DeepField. "For a long time, it was just that the technology was driving the evolution," he said. "Now, as a maturing industry, you really are seeing the business models drive, literally, redesigning how the Internet is built."

### Settlement-Free Peering 'Unstable'?

A huge spike in consumer demand for over-the-top content has made agreements increasingly contentious, said network operators, academic researchers and other stakeholders. "Nobody thought there would be disputes, because nobody thought there would be so much incoming as opposed to outgoing," Baker said. "The Internet is just a lot of consumption."

That consumption leads to asymmetries in traffic, and those disputes "really can get ugly," said Michael Miller, chief marketing officer at Renesys, which analyzes peering relationships. "When they're not equitable like that, the whole idea of not paying for the service starts to fall apart." The problem is compounded

when some providers use peering points to carry less of a load than they might otherwise have to — essentially "gaming the system," Miller said. "There are providers who will try to push traffic off of their network as quickly as possible, so they don't have to carry the traffic," he said. "They're trying to get their peers to carry as much traffic as possible, so that they don't have to carry it on their network, because that's [savings] they can use for their customers versus their noncustomers. That's usually where the tension comes from."

The question many in the industry are working through is how to measure the value of the traffic carried. Some connections will simply never be symmetrical, since last-mile networks always receive a lot more data than they send, said Mark Taylor, Level 3 vice president-media and Internet Protocol services. It should be a "simple engineer-to-engineer discussion," he said, but it's getting complicated by business and strategic issues. Level 3 bases its peering policies on the distance a bit has traveled, or bit-miles, he said: Traffic loads can be asymmetrical as long as the distance they are carried is relatively analogous.

It makes sense that Level 3 is pushing a bit-mile metric, said William Norton, executive director of DrPeering International, a consulting firm focused on Internet peering. "You would too if you ran a long-haul network." That's just one measure, he said: Some ISPs won't peer unless the out:in ratio is less than 2.5:1. Verizon's settlement-free interconnection policy states that the ratio of traffic "shall be roughly balanced and shall not exceed 1.8:1" (<http://vz.to/14f1ok5>). It also requires the aggregate traffic volume exchange in each direction over all interconnection links "shall equal or exceed 1500 Mbps of traffic" for Verizon.

Research predicts "there will be more disputes," Misra said. Fifty years of study into cooperative game theory shows that what each partner in a coalition gets is proportional to what it brings to the table, he said: It's not surprising that Verizon "wants a part" of what Netflix is paying to Cogent, Misra said, because in Verizon's role as an access ISP, it's bringing the eyeballs. "I'm not saying that Verizon is wrong, but we'll see more and more of this happening," he said. "As the Internet has become more and more asymmetric, the current scenario is unstable."

Eyeballs aren't the only source of leverage in trying to convert formerly free relationships into paying ones, said researchers and engineers. Wholesale networks have an incentive to convert as many of their peered relationships into paying relationships as possible, Akami's Gilmore said. Networks that serve on-demand content — like Netflix videos — could threaten to cut off that connection without payment, if they know it would have a detrimental effect on another network's end-users, he said. Bill Woodcock, research director at Packet Clearing House, called such tactics "blackmail."

"It happens surprisingly a lot around Cogent, which is why people find them objectionable," Woodcock said. "More Internet-oriented companies generally don't bother with this, because it's all getting in the way of actually serving their customers. Using other peoples' customers as hostages is blackmail, and using your own customers by abusing them — by not providing them the service they paid for and hoping they don't claim a refund — it's just bad business practice." Cogent CEO Dave Schaeffer told us recently that his company gets a bad rap in the industry because it regularly undercuts competitors on Internet rates. He said Cogent doesn't de-peer other ISPs, but acknowledged it has been involved in a number of high-profile peering disputes. The company had no comment for this story.

### **Silent, or 'Quite the Spectacle'**

As ISPs seek to protect their interests, the potential for conflicts rise, said many experts. When negotiations reach an impasse, the result can be a silent de-peer, or a public de-peer, Norton said. "The si-

lent de-peers happen all the time. The session is turned down and like dating, networks don't want to tell others that they were dumped for fear of how it will make them look: Weak and undesirable.” De-peering can also happen in response to errant cable cuts or weather emergencies. Woodcock estimates 500 to 1,000 small de-peerings occur daily.

Public de-peerings get media coverage. “The case is made to the press, blame is targeted and everyone on the Internet gets a chance to chime in on various blogs with comments enabled,” Norton said. “It is quite the spectacle and everyone is loudly sure that one side is evil and the other is the victim. The court of public opinion is intended to put pressure on the other side.”

It's becoming more common for parties to a dispute to try to leverage their subscribers to advantage their side of the debate, said Baker. Peering disputes are "being used now in the public to try to act as a lever," he said, citing the Netflix ISP Speed Index as an example (<http://nflx.it/14f0BiZ>). "It has nothing to do with selling more subscriptions," Baker said. "It's purely done by Netflix so that there's a public outcry. If your ISP is not rated as one of the top ISPs in their Netflix ranking, Netflix wants to use that as leverage to get better agreements and more gear and things going in that network. And they want public perception to be [Your ISP] is not a good Netflix network, you need to call them to make Netflix better." Netflix declined to comment.

Some say peering disputes are still rare, just increasingly public. Big disputes happen closer to once a year than once a month, Gilmore said. "They've happened before. Maybe they just weren't as public," he told us. "It doesn't seem like they're happening much more frequently."

Not everyone agrees the rise in paid peering is significant. Woodcock called paid peering a “fiction,” pushed by network salespeople selling transit that they’ve rebranded as peering. “There are people who understand that peering exists, but haven't figured out how to do it for themselves, and somebody comes along and says, 'Here, let me sell it to you,'" he said. “It’s no more true now than it ever has been

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in the past. There is no massive groundswell towards people desiring to give [these networks] their money. Just not going to happen. Although [those] salespeople would love to have people believe that that's the trendy, hot new thing."

Stakeholders disagree over how much harm consumers face as a result of peering disputes. Akamai's Gilmore said that if large backbone providers actually de-peer, end-users of one ISP could lose their connection to end-users of another. Level 3's Taylor said the Web had enough other peering points to prevent such an extreme case, but cautioned that de-peering could significantly slow connection speeds for end-users. "The route gets more and more congested, and the quality of the bits get more and more degraded," he said. Miller agreed. Without a direct peering relationship, traffic will flow into the Internet either via another peered relationship, or a paid transit relationship, he said. "It still may make it to its destination, but it may go in a roundabout way, and impact people's performance. When you're a content provider like Comcast, those things become very important very quickly in the performance your customers are getting out to the Internet."

It is difficult to predict what impact a de-peering will have, Merit's Stovall said. He was privy to a de-peering several years ago, he said, in which his network's transit provider de-peered from the transit provider serving a satellite campus across the country. "One of our campuses was doing research with an entity over there and they couldn't patch their traffic," he said. "It took two or three days to resolve, and even email stopped working."

### Regulatory Backstop?

As peering disputes become more public, bringing with them the looming threat of an Internet slowdown, some are calling for the government to start taking an interest. The FCC and other relevant governmental authorities "should be collecting information about peering," said Sascha Meinrath, director of the New America Foundation's Open Technology Institute. "Given that this is a vital infrastructure, it's absurd how little we know about what's actually happening behind the scenes."

Paid peering arrangements exist under a shroud of non-disclosure agreements. Because of that, no one has hard numbers on exactly how many peering agreements are paid, researchers said. "There needs to be transparency around what's actually happening, since peering impacts nearly every facet of our society, yet isn't understood," Meinrath said.

"If possible, you want competition, rather than regulation", said computer-science Professor Dah Ming Chiu of the Chinese University of Hong Kong. "Even in China, where government has a lot of power, they don't dictate how ISPs peer." The nation does "make sure ISPs peer," he said. If there's a monopoly on last-mile access, there might be a role for government oversight, he said. "But if there are alternatives, sooner or later, customers can choose to move to other ISPs."

True competition "doesn't exist" in the last mile, said Prof. Misra. Customers rarely have more than two choices for broadband, he said. Even if there are ostensibly other options, customers are often locked into multiyear contracts, he said: "Eventually" the government "will have to step in." Misra has proposed a "public option" for the Internet, where the government could "run its own ISP" and ensure access. He conceded that's "unlikely to happen."

If the FCC wanted to study Internet peering, "I don't think this would necessarily be the end of the world," a Tier 1 ISP executive said. When it does so, the agency will find a market that's working "remarkably well," better than anything that could be achieved with regulation, he said.

“Internet peering has never been regulated, nor should it be,” said Robert McDowell, an FCC member for seven years until May and now affiliated with the Hudson Institute. “To do so would be to cross a dangerous regulatory Rubicon. History has proven that having peering arrangements worked out through private contractual negotiations is a phenomenally successful model for dispute regulation.” Bringing regulators into the space would be “harmfully disruptive on many levels,” he said, calling it a “giant step backward” that would “impair the dynamism of the global Internet market,” as well as “fuel international efforts to regulate the economics, operations and content” of the Internet. — *Matthew S. Schwartz, Erin Mershon*

## Obama Priority

### **Clyburn Asks FCC to Vote on E-rate NPRM at July Meeting**

FCC acting Chairwoman Mignon Clyburn circulated an NPRM Friday, teed up for a vote at the commission’s July 19 meeting, examining a further overhaul of the USF E-rate program. The NPRM also comes in the wake of a June 6 speech by President Barack Obama urging the commission to make high-speed Internet available to enough schools and libraries to connect 99 percent of American students (CD June 7 p7).

The NPRM will look at such issues as how the E-rate program can be revamped to meet the president’s goal that educational institutions be connected at a minimum broadband speed of at least 100 Mbps, as well as how services are purchased with an eye on program efficiency, FCC officials said Friday. The FCC meeting is Clyburn's second at the helm of the agency. Also on the tentative agenda for July 19 is an order on telecom relay services and the 15th annual report on video competition, according to an FCC news release (<http://fcc.us/17qf6Sk>).

“Today, I am sharing a proposal with my fellow FCC Commissioners to modernize our E-rate program to ensure students and teachers have access to the best, most current learning technology. Earlier this month, President Obama called on the FCC to bring high-speed Internet to 99 percent of U.S. students within five years,” Clyburn said Friday in an emailed statement. “Today’s proposal answers that call to close our education system’s bandwidth gap by modernizing the E-Rate program and providing our schools and libraries with a path towards affordable access to high-speed broadband. I look forward to working with my colleagues as we proceed towards revitalizing this important program, long-championed by Senator [Jay] Rockefeller and Senator-elect [Ed] Markey.” Rockefeller chairs the Senate Commerce Committee. Most classrooms are now connected to the Internet, Clyburn said. “In 2010 we took a number of initial steps to cut red tape and help schools get faster speeds for less money,” she said. “But now, to ensure a robust future for our children, we must equip them with the necessary tools to compete and flourish in an increasingly global and high tech economy.”

As examples of the kinds of issues the NPRM will raise, a senior FCC official cited use of broadband to provide students with the ability to take a foreign language remotely and the possibilities broadband offers for the education of students with disabilities. “All of these are game changers and you see it already happening in a few bright spots in the country ... but we have to make sure that every student in the U.S. has access to these opportunities,” the official said. E-rate has helped get some level of Internet service to almost 100 percent of U.S. classrooms, “but we also know that it’s time for an upgrade, a modernization of this program,” the official said.

The E-rate program dates to 1998 and has long been a favorite of some congressional Democrats. The original author of the E-rate program, Rockefeller, applauded Clyburn's announcement. It's an "important step ... toward beginning the process of updating the E-Rate program, so all students and teachers can access the transformative power of technology in their schools and libraries," he said in a news release. "I look forward to working with the FCC on preserving and strengthening E-Rate as it holds the promise of a brighter future for our youngest generation." Earlier this month, FCC Chairman nominee Tom Wheeler pledged to Rockefeller he would support the modernization of the program if confirmed by the Senate (CD June 19 p1).

"It is good to take a look at E-Rate," said Public Knowledge Senior Vice President Harold Feld. "The FCC should regularly review all the tools at its disposal to try to enhance broadband everywhere — in the home and in the classroom." The "importance of publicly available broadband in libraries has only increased in recent years," said Feld. "Used in conjunction with TV white spaces and other unlicensed spectrum potentially made available, broadband in schools and libraries can potentially help many of those without broadband in the home access the Internet." The "one concern" from "some quarters" is "that we should shift support from Lifeline to E-Rate," said Feld. "That would be exactly the wrong approach. Publicly accessible broadband in schools and libraries is an educational tool and a safety net for those without access, not a replacement for essential communication services. Hopefully, those waging an ill-considered campaign to undermine Lifeline will not try to hijack E-Rate for their purposes."

A former FCC official warned the notice could open the door for the FCC to expand the program. "The push from the Hill has been take it bigger and that has been met with a warm reception at the commission," the official said. "I would look for E-rate to be expanded in the guise of making it more efficient." — *Howard Buskirk, Bryce Baschuk*

### First Amendment Concerns 'Spurious'?

## **FCC Won't Move on Bloomberg/Comcast Neighborhooding Dispute, Attorneys Say**

The FCC won't take up the Bloomberg/Comcast channel placement dispute anytime soon, despite a plea last week (CD June 27 p16) from the financial news channel for the agency to act on the two-plus-year-old matter, several cable industry attorneys told us in interviews. With the recent Tennis Channel program carriage dispute decision against the FCC from the U.S. Court of Appeals for the D.C. Circuit (CD May 29 p1) and a new chairman unlikely to take office right away, the attorneys said the current commission probably won't quickly resolve the issue. The dispute revolves around conditions of the Comcast/NBCUniversal deal and the placement of the Bloomberg TV network in the same neighborhood as other news networks owned by Comcast.

An item on the matter was listed as being "on circulation" by the agency since February. "Once you start circulating, you get into that middle world," said one cable attorney connected to the case. "With an interim chairwoman, it's harder to move an item that's not short and sweet, or related to a primary issue," such as the spectrum auction, he said.

"The FCC had a pretty high hurdle to show discrimination," said Cohn and Marks cable attorney Ronald Siegel of the May 28 *Comcast v. FCC* Tennis Channel decision. Several cable attorneys cited the ruling as a deterrent to the FCC acting on the Bloomberg matter. Concurring opinions in that case refer-

enced the First Amendment implications of channel placement, and multiple attorneys said the FCC wants to stay away from those sorts of arguments at the moment. “Doesn’t this go to the core of what editorial discretion an operator has?” said Baker Hostetler cable attorney Gary Lutzker. “It’s almost like the government telling a newspaper they have to put sports in the first section.” Bloomberg, Comcast and the Media Bureau had no comment for this story.

However, the First Amendment argument could be seen as “spurious,” said Public Knowledge Senior Counsel John Bergmayer. Since Bloomberg’s channel placement was one condition of the NBCUniversal/Comcast combination, Bergmayer said the core issue of the dispute is “the rule of law,” not the First Amendment. “The commission surely has to enforce its own decisions,” Bergmayer said. “A failure to do that is failure of commission effectiveness overall.” Former FCC Commissioner Michael Copps, who voted against the deal, said the dispute shows that the agency needs to follow up on the promises made by companies that come before it. “The commission needs to follow up on the conditions it imposes,” said Copps, now at Common Cause. “It’s easy to make commitments, but [the FCC] has to do more than rely on reports” from the companies themselves, he said.

The commission is also much less likely to address a controversial issue with acting Chairwoman Mignon Clyburn having only just taken office and Chairman nominee Tom Wheeler waiting to take over, said several cable attorneys and others. “The commission being in transition raises a particular challenge,” said Bergmayer. The incentive auction is also a factor, said Siegel. “We have a new chairwoman with a really heavy agenda,” said Siegel. “They’re not focusing on a lot of other things.” Lutzker said that it’s not unusual for the commission to take a long time to address applications for review even when it’s fully empanelled. “Applications for review are not dealt with rapidly,” he said. “Unless there’s a political motivation for moving fast.”

The FCC should “direct Comcast to immediately move BTV into every SD news neighborhood on each of Comcast’s channel lineups in the top-35” markets, said Bloomberg in a filing Wednesday (<http://bit.ly/1cnx7ky>). The two companies have been battling on the issue since Comcast bought control of NBCUniversal in 2011, when the FCC ruled as a merger condition that if Comcast carries news or business channels in a neighborhood, it has to carry all independent news channels in that neighborhood. Comcast has said since the transaction that a grouping of four news channels doesn’t constitute a neighborhood.

After the deal, Bloomberg filed a complaint against Comcast, eventually leading to a Media Bureau order saying the operator had news neighborhoods on some systems and must carry the indie on those systems, said the programmer's filing. However, the bureau then clarified that the rule only applied to standard definition systems, and then stayed the “neighborhood order” pending “commission review,” Bloomberg said. “Some two and a half years after the adoption of the news neighborhood condition in the Merger Order — and more than one year since the Bureau initially said BTV should be neighborhooded within sixty days — BTV continues to be carried in fewer than half of Comcast’s news neighborhoods, representing a small fraction of Comcast subscribers.” — *Monty Tayloe*

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## 'Down in Flames'

### CPUC Votes 4-1 to Oppose California LifeLine Bill

The California Public Utilities Commission, despite its president's urging, voted to oppose a major piece of telecom legislation moving through the Legislature. Commissioners voted 4-1 to oppose Assembly Bill 1407, without suggesting any amendments. The bill proposes to expand the California LifeLine program to wireless and alternative providers of interconnected VoIP. But several commissioners argued the bill would scrap extensive CPUC efforts as well as hurt the California subsidy program. CPUC staff, in a memo posted earlier last week, had advocated opposing the bill (CD June 26 p15).

"I don't see the point of going down in flames," CPUC President Michael Peevey told colleagues. He was the sole dissenting voice arguing against opposition. Instead he suggested the CPUC advocate for eight bill amendments and a "support if amended" position, which he called "a better stance" and "more tactical."

AB-1407 received its first reading in March, passed unanimously out of the Assembly May 23 and is slated for a hearing before the Senate Committee on Energy, Utilities and Communications on Tuesday. It proposes to adjust the Moore Universal Telephone Service Act and sets specific parameters for discounts. "Through and including December 31, 2014, the nonrecurring service charge for commencing voice service for a single voice connection for a lifeline customer be no greater than \$10," said the legislative counsel's digest attached to the bill text (<http://bit.ly/11NWqv9>). "Until and including December 31, 2014, the lifeline provider would be eligible for reimbursement from the fund for the difference between the nonrecurring charge paid by a lifeline subscriber and the nonrecurring charge the lifeline provider charges for identical services in the ordinary course of business to subscribers that are not eligible customers, subject to the limitation that the reimbursement can be no more than \$40 per connection." The CPUC would have some discretion to increase those amounts after, it said.

The bill worried Peevey in much the same way it did his colleagues: "I wish the bill hadn't been introduced, personally, honestly," he said. "But that's not the reality." The CPUC has a "rocky relationship" with the Legislature, and opposing the bill would "annoy" key legislators, especially given that AB-1407 sponsor Assembly member Steven Bradford (D) is a "significant player," said Peevey. He saw this discussion as "a replay" of last year's debate over Senate Bill 1161 (CD Oct 2 p7), which was passed and bars the CPUC from regulating VoIP, he said.

"I bear the tread marks of that bus that ran right over us," Commissioner Mark Ferron said of SB-1161. The problem with the bill was that the CPUC didn't "take a clear position in opposition," he said. The CPUC should be "very clear" that it cannot support AB 1407 in its current form, he said.

"I was disappointed to learn of the PUC's decision to oppose my bill, AB 1407," said Bradford in a written statement Friday. "We have engaged with numerous stakeholders — including the author of the original Lifeline law, former Assembly member Gwen Moore, the PUC, the NAACP, the Mexican American Legal Defense and Education Fund (MALDEF), and ratepayer advocates — and we are all in agreement that the Lifeline program needs to adjust to changes in technology. We will continue to engage them as this bill moves forward." Bradford chairs the Assembly Committee on Utilities and Commerce. He framed the bill as modernizing the LifeLine program "to ensure low-income consumers can access wireless and voice over internet protocol services and other emerging technologies." These changes should help open LifeLine to "millions of low-income Californians" and reflect "rapid changes in consumer preference," Bradford said.

But the opposing commissioners argued that AB-1407 had the potential to wipe out the work the CPUC has already done with the goal of reforming California's Lifeline program. The CPUC passed a decision on basic service in December, which paved the way for reforming Lifeline in 2013, Commissioner Catherine Sandoval explained. The CPUC is looking at "new discount levels; expanding the services eligible for the discount, including wireless Lifeline service, Voice Over Internet Protocol (VoIP), and other non-traditional services, and what these services might include; continued support for application of discounts to installation charges; pros and cons of pre-qualification of potential Lifeline customers," said its online page on the proceeding. It has already held multiple public participation hearings on these topics around the state and plans several more through August.

Sandoval pledged to have a proposed decision in that Lifeline proceeding by October, which would then be open for comment for 30 days. "I am confident that we can decide on the proposed decision before Thanksgiving," Sandoval said. "We can decide in early November." She outlined several substantial concerns with AB-1407 and argued that it would limit consumer protections, limit the CPUC's ability to hold Lifeline providers accountable and hurt consumers' access to 800 and toll-free numbers, which often cover suicide and domestic disturbance lines. The CPUC proceeding would reform Lifeline "six months to a year faster than this bill," she said. "I would argue the CPUC has a very good process under way." The CPUC "should be able to continue that process," said Sandoval.

"We would get a faster time to market if we continue on the current path, which is our own proceeding," Ferron added. The bill's passage would ultimately send the CPUC's basic service proceeding and decision "to the trash bin," he said. Commissioner Michel Florio also judged the bill "very frustrating," he said. "This bill would eviscerate all that hard work," he said of the CPUC's past proceeding. "The timing issue is very critical here." He urged Bradford to extend the process and see what decision the CPUC comes up with rather than pursue what he called a "backwards" process now. The bill would prove "incredibly more restrictive" on the CPUC and make the program "a copycat of the federal program" without attending to any "California-specific needs," he added. Bradford sponsored the bill due to frustrations with the CPUC's slowness in the basic service proceeding, but Sandoval is moving forward with the Lifeline proceeding "with alacrity," he said.

Florio and Commissioner Carla Peterman said they appreciated Peevey's attempt at amendments but disagreed they cured the substance of the problems. The bill also inspired considerable public comment at the start of the meeting. By Peevey's count, there were 30 speakers on the bill, 16 in favor and 14 opposed. — *John Hendel*

Honest Discussion 'Long Overdue'

## **Bipartisan Support for Broad Privacy Debate Gains Momentum**

A trio of House lawmakers said they want to debate the issue of government and corporate surveillance of Americans during separate interviews set to air this weekend on C-SPAN's *The Communicators*. Rep. Jared Polis, D-Colo.; Justin Amash, R-Mich.; and Michael Capuano, D-Mass., spoke less than a fortnight after reports of an order by the Foreign Intelligence Surveillance Court (FISC) that gave the National Security Agency authority to collect phone metadata from millions of Verizon subscribers (CD June 7 p1) and the existence of a program authorized by Section 702 of the Foreign Intelligence Surveillance Act (FISA) that permitted NSA collection of Internet user data from non-U.S. citizens.

Polis said America is leaning "too close to a police state, totalitarian side of things with regard to insufficient checks and balances around government checking emails, government checking phone records and those sorts of things. We need to balance it in a way similar to what we did traditionally during the height of the Cold War, the '70s and '80s." Polis is a sponsor of the Limiting Internet and Blanket Electronic Review of Telecommunications and Email (LIBERT-E) Act, which would place restrictions on the government's ability collect information on Americans under the Patriot Act. HR-2399 would also require congressional access to secret FISC opinions and declassified summaries of the opinions be made available to the public.

Amash, a co-sponsor of the LIBERT-E Act, said the legislation seeks to narrow the scope of the Patriot Act to only target those who are under investigation, "rather than sweeping up all communications." Amash said the government's current interpretation of the Patriot Act treats all phone records as relevant to investigating terrorism. "I am very confident the Supreme Court would strike down what we are doing now," he said. "What we want to do is prevent this kind of collection of records. We believe it violates the Constitution, it violates the Fourth Amendment. And we don't want this kind of information being held by the government."

Capuano said the "whole panoply of invasions of privacy is long overdue for an honest discussion," during a separate interview. "Privacy is about a person being able to control your own life with as much reasonable expectations you can have," he said. "We have all come to understand there are cameras on the public street — we all know that — but when it comes time to have cameras in your own bedroom or your living room, I certainly think that should be your own choice." Capuano introduced the We Are Watching You Act in June aimed at preventing companies from spying on consumers via their video devices (CD June 17 p14). The bill would ban video service operators from collecting visual and auditory information about consumers unless the company displays a message that says: "We Are Watching You" and provides consumers with information about the data collected.

Verizon, Sony and Microsoft have all filed patents for consumer products that monitor individuals from within their homes, Capuano said. "The patent applications are very scary and should be very scary to anyone that cares about privacy," he said. "If the device sees you drinking a beer, it will send you an ad for Budweiser. If they see you cuddling, it will send you an add for marriage counseling or for contraception," said Capuano. "Those are directly out of the patent application of one of the most famously known international corporations in the world. ... I would argue that the average person should know that is happening and should have the choice to get out of it." — *Bryce Baschuk*

**'Seize This Mix'**

## **FCC, Industry Offer Solutions to Improve Telemedicine Through Spectrum, Infrastructure**

More than ten million Americans benefited from telemedicine last year, said FCC Commissioner Jessica Rosenworcel at a Friday conference hosted by the American Telemedicine Association. CTIA and Time Warner Cable held a panel discussion on how wireless and wireline technologies are helping to advance telemedicine platforms to rural and urban areas.

The FCC's Healthcare Connect Fund will provide funding to eligible healthcare providers that will cover 65 percent of cost of broadband services or healthcare provider-owned networks, said Rosenworcel. The FCC opened up the 2360-2400 MHz band for medical body area networks (MBAN) last year. “It sounds like science fiction, but by using small low powered sensors on the body, we can capture a wide range of physiological damage that can be sent along wirelessly to help healthcare providers,” said Rosenworcel. “It reduces the cost of patient monitoring and it makes it possible for more accurate, more patient-centered and more preventative care.” Rosenworcel wants the FCC to work with other federal agencies, including the Food and Drug Administration, to make effective policy changes. “Digitization, cloud computing, broadband ubiquity, and new wireless services are combining in such a potent way,” she said. “We can seize this mix and make telemedicine an integral part of modern medicine and in the process we can save lives, enhance patient care, improve outcomes and lower costs.”

Access to spectrum and better infrastructure to support spectrum are the critical needs for the wireless industry, said CTIA Vice President Jot Carpenter. “We need to adapt our structure for what our network is capable to do,” said Carpenter. Healthcare providers have a common goal to figure out business and maximize common care opportunities, he said. “In this business, everyone wants to have access to five bars of connectivity, but no one wants to build a tower.” Carpenter said product lifecycles are short, so it becomes difficult to go through the multiyear approval process put in place by the FCC. “This tension between government and industry needs to be resolved,” he said.

Time Warner Cable sees helping healthcare providers as a huge opportunity because the healthcare industry accounts for 17 percent of the gross domestic product, said Vice President Satyanarayana Parimi. The wireline industry is also focused on providing infrastructure with wireless as a backup. TWC's initial focus is providing telemedicine in the home videoconferencing and remote monitoring arena using medical devices. “We want to have virtual visits and we are looking into technologies through the TV rather than the computer, since many of these people do not know how to use a computer,” Parimi said. TWC wants to offer healthcare providers their telemedicine technologies to be included in their healthcare plans. “With the cost of healthcare in the United States predicted to be nearly three trillion [dollars] this year, we should see solutions that will reduce cost while also improving medical outcomes and patient care,” said Rosenworcel. — *Sara Friedman*

## 'Complex Puzzle'

### **FTC Unlikely to Act Against Those Making Good Faith Efforts to Comply with New COPPA Rule**

As the updated Children's Online Privacy Protection Act (COPPA) rule takes effect Monday, operators of child-directed websites and apps are navigating the expansions in the rule, industry members and observers told us. The expansions in the rule — unveiled by the FTC late last year (CD Dec 20 p10) — include defining personal information to include device identifiers and the inclusion of sites and apps that are largely but not primarily directed to children. Such expansions require apps and websites to do substantial backend work and may cause revenue losses, said industry officials.

The FTC is unlikely to pursue violations of the updated rule immediately, said lawyers who deal with FTC compliance. In rejecting proposals to postpone the implementation date, as the agency did ear-

lier this year (CD May 7 p8), the FTC is telling companies to "get your act in gear," said John Feldman, ad attorney with Reed Smith. The agency will likely bring cases against only those companies that blatantly violate the updated rule and are not looking to become compliant, he said: Companies making good-faith efforts to come into compliance should be safe from FTC action for the immediate future. "That kind of attitude is likely to satisfy" regulators "if explained correctly," he said. If questioned by the agency, "the answer has to be a bona fide exhibition of compliance activity," he said.

A company's ability to meet compliance requirements depends on company-specific factors, said Dona Fraser, director-privacy online for the Entertainment Software Rating Board, an FTC-approved COPPA safe harbor. "It's a heavy lift for some companies," she said. "Some of these rule changes require a lot of changes on the backend." For each company, the compliance "timeframe depends on the nature of their business and the complexity of their data collection practices," said Joanne Furtsch, director of product policy for TRUSTe, an FTC-approved COPPA safe harbor. TRUSTe has been working through meeting the new compliance requirements since the beginning of the year, she said.

App developers face "incredible technological challenges" to become compliant with the new rule, Tim Sparapani, Application Developers Alliance vice president-law, policy and government affairs, told us. For some apps, the updated rule will require them to collect and process more information about their users, he said. For instance, some child-directed apps had complied with the old COPPA rule by collecting no information, he said. Under the updated rule, they will have to collect enough information to determine if a user is under the age of 13 and then create separate data flows to treat those users according to the rule. The updated rule creates perverse incentives "in that they require you to collect a whole bunch more information" than apps might have previously, he said. On Friday, the ADA sent to its members a video and questionnaire to help developers come into compliance with the new rule. The video (<http://bit.ly/19DMLMC>) and checklist (<http://bit.ly/18le0dF>) are "intended to be a quick notice and questionnaire to help developers determine if they're compliant," Sparapani said.

The inability of child-directed apps under the updated rule to display cross-platform ads will be detrimental to the app economy, Feldman said. Online behavioral ads are "how, today, most apps are funded," Feldman said, so it's important that operators carefully evaluate which of their apps rely on cross-platform ads for revenue. The way the new rule limits ad opportunities "cuts down revenue streams" for apps and sites, even if they're looking to profit from contextual — rather than behavioral — advertising, said Alan Friel, a technology lawyer at Edwards Wildman. Contextual advertising services often collect information from users to create "rich data sets," he continued. "Even if they're not creating a behavioral profile, they're still collecting data."

Operators cannot simply prevent young children from accessing their sites and apps to avoid COPPA compliance under the new rule, which is detrimental to apps, Feldman said. As explained by the FTC in an FAQ it released prior to the implementation of the new rule (<http://1.usa.gov/12rIE0W>), operators with sites and apps not primarily directed at children but with audiences largely including young children may not screen users and prohibit access by users under the age of 13. Instead, the FTC said, operators may screen users for age and then collect personal information only from those users over the age of 13.

For the FTC to have this position is "unacceptable and arrogant," Feldman said. As the updated rule is implemented, it would benefit operators to be able to block young children as their sites and apps come into compliance, he said. "During this transition period, I would rather block the children." By including sites and apps that are largely but not exclusively directed to young children but not allowing

those operators to block users under 13, the commission is broadening operators that have to comply with "restrictions that were really designed for little kids sites," Friel said.

There needs to be some kind of technical solution so operators can clearly and consistently communicate to third parties which users are under 13 to prevent the collection of data about those users, Friel said. "There's a question as to whether or not that technical solution is, in itself, a violation." Sites and apps would effectively be tracking young users to tell integrated third parties not to track those users, he said. It's unlikely the FTC would go after tracking behavior like that, he said: It would be "pretty aggressive" for the agency to do that. Ultimately, a technical solution for that kind of preemptive tracking would come from industry members, Friel said. "It will take awhile for an industry-wide technical solution to be developed."

Operators should verify that all third parties integrated into their sites and apps are compliant with the new rule, Friel said. TRUSTe is working with members to make sure they are "really understanding who's integrated into their websites and mobile applications" and "helping them assess those relationships," Furtusch said. Operators need to be able to ensure third parties are compliant, so TRUSTe is "arming out clients with information" to help them understand "the complex puzzle known as COPPA." Fraser said the ESRB has been helping members to vet the third parties they work with. The members want to make sure that "if they're engaging with third parties ... they're doing so in a proper way," she said. ESRB also assists members with their mobile apps' privacy policies. "What our program does is provide the most effective disclosures for what our members are doing," which leads to "more transparency for users," said Fraser.

Getting verifiable parental consent "is key" for companies striving for compliance with the new rule, Fraser said. When it updated the rule, the FTC said companies could submit proposals for new ways to obtain verifiable parental consent. ESRB is working with members, "making sure that the notices ... are done in a way that are easily understandable to the user" and not "buried in legalese," she said. "The challenge has been doing that on mobile devices as well." ESRB looked for ways to make giving that verifiable consent "seamless," she said. It wanted "a technology that can be built into a website, can be used on a mobile device," she continued. ESRB partnered with Veratad Technologies to make available to members at discounted rates "a simple API plug-in" that lets parents provide immediate consent across multiple platforms after providing information once and doesn't interfere with the user experience, Fraser said. "We spent a lot of time really researching the company and technology." ESRB also hopes parents will use the privacy settings on devices, she said. "There are so many privacy settings on devices." — *Kate Tummarello*

## Comm Daily® Notebook

The FCC sought comment on Verizon's Section 214 petition to end landline service in parts of New York and New Jersey following the copper damage from last year's Superstorm Sandy, said a Wireline Bureau public notice Friday (<http://fcc.us/1amFnoz>). The telco proposed instead using the fixed wireless alternative known as Voice Link. Comments are due July 29 in docket 13-150. The FCC has discretion in whether to grant such requests, said the PN. "Balancing the interests of the carrier and the affected user community, the Commission generally considers a number of factors including: (1) the financial impact on the carrier of continuing to provide the service; (2) the need for the service in general; (3) the need for the particular facilities in question; (4) the existence, availability, and adequacy of alternatives; and (5) increased charges for alternative services, although this factor may be outweighed by other considerations." The public notice described the debate over Voice Link that has emerged in recent months, laying out the concerns the New York State Public Service Commission pointed to in a May order granting Verizon condi-

tional approval to deploy the service on Fire Island. The PN seeks comment on Verizon's "waiver request, the steps it has taken to notify customers given the particular circumstances in this case, the availability of alternative services including the steps Verizon has taken to offer alternative service to customers, and any other relevant issues in light of the above mentioned factors," it said. "What impact, if any, should the circumstances of this case have on the Commission's traditional analysis, including the fact that many of the affected customers have already lost service? Is Voice Link service a reasonable substitute for the Affected Services? In addition to those discussed above, are there features, functions, or capabilities that were available over the Affected Services that would not be available over the Voice Link service?" The bureau asked stakeholders to comment on "the significance of the features, functions and capabilities that are not currently available over the Voice Link service" and "should identify whether any conditions could ensure that the discontinuance of Verizon's wireline service does not harm the public interest."

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Correction: The date when acting FCC Chairwoman Mignon Clyburn will be going to Ottawa for meetings with Canadian officials is in late July (CD June 28 p6).

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The FCC Office of Engineering and Technology approved Google's launch of a white spaces TV band database in a Friday order (<http://bit.ly/12ryAF5>). The Google database is the third approved by OET. Databases provided by Spectrum Bridge and Telcordia Technologies previously received the commission's blessing. A 45-day public trial of the Google database ended April 17. Some 16,000 "unique users" visited its trial site, generating more than 36,000 page views, Google said at the time. More than 30 percent of visits were from outside the U.S.

## Wireline

The FCC has "clear statutory authority" under Sections 201, 205 and 276 of the Communications Act to adopt the proposed benchmark rates for interstate and intrastate inmate calling service calls, said Lee Petro of Drinker Biddle on behalf of Martha Wright (<http://bit.ly/1amG5Sw>). Wright originally petitioned the FCC asking it to investigate high prison phone call rates. The FCC's recent call for additional information on ancillary services "is necessary only because the parties with the information, i.e., the ICS providers, have steadfastly refused to respond to numerous FCC requests to provide this information," Petro said. In light of ICS providers' failure to provide detailed cost data requested of them, "these parties may no longer — both reasonably and legally — object to the FCC's adoption of the Petitioners' proposal based on the information submitted into the record," he said. The FCC should adopt a benchmark rate of 7 cents per minute with no other charges or ancillary fees, he said.

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The FCC should do "everything possible" to gather the information set forth in the mandatory special access data request "as soon as possible," CLEC attorney Thomas Jones of Willkie Farr told an FCC Wireline Bureau official, an ex parte filing said (<http://bit.ly/1amGIeO>). "The Commission should not unnecessarily delay the data gathering process by changing the vintage of data sought from 2010 and 2012 to 2011 and 2013," he wrote. Jones represents Cbeyond, EarthLink, Integra Telecom, Level 3 and tw telecom.

## Wireless

BlackBerry on Friday reported smartphone and tablet sales for Q1 ended June 1 that were weaker than the year-ago quarter. Despite posting a narrower loss and improved revenue, BlackBerry shares

closed 27.8 percent lower Friday at \$10.46. Analysts had expected the struggling company to report a profit and somewhat higher shipments of smartphones using its new BlackBerry 10 operating system than the 2.7 million units that it reported. The company shipped 6.8 million smartphones in Q1, up from 6 million in Q4, said Chief Financial Officer Brian Bidulka on an earnings call. But shipments were down from 7.8 million in Q1 last year. About 40 percent of the smartphones shipped were BlackBerry 10 models, said Bidulka. BlackBerry also shipped about 100,000 PlayBook tablets in Q1, it said. That was down from about 260,000 in Q1 last year. BlackBerry didn't say how many PlayBooks were sold to consumers. Although the company will "eventually" move all its smartphones to BlackBerry 10, it no longer plans to do that with the PlayBook, said CEO Thorsten Heins. The company spent a lot of time looking for solutions to move the tablet to BlackBerry 10, but was "not satisfied with the level of performance and user experience" on the device, he said. Therefore, it made a "difficult decision to stop these efforts and focus on our core hardware portfolio," he said. BlackBerry 10 is "still in the early stages of its transition," said Heins, pointing out the new operating system launched five months ago. The plan is to have no more than six new devices on the market at any time, he said. The BlackBerry Z10 is now available in 147 countries including the U.S. and has been an "effective launch product" for BlackBerry 10, he said. The BlackBerry Q10 is now available in 96 countries including the U.S. and is expected to expand into 50 more countries in Q2, he said. The BlackBerry Q5, a lower-end model targeted at emerging markets, shipped in Dubai and 106 carriers in 59 countries are expected to launch it in Q2, he said. Despite the focus on BlackBerry 10, the existing BlackBerry 7 customer base "remains an important market to us," said Heins. "Many emerging markets continue to purchase" those phones, he said. Q1 revenue grew 9 percent to \$3.1 billion from Q1 last year. BlackBerry's loss narrowed to \$84 million, or 16 cents a share, from \$518 million, or 99 cents. Hardware revenue grew 33 percent from Q4 to about \$2.2 billion and made up 71 percent of revenue, up from about 61 percent in Q4, said Bidulka. Twenty-six percent of revenue was from services and 3 percent was from software and other sales, the company said. Inventories grew by \$284 million to \$887 million from Q4, mainly to support the continued BlackBerry 10 launch, said Bidulka. Heins was "encouraged" that three of its four regions returned to revenue growth in Q1 as BlackBerry 10 continued to roll out, he said. Its largest region, Europe, Middle East and Africa, made up 43 percent of revenue and was up 9 percent from Q4, said Bidulka. North America made up 25 percent of revenue and was up 30 percent from Q4, while Asia Pacific made up 17 percent of revenue and was up 35 percent from Q4, he said. Latin America, however, represented 15 percent of revenue and was down 6 percent from Q4, he said. The new fiscal year will be a "year of investment" for BlackBerry that will include significant marketing efforts to back the ongoing BlackBerry 10 launch, said Heins. Over the next three quarters, it will be increasing investments to support the rollout of new products and services, he said. As a result, it expects an operating loss for Q2, he said. But Q2 results are "very difficult to estimate during this transition in what remains a highly competitive smartphone environment," said Bidulka. A year ago, the company made a "tough decision" in delaying the BlackBerry 10 launch until early 2013, said Heins. BlackBerry is a "leaner, more efficient" company now, he said. — **JB**

Spectrum-hungry T-Mobile US said Friday it will buy AWS spectrum covering 29 markets in the Mississippi Valley region for \$308 million in cash from U.S. Cellular. Markets covered include St. Louis; Nashville; Kansas City; Memphis; Lexington and Louisville, Ky.; Little Rock-North Little Rock, Ark.; Birmingham, Ala.; and New Orleans, T-Mobile said. "This additional spectrum will allow for an incremental roll-out of T-Mobile's 4G LTE network coverage to new markets and expands the existing 4G LTE bandwidth in the important Mississippi Valley region." The carrier, the nation's fourth largest, is widely viewed as a top contender for sub-1 GHz spectrum in the upcoming FCC incentive auction. "In today's marketplace, spectrum is gold," said T-Mobile CEO John Legere. "This is a rare opportunity to secure precious AWS spectrum in key markets that will immediately be put to use by both T-Mobile and

MetroPCS customers. This deal expands our network and capacity, allowing for a broader roll-out of 4G LTE and an even faster and more reliable 4G experience for our customers — in addition to spurring competition in the wireless marketplace.” The FCC and Department of Justice both must sign off on the transaction. “Following the Market Divestiture that closed in May, we have been seeking opportunities to monetize other non-strategic assets,” said Kenneth Meyers, CEO of U.S. Cellular. “We’re pleased to have achieved significant value for this spectrum license, as we continue to evaluate opportunities to create additional value for our shareholders.” Wells Fargo noted that the transaction prices the AWS spectrum at \$0.95 per MHz/Pop. “The value of spectrum continues to increase,” Wells Fargo said in a research note. “Verizon paid \$0.69 per MHz/Pop for SpectrumCo’s AWS spectrum in 2011. Today’s \$0.95 price represents a 37 percent increase in the value of AWS spectrum.”

The record so far demonstrates that FCC proposals to subject wireless carriers to a regulatory fee for interstate telecommunications service providers (ITSPs) and to reallocate some full-time equivalent employees (FTEs) are “ill-advised and, if not rejected outright, at the very least should be subject to further scrutiny and greater transparency,” CTIA said in reply comments on a May NPRM on regulatory fee reform (CD June 24 p5). “Commenters have expressed grave concerns and have identified significant flaws in the proposal to include wireless regulatees in the ITSP regulatory fee category,” CTIA said (<http://bit.ly/153bJki>). “In particular, industry growth is not a basis for setting regulatory fees under Section 9 of the Communications Act. Moreover, as CTIA demonstrated in its initial comments, claims that wireline regulatees are paying more than their fair share of regulatory fees fail to account for the fact that wireless regulatees contribute more to the Commission’s overall budget than ITSPs or any other group of regulatees.” CTIA said the NPRM’s proposal “to reallocate the FTEs in certain core bureaus creates a tremendous amount of complexity and uncertainty regarding the calculation of regulatory fees across all bureaus.”

Trade groups and companies that favor spectrum aggregation limits in the incentive auction of broadcast TV spectrum met with Louis Peraertz, aide to acting FCC Chairwoman Mignon Clyburn and Jessica Almond, chief of staff at the Wireless Bureau, to press their case. “This group of public interest organizations, trade associations, and competitive carriers discussed the attached slides [<http://bit.ly/1aUXQXU>], which explain the importance of promoting competition and preventing excessive spectrum aggregation in the upcoming 600 MHz incentive auction,” said a Friday ex parte filing (<http://bit.ly/17Iax9F>). “Adopting a spectrum aggregation limit for this auction will promote investment and innovation, encourage auction participation, enhance consumer choice, and create the potential for higher auction revenue.” Among the groups represented were the Competitive Carriers Association, Rural Telecommunications Group, NTCA, New America Foundation and the Computer & Communications Industry Association. Carriers represented included Sprint, T-Mobile, U.S. Cellular and C Spire Wireless. Dish Network also had a representative at the meeting.

## Internet

The National Institute of Standards and Technology issued a request for information for a publication on improving coordination between Computer Security Incident Response Teams and reducing delays when reacting to computer security incidents, NIST said Friday (<http://1.usa.gov/17plM3a>). NIST wants information on best practices, impediments to information sharing and response, successful technical standards and technologies and viewpoints on incident coordinator objectives. NIST requests all comments by July 29.

## State Telecom Activities

Frontier received \$21.8 million in escrowed money from the West Virginia Public Service Commission and the Oregon Public Utilities Commission, the telco said Thursday night (<http://bit.ly/128FyvW>). “The funds were escrowed in connection with Frontier's acquisition of wireline properties from Verizon Communications in July 2010.” The majority of the money was held up in two escrows of the West Virginia PSC, one related to service quality and another to broadband — \$21.4 million total. Frontier had asked for the release of the money and received the full amounts requested. “Just three years ago, Frontier took ownership of wireline assets that no longer met the needs of consumers in 14 states,” said Kathleen Abernathy, external affairs executive vice president, in a statement. “We have invested heavily since then to transform the broadband, voice and video experience of our customers. The latest escrow releases, all of which required commission approval, confirm that we did what we said we'd do to meet the expanding technology needs of our customers.” In approving the release of the service quality funds, the West Virginia PSC judged Frontier's listed expenses to be “necessary improvements to the Frontier WV network,” according to its order earlier this month (<http://bit.ly/10psy7k>). The PSC made a similar judgment regarding the broadband account in another order (<http://bit.ly/12qUCYA>).

Dismiss the New York attorney general's Voice Link concerns, Verizon told the New York State Public Service Commission in comments filed Thursday night (<http://bit.ly/12qxKbC>). Wednesday, the office of Attorney General Eric Schneiderman alleged Verizon is violating a May PSC order by deploying and promoting Voice Link beyond Fire Island, an area where the regulator had officially sanctioned the fixed wireless service as a sole offering (CD June 27 p6). “Despite its alarmist title and extravagant claims, the Attorney General's ‘Emergency Petition’ fails to provide evidence of any violation of a ‘Commission directive,’ much less of any emergency,” the telco said, its comments signed by Verizon New York Counsel Joseph Post. Verizon acknowledged offering Voice Link in Monticello, N.Y., as the AG showed with an affidavit from a resident there, but the telco argued it was presented as an optional service, fully permissible and not at all forbidden by the May PSC order. “Indeed, the Order specifically excludes optional offerings from the limitations (including geographic ones) imposed on ‘Voice Link only’ offerings — a fact that the Petition fails to mention, despite its detailed discussion of other provisions of the same tariff,” Verizon added. It said any balanced read of the situation or contacting Verizon could have avoided the filing of such a petition, lacking in “factual or legal support.” The AG's attached affidavit indeed proves Verizon's operating procedures in the Catskills, it argued, explaining that it has begun offering Voice Link to customers currently served by copper who encounter persistent trouble, but does not force the option.

Fibertech Networks constructed more than 850 miles of fiber recently in Connecticut, the company said Friday (<http://bit.ly/11SFFLC>). Its total is now upward of 3,500 miles throughout that state, it added, calling Connecticut “our Eastern region headquarters.” It opened a large regional office in Cheshire, Conn. “Fibertech's service offering encompasses both dark fiber and optical broadband options to area businesses that have predominately used traditional carrier lines in the past,” it said. Fibertech cited Connecticut's business growth and an increasing demand for broadband connectivity.

## Telecom Notes

The Office of Personnel Management partially reported on two of the seven requirements of the Telework Enhancement Act of 2010, but it didn't report agency information for the five remaining requirements, said the GAO in a report released Friday (<http://1.usa.gov/17IdUgX>). Insufficient time had elapsed

for all requirements of the act to be fully implemented because agencies faced challenges in measuring outcomes for some nonparticipation goals, said OPM. It didn't take adequate steps to establish a completion date for agencies to produce reliable data from employee time and attendance tracking systems.

## Broadcast

The Minority Media and Telecommunications Council will “shortly” release additional information about the respondents to its cross-ownership study to answer criticisms by public interest group Free Press, said MMTC President David Honig in an email to us Thursday. He responded to a Free Press FCC filing (CD June 28 p15) attacking the study for not adequately describing its sample or providing quantitative evidence on cross-ownership. Free Press is “profoundly misreading” the study, Honig told us. “As we explained when we filed the study with the Commission, the study is not intended to be dispositive. Rather, it is a piece of evidence to be weighed together with other evidence.” The small number of cross-ownership markets makes a fully empirical study “impossible,” Honig said. He disputed Free Press’s claim that the MMTC study doesn’t satisfy the 3rd U.S. Circuit Court of Appeals’ *Prometheus II* ruling that the commission must base ownership rule changes on hard data. “What courts do expect is that agencies rest their judgments on the best evidence available, even if the evidence is unavoidably imperfect,” said Honig. He didn’t give a date for the release of the additional information on the subjects of the study, and said the data would be “consistent with the confidentiality we promised our respondents.”

## Cable

The "Industrial Logic" of Charter Communications buying the larger Time Warner Cable "Is Sound," wrote a Citigroup analyst at the start of a report to investors Friday. "The cable industry is 50 years old, but is still woefully fragmented. Escalating programming costs, the rising importance of heavy user interface investments (think Comcast's X1 platform) and the need to develop an industry-wide ad platform all augur for further consolidation." Spokespeople for Charter and Time Warner Cable had no comment on the report. Charter's market value is less than half that of Time Warner Cable's, wrote the analyst, Jason Bazinet. Liberty Media's investment in Charter, that operator's "pending turn-around, the industry's lack of scale," Charter CEO Tom Rutledge's "managerial acumen and historically low interest rates" all "suggest" the "industry is poised to consolidate," wrote Bazinet. "The only question is this: which firm will Charter acquire?"

Cablevision completed the sale of "substantially all of the Clearview Cinemas theaters" to Bow Tie Cinemas, said Cablevision in a news release Friday (<http://bit.ly/17HXvJI>). The buyer is getting 41 venues (CD April 30 p13).

A Time Warner Cable app will launch later this summer on the Xbox 360 as part of a deal with Microsoft, a TWC spokeswoman said Friday. The app will allow TWC subscribers who are also paying Xbox Live Gold members to watch up to 300 live TV channels on the videogame console, it said in a news release. The app will be available for free download at the Xbox Live Marketplace, it said. TWC has been working with Microsoft on the deal "for a long time," and it's "going to build on this momentum by adding features like VOD," the spokeswoman said. TWC will also "explore" the Xbox One that Microsoft plans to ship in November, she said. The new console "has a lot of potential" and TWC is "always working to expand" the app, she said. — **JB**

## Satellite

The FCC International Bureau said it dismissed earth station-related applications from Christian Television Corp. and Antenna Technology Communications due to deficiencies and inconsistencies on FCC Form 312. In its application for a new fixed earth station, Christian Television didn't submit the required radiation hazard study, the bureau's Satellite Division said in a letter (<http://fcc.us/15NM3Vv>). Christian lists the 6425-9525 MHz band as "desired frequencies of operation," the division said. Fixed satellite service isn't authorized throughout that frequency, "and the requested space station point of communication, AMC-1, is only authorized to operate in the 5925-6425 MHz frequency band," it said. ATC incorrectly stated in its application to modify its fixed earth station that a frequency coordination report isn't required for the emission designator 5G00GIF, the division said in another letter (<http://bit.ly/17HXpl2>). Because the 5840-6425 MHz frequency band is shared with equal rights with terrestrial services, "the failure to provide a frequency coordination analysis renders Antenna Technology's application incomplete," it said.

Orbital Sciences Corp. successfully launched the Interface Region Imaging Spectrograph (IRIS) satellite for NASA. IRIS was launched into its polar, sun-synchronous earth orbit from Vandenberg Air Force Base in California, on a Pegasus rocket, OSC said in a news release Thursday (<http://bit.ly/1aUg0sR>). It said the Pegasus launch history now includes 42 launches to orbit. ATK was the major propulsion provider for the Pegasus rocket, ATK said in a news release (<http://bit.ly/124U9cZ>). It also provided the composite structures and manufactured the flexseals "that facilitate movement of the second and third stage nozzles," it said.

## Communications Personals

Changes at CEA: **Michael Bergman**, ex-Kenwood, joins as senior director-technology and standards; **Laurie Ann Phillips** departs as senior director-industry and policy communications, plans unannounced ... Congressional Hispanic Caucus hires **Kristian Ramos**, ex-21st Century Border Initiative, as communications director, and she's replaced at the initiative by **Emma Buckhout**, ex-Latin America Working Group ... AMC hires **Eliot Goldberg**, ex-CMT, as senior vice president-unscripted programming ... Madica Productions digital, TV and film new production company started by Sunshine Sachs' **Ken Sunshine** and **Shawn Sachs** hires **Jeff Tahler**, ex-FremantleMedia, as managing director ... National Emergency Number Association board includes: **Buster Brown**, Virginia Information Technologies Agency, as president; **Christy Williams**, North Central Texas Council of Governments, first vice president; and **Cheri Lynn Rockwell**, of Chico, Calif., second vice president ... Lobbying registrations: NetChoice, **Bingham McCutchen**, effective June 25 ... Good Technology, **Franklin Square Group**, effective April 1.

## Communications Daily Calendar

- July 1      Practising Law Institute event on cybersecurity risk management, 9 a.m., PLI, 810 7th Ave., New York — [bit.ly/12g1hR1](http://bit.ly/12g1hR1)
- July 1      NATOA webinar on closed captioning, 2 p.m. — <http://bit.ly/VJyGld>

- \*July 3 CableEurope panel on convergence, 4 p.m., Musical Instrument Museum, Brussels — <http://bit.ly/135w7mI>
- \*July 8 TechFreedom event on FTC's Children's Online Privacy Protection Act rule, noon, 100 Maryland Ave. NE — <http://bit.ly/17yvCmQ>
- July 8 Practising Law Institute copyright law event, PLI, 685 Market St., San Francisco — <http://bit.ly/XVm6pn>
- \*July 9 Interactive Advertising Bureau webinar on mobile ad revenue, 9 a.m. — <http://bit.ly/11OcNYs>
- July 9-10 Minority Media and Telecommunications Council policy and access to capital conference, Washington Embassy Suites Convention Center — <http://mmtconline.org>
- July 10 FCC workshop on reforming inmate calling services rates, Commission Meeting Room — <http://bit.ly/144Xmtg>
- July 10-12 National Institute of Standards and Technology cybersecurity framework workshop, University of California-San Diego's Mandeville Auditorium, 9500 Gilman Dr., La Jolla, Calif. — <http://1.usa.gov/13YiAdE>
- July 11 FCC Office of Communications Business Opportunities access to capital conference and workshop, Commission Meeting Room — <http://fcc.us/10YgntL>
- July 14-18 ICANN meeting, International Convention Centre, Durban, South Africa — <http://bit.ly/157n9G8>
- July 15 FCBA Young Lawyers Committee brown bag lunch on advice from managing partners, 12:15 p.m., Wiley Rein, 10th floor, 1750 K St. NW — <http://bit.ly/19iAc5K>
- July 15-16 Practising Law Institute event on privacy and data security law, University of Chicago, Gleacher Center, 450 N. Cityfront Plaza Dr., Chicago — <http://bit.ly/14nsqof>
- July 16 Broadband Breakfast Club event on electric grid, 8:30 a.m., Clyde's, 707 7th St. NW — <http://xrl.us/bnk48j>
- \*July 16 Brookings Institution event on mobile technology and natural disasters, 2 p.m., Falk auditorium, 1775 Massachusetts Ave. NW — <http://bit.ly/13esFoO>
- \*July 16 *Game Show Network v. Cablevision* FCC administrative law hearing delayed indefinitely
- July 17 Aspen Institute security forum, institute's Aspen Meadows campus, Aspen, Colo. — [bit.ly/12msoAU](http://bit.ly/12msoAU)
- \*July 18 Media Institute luncheon with FTC Commissioner Maureen Ohlhausen, 12:30 p.m., Carlton room, St. Regis hotel — [coto@mediainstitute.org](mailto:coto@mediainstitute.org)

- July 19 FCC monthly meeting, 10:30 a.m., Commission Meeting Room — <http://fcc.us/ST7ZKY>
- July 21-24 NARUC summer meetings, Sheraton Denver Downtown — <http://bit.ly/123Joc5>
- \*July 28-31 Cable's Independent Show, Hilton San Diego Bayfront — [bit.ly/107XZ5X](http://bit.ly/107XZ5X)
- July 28-Aug. 2 Internet Engineering Task Force meeting, Berlin — <http://bit.ly/YGhO08>
- July 29-Aug. 2 Motion Picture Experts Group meets, Austria Trend Eventhotel Pyramide, Vienna — <http://bit.ly/12xmzKy>
- \*July 31 Northern Virginia, Maryland and District of Columbia Public Safety Regional Planning committees meet, 10 a.m., Prince George's County Public Safety Communications Center, Bowie, Md. — [WMcBride@co.pg.md.us](mailto:WMcBride@co.pg.md.us)
- \*Aug. 1 Michigan Public Safety Regional Planning committees meet, 10 a.m., 2nd-floor conference room, Marshall Department of Public Works, 900 S. Marshall St., Marshall — [Keith.bradshaw@macombgov.org](mailto:Keith.bradshaw@macombgov.org)
- Aug. 5 NATOA webinar on public, educational and governmental programming, 2 p.m. — <http://bit.ly/VJyGld>
- Aug. 9 FCC monthly meeting, 10:30 a.m., Commission Meeting Room — <http://fcc.us/SLULkI>
- Aug. 13 FirstNet board meets, 9 a.m., Commerce Department, Room 5855 Hoover Building, 14th and Constitution NW — <http://xrl.us/bnynvk>
- Aug. 18-20 Technology Policy Institute annual event, St. Regis, Aspen, Colo. — <http://bit.ly/T5hhpf>
- Aug. 18-21 APCO International conference, Anaheim (Calif.) Marriott — <http://bit.ly/13O2C8H>
- Aug. 27-29 Super Wi-Fi and Shared Spectrum Summit, Mandalay Bay, Las Vegas — <http://bit.ly/10y8mzU>
- Aug. 29 New York Metropolitan Area 700 MHz and 800 MHz Public Safety Regional Planning committees meet, 10 a.m., Orange County Department of Emergency Services, 22 Wells Farm Rd., Goshen — [meliaa@apco911.org](mailto:meliaa@apco911.org)
- \*Sept. 9 Oral argument on *Verizon v. FCC* net neutrality case, 9:30 a.m., U.S. Court of Appeals for the D.C. Circuit
- Sept. 9 NATOA webinar on community broadband, 2 p.m. — <http://bit.ly/VJyGld>
- Sept. 15-18 Competitive Carriers Association Annual Convention, The Cosmopolitan of Las Vegas — <http://xrl.us/bn8wxr>
- \*Sept. 18-20 NAB's Radio Show, Rosen Shingle Creek, Orlando, Fla. — <http://bit.ly/1aIyKLP>

- Sept. 16-19 NATOA conference, Loews Portofino Bay Hotel, Orlando, Fla. — <http://xrl.us/bod62e>
- Sept. 17 New York Games Conference, Museum of Jewish Heritage, 36 Battery Pl., New York — <http://bit.ly/11HwAph>, with Future of Television Forum next day at same place — <http://bit.ly/107YdFz>
- Sept. 23-26 CompTel fall conference, Gaylord Palms, Orlando, Fla. — [www.comptel.org](http://www.comptel.org)
- Sept. 26 FCC monthly meeting, 10:30 a.m., Commission Meeting Room — <http://fcc.us/128s2te>
- Oct. 1 NAACP's Hilary Shelton delivers United Church of Christ ethics in telecom lecture, 8 a.m., First Congregational UCC, 945 G St. NW — <http://bit.ly/YgBdEx>
- Oct. 2-4 National Association of Black Owned Broadcasters conference, Westin City Center, 1400 M St. NW — [www.nabob.org](http://www.nabob.org)
- Oct. 7 NATOA webinar on public, educational and government channel revenue, 2 p.m. — <http://bit.ly/VJyGld>
- Oct. 7-10 PCIA annual show, Westin Diplomat, Hollywood, Fla. — <http://bit.ly/Y33ONL>
- \*Oct. 7-11 Akamai Edge Conference, Gaylord National Harbor Resort, National Harbor, Md. — <http://bit.ly/16FmYhV>
- Oct. 8-10 Telecommunications Industry Association conference, Gaylord Convention Center, National Harbor, Md. — <http://tia2013.org>
- \*Oct. 9-11 IEEE Broadcast Symposium, Westgate Hotel, San Diego — <http://bit.ly/11Cbuff>
- Oct. 15 FirstNet board meets, 9 a.m., Commerce Department, Room 5855 Hoover Building, 14th and Constitution Ave. NW — <http://xrl.us/bnynvk>
- Oct. 21-24 Society of Cable Telecommunications Engineers conference, Georgia World Congress Center, Atlanta — <http://bit.ly/11HwSfK>
- Oct. 22 FCC monthly meeting, 10:30 a.m., Commission Meeting Room — <http://fcc.us/VoBp2o>
- \*Oct. 22-24 Broadband World Forum, RAI Exhibition and Convention Centre, Amsterdam — <http://bit.ly/100J7fb>
- Oct. 28-31 NYC Television Week, Waldorf Astoria and Metropolitan Pavilion — registration info to come.
- Nov. 4 NATOA webinar on the digital divide, 2 p.m. — <http://bit.ly/VJyGld>
- Nov. 14 FCC monthly meeting, 10:30 a.m., Commission Meeting Room — <http://fcc.us/SLV0wg>

- Nov. 19 Oral argument on USF/intercarrier compensation case against FCC, 10th U.S. Circuit Court of Appeals, Denver
- Nov. 19 FTC event on the Internet of Things, rescheduled from Nov. 21, Washington, details TBA — <http://1.usa.gov/11LqENi>
- Nov. 19-22 ITU Telecom World, Bangkok — <http://bit.ly/16irnY8>
- Nov. 21 New York Metropolitan Area 700 MHz and 800 MHz Public Safety Regional Planning committees meet, 10 a.m., Orange County Department of Emergency Services, 22 Wells Farm Rd., Goshen, N.Y. — [melias@apco911.org](mailto:melias@apco911.org)
- Dec. 2 NATOA webinar reviewing 2013 and previewing 2014, 2 p.m. — <http://bit.ly/VJyGld>
- \*Dec. 5-6 International Wireless Power Summit, Omni Austin Downtown — <http://bit.ly/18l9A6z>
- Dec. 12 FCC monthly meeting, 10:30 a.m., Commission Meeting Room — <http://fcc.us/WOrhku>
- Dec. 17 FirstNet board meets, Boulder, Colo., details to come

\* Item is new or revised since last week.

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