

Communications Daily

THE AUTHORITATIVE NEWS SERVICE OF ELECTRONIC COMMUNICATIONS

THURSDAY, MAY 30, 2013

VOL. 33, NO. 104

TODAY'S NEWS

CLYBURN SETTING COURSE as FCC chair. How much she does likely to be decided by how much time she has to act. (P. 1)

SOFTBANK-SPRINT deal gets nod from CFIUS after signing of national security agreement; FCC approval seen likely 'within days.' (P. 3)

FILMON.COM, FORMERLY AEROKILLER, to stop streaming major broadcast channels, says CEO in open letter. (P. 5)

IMPOSE 911 CERTIFICATION REQUIREMENT but not other mandates as a result of derecho, Verizon counsels FCC. (P. 6)

CALIFORNIA LAWMAKERS MOVE TWO bills this week that propose expanding key state broadband fund. (P. 7)

U.S.-EU TRADE AGREEMENT should not weaken EU privacy rights or impose U.S. copyright restrictions, consumer advocates tell USTR. (P. 9)

TELECOM NOTES: Numbering trial would provide helpful information, Level 3 says ... Mobile Future urges Clyburn to press forward on spectrum auctions ... OET seeking comment on Google white spaces database test. (P. 12)

Clyburn Settling in as FCC Chairwoman

FCC acting Chairwoman Mignon Clyburn has yet to lay out a clear agenda for what she will do in what could be an extended period leading the agency. More will be known next week, when Clyburn releases the preliminary agenda for her first meeting as chair, scheduled for June 27.

Some early moves are expected. Clyburn has yet to make staff announcements. Like past interim chairs, Clyburn can beef up her staff, adding one aide on a temporary basis, but for the most part will likely lean heavily on bureau chiefs and other bureau staff who now report to her as acting chair, FCC officials said.

"They're learning the ropes," an agency official said of Clyburn's team. "They're trying to figure out what they want to get done." Don't "necessarily read more or less into anything that they're doing right now, because last week was the first week," the official said: "They're on everybody's email chain" for internal documents now that Clyburn is heading the agency. One former official said the biggest additional workload comes from having to manage the 1,800-member FCC staff and all of the work done throughout the agency.

In Clyburn's first major speech as acting chairwoman last week, at the CTIA annual conference, she assured the wireless industry that the incentive auction remains on track for next year, but offered few specifics (CD May 23 p1). Since, the FCC took has taken care of business in several areas, putting out an NPRM on regulatory fees, releasing Phase I money as part of the Connect America Fund, and releasing Friday evening a design for a study on barriers to entry of communications businesses (CD May 29 p2).

"Chairwoman Clyburn's greatest strength is as a politician," said public interest lawyer Andrew Schwartzman. "She has a natural feel for people, and for issues, and she knows how to nego-

tiated effectively. I'm sure she realizes that her job is to keep things running smoothly, and she has the skill set to make sure that happens. But, as we have already seen with the public notice on barriers to entry, she will want to advance the ball on the things she thinks are important."

It could take Clyburn and her top advisors a few weeks to get their bearings, said former FCC officials. A former top staffer noted that Clyburn has only been acting chair for a little more than a week, and part of last week was spent getting to and from the CTIA show in Las Vegas. "It's one thing to be watching what's going on even if you're watching it super attentively, and it's another thing to be the person who all of a sudden is in charge of running the ship," the lawyer said.

The length of Clyburn's tenure remains to be seen, but getting Senate approval for Tom Wheeler, who was nominated by President Barack Obama to replace Julius Genachowski as chairman, could take many months, industry officials agreed. They said that's especially true because Republicans have yet to identify a replacement for former Commissioner Robert McDowell.

"I don't think she has the desire to tackle any monumental issues," said a former FCC official. "As she said to commission staff [<http://bit.ly/10QI4H6>], she sees herself as taking the baton from Julius to the next chair. The variable on that is how long will it take to get Wheeler approved. If that drags out, will there be pressure for her to try to come up with at least some of the early decisions in the incentive auction?"

"I was encouraged by Chairman Clyburn's remarks at CTIA that she intends to keep the incentive auction on track," said Free State Foundation President Randolph May. "That's important. Because she is passionate about the Lifeline program, I expect she will focus on implementing some further reforms to prevent fraud and abuse, while at the same time arguing for maintenance of a healthy program. And because she is also passionate about increasing media ownership opportunities for minorities and women, I suspect Chairman Clyburn will look for ways to further this cause, consistent with constitutional constraints."

"Acting Chairwoman Clyburn should focus on setting just and reasonable calling rates for inmates and their families," said Free Press Policy Director Matt Wood. "She should continue building on last year's accomplishments in political advertising transparency, and make sure the FCC meets its responsibility to require disclosure of the real funders behind these ads." More work remains on National Broadband Plan promises to collect better data on broadband deployment and pricing, and make that information available to the public and researchers outside the agency, Wood said. "And she should keep moving ahead with 700 MHz interoperability, the commission's phone unlocking inquiry, and other initiatives that give users more freedom and control over the wireless devices they buy."

One of Clyburn's problems is she doesn't know how long she will be chairwoman, said Public Knowledge Senior President Harold Feld. "Most people predict that even if Wheeler has a confirmation hearing before the end of June, we are still looking at after Labor Day before he, and whoever is appointed to replace McDowell, are likely to be confirmed. What you try to do can depend a lot on whether you think you have four months to accomplish it, six months to accomplish it, or potentially even longer if some unanticipated snag like a last minute unrelated 'hold' comes up." Clyburn is likely to take on several issues, Feld said. "Prison phone rates is clearly an issue she has championed and one where the record is now complete," he said. "Rural call completion is an issue that has urgency to it and bipartisan support. Various aspects of USF reform will be very familiar to Clyburn because of her background as a state ... commissioner, fit well with her priorities of promoting broadband, and does not appear to be an

area where Wheeler wants to be active. On the other hand, Wheeler clearly has a huge interest in wireless, so it is unclear how much Clyburn will attempt in this area.”

Two wireless issues the commission may take on are the SoftBank/Sprint deal, among other transactions, and 700 MHz interoperability, Feld said. But an interoperability mandate “is sort of iffy because AT&T and Verizon are almost certain to challenge any mandate, and Clyburn may therefore want the issue resolved by the full commission for political reasons,” he said. Media ownership is another area set for action, once the Minority Media and Telecommunications Council completes its study (see separate report below in this issue), he predicted: “While an important issue, it also falls outside Wheeler's areas of interest. On the other hand, it is also likely to be highly controversial, and therefore may wait for the full commission.”

“I find it hard at this point to predict with any certainty how Acting Chairwoman Clyburn's tenure will play out in coming months, given the mix of factors in motion,” said Jeff Silva, analyst at Medley Global Advisors. “To some extent, Clyburn's effectiveness will be a function of the amount of time she gets to chair the agency. The longer it takes for the Senate to confirm a permanent chairman and a Republican replacement for former Commissioner Robert McDowell, the greater impact she can have as rule-makings and initiatives become ripe for decisions. It cannot be overlooked as well that Commissioner Jessica Rosenworcel and Commissioner Ajit Pai are no longer newbies and their elevated stature on a 2-1 commission puts each in a stronger position to exert their respective wills on policy.” — *Howard Buskirk*

Security Agreement Signed

CFIUS Clears SoftBank-Sprint Deal On National Security Issues

The Committee on Foreign Investment in the U.S. (CFIUS) approved Japan-based SoftBank's bid to buy 70 percent ownership of Sprint Nextel, the two carriers confirmed Wednesday (<http://bit.ly/117byQ5>). The multi-agency committee decided there were no unresolved national security issues related to the deal, despite recent concerns voiced by lawmakers and another company competing for control of Sprint. The FCC's review is the deal's remaining regulatory barrier — which Medley Global Advisors analyst Jeffrey Silva predicted will be removed “within days.”

SoftBank and Sprint said they signed a national security agreement with “Team Telecom” — the Departments of Defense, Homeland Security and Justice — in order to get CFIUS clearance. The agreement, which took effect immediately, will terminate if SoftBank's bid terminates. SoftBank and Sprint said they still expect SoftBank's \$20.1 billion purchase will be completed by July 1. Sprint shareholders are to vote on the deal June 12.


The Team Telecom agencies are expected to notify the FCC that it can complete its own ongoing review of the proposed deal. Wednesday marked day 180 on the FCC's unofficial 180-day shot clock for a decision on the transaction. The commission wanted to “make sure CFIUS was absolutely completed” before it moved ahead, Silva said. “It's my assumption that the FCC will approve the transaction with days,” he told us. The FCC's order may contain some “interesting” provisions from the public interest standpoint, but there's unlikely to be anything surprising, Silva said.

The national security agreement gives the Team Telecom agencies veto power over one of SoftBank's appointees to Sprint's board, Sprint said in a filing with the SEC. That appointee, who will act as

the Security Director, will keep in contact with the agencies and will ensure implementation of the agreement. The agencies will also be able to approve “certain network equipment vendors and managed services providers” Sprint uses, and have a one-time right to demand Sprint remove and decommission specific equipment within Clearwire’s network if it gains full control of that carrier, Sprint said in the filing. That right expires Dec. 31, 2016 (<http://1.usa.gov/12ir9mg>). Sprint is attempting to buy Clearwire for \$2.5 billion; Clearwire shareholders are expected to vote on that deal Friday.

The agreement’s terms are certainly “not run of the mill” within the telecom sector, but they aren’t a surprise given the national security concerns critics have raised, Silva said. The national security concerns over SoftBank’s bid have centered on its use of equipment manufactured by Chinese telecom equipment vendors Huawei and ZTE on its 4G LTE network in Japan. The Chinese companies have been under scrutiny as a potential national security threat. Scrutiny of Sprint’s Clearwire bid has centered on Clearwire’s use of Huawei equipment on its network. The deals’ national security issues have gotten attention on Capitol Hill recently, with Sen. Chuck Schumer, D-N.Y., urging the FCC and CFIUS in a letter last week to “take a very careful look” at the deal (CD May 28 p8). Former Director of National Intelligence Mike McConnell said during a cybersecurity hearing earlier this month that SoftBank should not be permitted to buy control of Sprint (CD May 22 p9). Although those issues have been at the forefront of the debate recently, the government’s reviews have occurred in an environment in which the agendas of the Obama administration, SoftBank and Sprint aligned “fairly neatly,” Silva said. “That always helps when you need to negotiate a national security agreement.”

Dish Network, which has long opposed the SoftBank deal and made a \$25.5 billion counteroffer for Sprint in April, said in a statement Wednesday that the U.S. government “should continue to proceed with deliberation and caution in turning over assets of national strategic importance — such as the Sprint fiber backbone and wireless networks — to a foreign-controlled entity with significant ties to China. Oversight and accountability for our national network infrastructure is critical at a time [when] offshore

		EDITORIAL & BUSINESS HEADQUARTERS 2115 Ward Court, N.W., Washington, DC 20037		Business	
(ISSN 0277-0679) PUBLISHED BY WARREN COMMUNICATIONS NEWS, INC.		Albert Warren <i>Editor & Publisher 1961-2006</i>		Brig Easley Exec. VP-Controller Deborah Jacobs Information Systems Manager Gregory Jones Database/Network Manager Annette Munroe Dir., Marketing & Circulation David Osborne Marketing Associate Susan Seiler Content Compliance Specialist Katrina McCray Sr. Sales & Mktg. Support Specialist Greg Robinson Sales & Marketing Support Assistant Loraine Taylor Sales & Marketing Support Assistant	
Jonathan Make Managing Editor Howard Buskirk Associate Managing Editor		Paul Warren Chairman and Publisher Daniel Warren President and Editor Michael Feazel Executive Editor Paul Gluckman Executive Senior Editor Howard Buskirk Executive Senior Editor Jonathan Make Managing Editor Mark Seavy Senior Editor Jeff Berman Senior Editor Rebecca Day Senior Editor Monty Tayloe Associate Editor Kamala Lane Assistant Editor Bryce Baschuk Assistant Editor Matthew Schwartz Assistant Editor John Hendel Assistant Editor Jimm Phillips Assistant Editor Kate Tummarello Assistant Editor Erin Mershon Assistant Editor		Television & Cable Factbook	
Warren Communications News, Inc. is publisher of Communications Daily, Warren’s Washington Internet Daily, Consumer Electronics Daily, State Telephone Regulation Report, Television & Cable Factbook, Cable & Station Coverage Atlas, and other specialized publications.		International Trade Today		Sales	
Send news materials to: newsroom@warren-news.com		Tim Warren Managing Editor Brian Feito Associate Editor Jessica Arriens Assistant Editor		Michael Taliaferro Managing Editor & Asst. Pub. Gaye Nail Assoc. Managing Editor Kari Danner Sr. Editor & Editorial Supervisor Colleen Crosby Sr. Editor & Editorial Supervisor Bob Dwyer Senior Research Editor Marla Shepard Senior Editor	
Copyright © 2013 by Warren Communications News, Inc. Reproduction in any form, without written permission, is prohibited.				William R. Benton Sales Director Agnes Mannarelli National Accounts Manager Jim Sharp Account Manager Brooke Mowry Account Manager Norlie Lin Account Manager	
Phone: 202-872-9200 Fax: 202-318-8984 www.warren-news.com E-mail: info@warren-news.com				Dir. of Advertising: Richard Nordin Phone: 703-819-7976 Fax: 202-478-5135 richard@groupnordin.com	
By using our e-mail delivery service, you understand and agree that we may use tracking software to ensure accurate electronic delivery and copyright compliance. This software forwards to us certain technical data and newsletter usage information from any computer that opens this e-mail. We do not share this information with anyone outside the company, nor do we use it for any commercial purpose. For more information about our data collection practices, please see our Privacy Policy at www.warren-news.com/privacypolicy.htm .					

cyber-attacks continue to rise.” Dish has been a frequent critic of the national security aspects of SoftBank’s bid in recent weeks (CD May 24 p14). The CFIUS decision is “a blow to Dish’s counteroffer” rather than a positive SoftBank can tout with Sprint shareholders, Silva said. CFIUS’s decision “makes the whole counteroffer less and less likely to go anywhere,” he said. — *Jimm Phillips*

CBS: Dismiss Aereo Request

FilmOn.com CEO Says He'll Stop Streaming Major Broadcasters

A week after being sued in U.S. District Court in Washington, D.C., online TV service FilmOn.com will stop streaming major broadcasters in D.C. and eventually all over the country, said an open letter sent to U.S. broadcasters by CEO Alki David. Doing business until now as Aereokiller, David’s company continues to call itself FilmOn.com after a recent legal settlement with competing company Aereo. David said FilmOn will replace the local network affiliates, the content of which it’s been streaming online, with independent stations, with which his company will negotiate residual fees. “This model will set a standard by which companies like Aereo will have a tougher time establishing the precedent of not paying broadcasters for the content that they own,” wrote David. Fox, CBS, ABC and NBC didn’t comment.

If FilmOn stops rebroadcasting network TV, it may affect the broadcasters’ lawsuit against it in the D.C. federal court and another in the 9th U.S. Circuit Court of Appeals, said Fletcher Heald broadcast attorney Harry Cole, with no client in those cases. “By pulling off the programming, it could moot out those cases.” He said since both lawsuits are based on FilmOn rebroadcasting unlicensed TV content, the company could ask the court to throw the cases out if the company has stopped the behavior.

Cole also said if FilmOn starts paying for content, it could hurt Aereo’s argument that streaming on-air content shouldn’t require a fee. “By acknowledging that he needs some form of licensing, it does undermine Aereo,” Cole said of David. But Cole said it’s doubtful FilmOn’s shift will cause Aereo, which has won several preliminary court battles in the 2nd Circuit, to change its behavior. A spokeswoman for Aereo declined to comment.

CBS asked a federal judge to dismiss Aereo’s request for a declaratory judgment against the broadcaster, in a Tuesday filing in U.S. District Court in Manhattan. CBS’s motion is a response to Aereo’s suit against the broadcaster earlier this month, in which it asked the 2nd Circuit to rule that its streaming system of individual antennas, functionally identical to Aereokiller’s, doesn’t violate copyright law (CD May 8 p10). In its motion for dismissal, CBS said Aereo’s “anticipatory lawsuit” was an attempt to preempt future suits in cities where the company hasn’t even begun operating. CBS also argued that Aereo’s suit is duplicative of a claim for summary judgment Aereo made in the case brought against it by broadcasters in U.S. District Court in New York, which is still being adjudicated. CBS said if the court won’t throw the case out, it should be held until after the other case has been decided.

David’s letter said major broadcasters have repeatedly refused to negotiate with his company, and blamed them for propping up a business model that “is crumbling from the inside.” He also accused major broadcasters of making “death threats” against him and his family. Though David said at the start of his letter that he’s taking major broadcasters off his service, he also said his company needs them to placate consumers. He also mentioned an attempted deal to license content from NBCUniversal that he said fell through because of high retransmission fees. “As much as I’d like to not have the Majors on our system, they are a necessary evil as the unwitting consumer expects them to be there,” said David.

David also attacked the Nielsen ratings system, which he called the “lifeblood” of TV. He said he had offered to help Nielsen improve its online data, but had been rebuffed. “The Nielsen system is built for 5 channels that existed over 30 years ago. Not a world made up of Cable Satellite and Online Convergence,” wrote David. “The King has no clothes and this why the Networks want to kill FilmOn.com.” — *Monty Tayloe*

Voluntary Compliance Enough?

Verizon Says Carriers Should Be Required to Meet 911 Certification Requirement

The FCC should require all carriers to certify their systems meet “a core set of 911 resiliency practices,” which would be developed by public safety and other stakeholders, Verizon and Verizon Wireless said in reply comments. The comments responded to a March NPRM (<http://bit.ly/YtIwc5>) from the commission, reacting to last year’s derecho wind storm. It led to outages that affected 77 public safety answering points across Ohio, the central Appalachians and the Mid-Atlantic states, with 17 PSAPs losing service completely (CD March 21 p4).

“The comments in this proceeding make clear that 911 service providers are focused on ensuring the availability and reliability of their services and are actively engaged in applying the lessons learned from the Derecho,” Verizon said (<http://bit.ly/133G5RQ>). Mandates and new regulations aren’t the answer, the wireless carrier and telco said. “The Commission should focus on such a certification approach, and reject calls for prescriptive mandates and audits that would be diversionary and counterproductive.”

AT&T said the FCC should focus on problems identified in the commission's January report on the derecho, looking at problems experienced by a few carriers, rather than imposing broad, new mandates. “The *Notice* afforded commenters favoring prescriptive regulation an opportunity to develop a factual record on why it is necessary or advisable for the Commission to abandon its successful reliance on dynamic best practices in favor of prescriptive regulations, and to demonstrate how new regulations will increase 911 reliability,” AT&T said (<http://bit.ly/ZeVQEU>). “But regulation proponents have failed on both counts. Commenters favoring prescriptive regulation largely assume a record of industry-wide failure that does not exist, either in the *Derecho Report* or elsewhere.” AT&T said the record developed by the commission shows: “(1) most 911 Service Providers performed well during the derecho despite the historic severity of the storm; (2) this success resulted from the widespread adherence by 911 Service Providers to voluntary industry best practices; and (3) industry-wide regulatory remedies are not needed.”

But the National Emergency Number Association said industry best practices alone aren't enough. “Contrary to some commenters’ views, NENA is convinced that minimum reliability requirements premised on risk-based analysis of 911 system vulnerabilities are a superior alternative to self-policed, and therefore often ignored, compliance with industry-developed best practices,” NENA said (<http://bit.ly/15azTIK>). NENA urged the FCC to seek additional comment on a requirement that carriers and system service providers (SSPs) maintain a 24x7 “911 Resolution Team.” While the commission didn't “explicitly request comment on the creation of dedicated 911 resolution teams in the Notice, a number of commenters have noted the potential benefits of such an arrangement,” the group said. “NENA agrees that such teams would be incredibly beneficial: As many commenters noted, 911 systems are comparatively unusual in topology and operation. Consequently, many in the 911 community have experienced occasions when carrier or SSP personnel are unfamiliar with the provisioning, maintenance, and operational minutiae of 911 systems.”

New York City disagreed with AT&T's reading of the derecho report. "Voluntary compliance with industry best practices regarding critical 911 call delivery infrastructure systems has proven inadequate, as was illustrated in the Derecho report, and 911 service providers do not currently have sufficient incentive to fully comply with best practices recommendations," the city said (<http://bit.ly/15jkKEm>). — *Howard Buskirk*

\$100 Million Question

California Bills Propose Expanding State Broadband Fund

California may change how it subsidizes broadband deployment and adoption in several ways, under legislation on the table this session. Senate Bill 740 and Assembly Bill 1299 seek to expand how California grants broadband subsidies — one focusing on expanding how hundreds of millions of dollars in grant money is spent in building out the state's broadband infrastructure, the other on connecting public housing. Some stakeholders worry about changes hurting the fund and limiting funds to the bigger players as the bills evolve.

The California Public Utilities Commission adopted the broadband-focused California Advanced Services Fund in 2008. The fund relies on a surcharge and now faces big changes in current pending bills — particularly in SB 740, which would reauthorize the fund. Both bills faced key votes this week, and passed. SB 740 passed the Senate 34-1 Tuesday and will now move to the California Assembly. AB 1299 passed Wednesday in a 55-14 vote. Sen. Alex Padilla (D), the author of SB 740, described the needs of changing the funds to address the digital divide.

"While the initial funds, now having reached a total of about \$225 million, have gone a long way in filling that gap, filling that void to the unserved and underserved parts of the state, there are still some areas of the state that by virtue of being hard to get to, an economic case or otherwise, providers aren't offering high-speed Internet access," Padilla told senators Tuesday. He said there's also "more and more being done online." Residents rely on the Internet for government communication, e-commerce, education and health-care, and it's important to connect as many Californians as feasibly possible, he said. "This bill would do just that by providing the PUC a little bit more flexibility on who can apply for and receive the advanced services fund grant to try to get to those final pockets of the state that aren't ideally connected."

Some stakeholders worry about how SB 740 has evolved since Padilla introduced it in February. "You're all but killing CASF [California Advanced Services Fund]," Tellus Venture Associates President Steve Blum told us of the latest version. His consulting firm focuses on community broadband and has many municipal customers. The original version of the bill fit with what the California Emerging Technology Fund had lobbied for last year, he said. "That was the proposal on the table as of last February." Amendments to the bill, added after industry aired its concerns, dropped the maximum size of the fund from \$325 million as originally proposed back to \$225 million, \$25 million of which would be shifted to public housing deployment and adoption spending if AB 1299 passes.

"The current version will not get us there at all," Sunne Wright McPeak, president of the California Emerging Technology Fund, told us of SB 740. Her nonprofit told legislators of the need for the additional \$100 million, which informed the first version of the bill, and she stressed the need to restore the \$100 million to the bill if California wants to reach its stated goal of 98 percent broadband access. The bill's latest text (<http://bit.ly/17tdz16>) proposed that CASF strive to offer broadband to "no less than 98 percent of Cali-

ifornia households and would provide that it is the intent of the Legislature to authorize collection of additional surcharge amounts necessary to achieve this program goal.” Padilla has said he plans to restore additional funding once the CPUC provides more information, McPeak said, expressing optimism, especially after the recent votes: “Both authors are working diligently to address concerns from stakeholders.” A Senate Appropriations Committee analysis from earlier this month confirmed Padilla’s intention “to amend the bill at a later date to allow the collection of additional funding” (<http://bit.ly/11zrG1y>).

The amended bill text “tightened the focus” on connecting unserved rather than underserved homes and specified that middle-mile providers “can only build out to unserved areas,” Blum said, citing these as priorities of cable companies and telcos. “That throws a big monkey wrench in the ability of independent ISPs to propose projects.” The bill also creates restrictions on cities and counties applying for funds, making it a “practical impossibility,” Blum said. The bill allows municipalities to apply for funds “only if the infrastructure project is for an unserved area, the commission has conducted an open application process and no other eligible entity applied, and the commission determines that within the region of the local agency’s jurisdiction there is less than 98 percent broadband deployment,” it said. Most remaining opportunities belong to the cable companies and telcos, Blum said. Tellus’s municipal clients are not especially worried about SB 740 because they often don’t work with the CPUC as is, but independent ISPs have expressed concern, he said. “This puts a big hole in some of their business plans.” SB 740 “started off looking a lot better” before committee amendments, Access Humboldt Executive Director Sean McLaughlin said, saying the latest version left him “a little disappointed.” The version that exists now has a “really significant” drop in funds and changed the eligibility language to include “a strong bias” against community-owned networks, he said.

McPeak, however, said she believes the bill text preserves flexibility on who can apply for the funds. The text doesn’t preclude the “woefully underserved,” she said. There is a need for hard numbers and goals, said McPeak. “It is imperative to focus on last mile to make sure we reach the 98 percent.” The fund can’t “just be an expenditure pot,” she said. According to the text, “an entity that is not a telephone corporation shall be eligible” to apply. The bill outlined instances where applicants will no longer need a certificate of public convenience and necessity, which McPeak said was important.

AT&T likes the direction of the bill. “We support the effort to focus the CASF on unserved consumers,” a spokesman told us. The telco supports the idea of using the CASF for deploying broadband to unserved areas “where private investment has not been forthcoming,” he said. AT&T is “working with the author,” Padilla, to make sure the funds go to those providing service to unserved communities and that “funding is used for applicants that demonstrate the intention and ability to provide service only to hard-to-reach, unserved consumers,” the spokesman added.

AB 1299 proposes shifting \$25 million in CASF money to focus on broadband access and adoption in public housing. It “seeks to close the digital divide in those communities that need it the most,” bill author Assembly member Steve Bradford (D) said on the Assembly floor Wednesday. McPeak called the bill “groundbreaking in the nation” and said it’s critical if California wants to reach its 80 percent adoption goal. As the federal stimulus grant projects of NTIA’s Broadband Technology Opportunities Program end, these new fund purposes could help achieve the same ends, McLaughlin said. “That’s exactly the opportunity if we do it right.”

“Any funding from the program should be technology-neutral to allow for a variety of solutions, including wireless,” the AT&T spokesman said of AB 1299. “CASF resources for this purpose should be

available to public housing agencies and established non-profit entities that operate affordable housing communities in California.” The telco supports using the grant money in cases of “existing limitations such as the age of the buildings and condition of current wiring,” he said. The bill also contains items “making the cable industry in particular very happy,” Blum said. He was referring to their potential role providing the broadband and bill text that requires cities and counties to give providers right of entry into the public housing.

Both bills have garnered a lot of support and attention and each is sponsored by the head of its respective committee, which “gives us certain indications of their chances of moving forward,” McLaughlin said. Blum also described a “lot of support” for both bills in the Legislature. “Right now the only meaningful obstacle to either of those becoming law is Gov. [Jerry] Brown,” Blum said. He called the California Democrat “an independent thinker” who “makes up his own mind” before signing bills. The bills’ wide passage margins this week are “a reflection of the commitment and the credibility of the two authors,” McPeak said. “I’m hopeful that the money will get added back in.” — *John Hendel*

Privacy, IP Interoperability?

USTR Hears Arguments For, Against Privacy, Copyright Interoperability in TTIP Hearing

The Office of the U.S. Trade Representative and members of the interagency Trade Policy Staff Committee heard arguments for and against the interoperability of EU and U.S. privacy and intellectual property standards, during a Wednesday hearing on the Transatlantic Trade and Investment Partnership (TTIP). Industry groups said TTIP should find the commonalities between U.S. and EU privacy and copyright policies to promote the free flow of data across borders, while consumer and privacy advocates said TTIP should not impose the restrictions of U.S. copyright policies on other countries or weaken EU privacy standards.

“Interoperability is the word we would offer” as the foundation for TTIP negotiations, Harriet Pearson, partner of Hogan Lovells Privacy Information Management Practice and representing the Coalition for Privacy and Free Trade, said during oral testimony. The privacy regimes in the U.S. and EU have “broad similarities,” as both “focus on empowering individuals to exercise control over their personal information; both emphasize the importance of appropriate measures to achieve adequate data security; and both expect accountability of the organizations to collect, use and otherwise manage personal data,” the group said in its written testimony. TTIP should focus on the free flow of data across borders, “enabling companies from different jurisdictions to share data across borders while providing necessary privacy protections,” the group said.

The privacy regimes of the two negotiating parties “are different, but compatible,” said David LeDuc, Software and Information Industry Association (SIIA) senior director-public policy. “A primary goal of the TTIP negotiations should be to ensure that privacy rules do not act as an unnecessary barrier to cross-border flows of information,” he said. The panel of agency representatives said it would be interested in seeing empirical evidence to support claims that data localization requirements motivated by privacy concerns harm businesses. LeDuc said SIIA has no empirical evidence on that issue. “It’s a hard area to determine and actually put a dollar figure on,” he said.

It's premature to address privacy in TTIP, as “both the EU and the U.S. approaches to data protection are being re-examined,” said Jeff Chester, executive director of the Center for Digital Democracy, in his prepared testimony. He compared the EU’s “long-established framework to empower its citizens regarding data protection” — which is subject to “pending regulatory proposals that would revise its highly regarded data protection directive” — to the U.S. “potential promise of some form of national privacy law” and the multistakeholder approach that has not been found to be “workable.” Chester cited the World Wide Web Consortium’s Do Not Track process and the mobile privacy process facilitated by the NTIA as examples of these multistakeholder processes. Chester also advocated for transparency in the negotiation process and the “creation of a formal advisory board” to “facilitate the participation of consumer groups.” Consumer advocates would be able to help TTIP negotiators see “the huge consequences to the public health and the public welfare” of digital data collection, he told the panel. “We look at what actually happens, not the rhetoric that you might get from lobbyists.”

In a blog post published before the hearing, Chester said industry groups like the Digital Trade Coalition and the Coalition for Privacy and Free Trade — both of which had representatives speak at the hearing — engage in “fiction writing” to “paint a picture of a robust system protecting privacy” in the U.S. (<http://bit.ly/19mRUUpG>) These groups want “a trade deal that would allow our ineffective privacy regime to be considered ‘interoperable’ with the EU’s human rights and civil liberties robust approach,” he wrote. Based on the statements and comments of these groups, it’s clear that “fiction writing is alive and well on K St.,” Chester told us.

TTIP can be a chance for the U.S and EU to learn from one another’s approaches to copyright infringement, Steven Metalitz, counsel to the International Intellectual Property Alliance (IIPA), told the agency representatives. IIPA includes the Entertainment Software Association, BSA/The Software Alliance, the MPAA and the RIAA. “Some European countries have different approaches in dealing with businesses that are based upon widespread copyright infringement,” while “the U.S., on the other hand, has gone further in terms of voluntary agreements” around copyright enforcement, which European countries could learn from, he said. Additionally, the U.S. and EU could increase their joint work to enforce intellectual property rights in third-country markets, he said. When asked by the agency representatives about specific recommendations and examples of specific ways the U.S. and EU can address these third-country markets, Metalitz said he had no specific recommendations in mind, but it’s important for the countries to come “to an agreement on which are our top priority markets to focus on.”

The IP provisions in TTIP should be different from provisions in other trade agreements, such as the Trans-Pacific Partnership, because “such provisions are not necessary in the TTIP,” Metalitz said. “Both partners in the TTIP already have in place modern copyright law and enforcement regimes that are also harmonized to a considerable extent.”

The U.S. should consistently promote a strong system of IP limitations and exceptions in TTIP, said Krista Cox, staff attorney for Knowledge Ecology International (KEI). Cox pointed to the World Intellectual Property Organization, where she said “the U.S. is a major player and in discussions with other countries.” The WIPO process is leading to a treaty that will strengthen limitations and exceptions for formatting copyrighted works for the visually impaired, and the U.S. should build off of that progress, she said. “We would hope ... that positive agenda is reflected in the United States trade policy.” TTIP should have copyright safe-harbor provisions that are missing from TPP, Cox said. KEI is concerned “that in the [Digital Millennium Copyright Act] there are specific carveouts for universities and institutes of higher education that’s not reflected in the TPP text,” she said. “That type of carveout should be included.”

The TTIP negotiation process should be transparent, Cox said. "Once the U.S. or EU have table text, it should be made public" with "narrow and limited" exceptions, she said. Cox said KEI objects "to the current secretive system" employed in other trade negotiations, including the TPP negotiation process. — *Kate Tummarello*

Comm Daily® Notebook

Global IP traffic will grow three-fold by 2017 to an annual run rate of 1.4 zettabytes — more than a trillion gigabytes per year, Cisco said Wednesday in its annual Visual Networking Index report. More traffic will traverse global networks in 2017 than all prior "Internet years" combined, Cisco said. There will be 3.6 billion Internet users by that year — 48 percent of the world's projected population of 7.6 billion. There will be more than 19 billion global network connections in 2017, up from 12 billion connections in 2012, Cisco said. The average fixed broadband speed in 2017 will be 29 Mbps, up from 11.3 Mbps in 2012 (<http://bit.ly/11y6rNA>).

The FCC Office of Engineering and Technology and the Media Bureau created a website where TV translators, low-power TV stations and Class As can update their input channel data in the Consolidated Database System (CDBS), said a public notice Wednesday (<http://bit.ly/17tUNqn>). The site is <https://apps.fcc.gov/oet/translator>. Input channels for low-power stations can be properly protected from interference by TV white space devices only if they are correctly recorded in the CDBS, the notice said. "This facility is especially important for low power stations that are located outside of the service contours of the station(s) that they re-transmit." Many full-power stations changed channels during the digital transition, and low-power stations re-transmitting them had to change their equipment, said the notice. "A significant number of those low power stations have not updated their input channels in the CDBS."

Capitol Hill

Senate Armed Services Committee Chairman Carl Levin, D-Mich., urged President Barack Obama to discuss pending U.S. cybersecurity legislation with Chinese President Xi Jinping when the leaders meet in June, said a letter that was made public Wednesday (<http://1.usa.gov/19mUA6I>). Levin urged Obama to refer the Chinese president to the Deter Cyber Theft Act (S-884), which is aimed at deterring countries from hacking U.S. commercial secrets and intellectual property (<http://1.usa.gov/141SEgi>). The bill, sponsored by Levin, "would require the Director of National Intelligence to produce a report that includes a priority watch list of foreign countries that engage in economic or industrial espionage against the United States in cyberspace," Levin's letter said. "The bill also would require the President, if he determines such action is warranted, to block imports of certain categories of goods if they benefitted from the stolen U.S. technology or proprietary information. ... I thought you could refer to this bill in your meeting with President Xi as an example that the U.S. will indeed impose real costs on China should they continue to steal our intellectual property." Obama plans to discuss cybersecurity issues with Xi when they meet in California next week, White House Press Secretary Jay Carney told reporters Tuesday (CD May 29 p10).

The U.S. Court of Appeals for the D.C. Circuit's decision to overturn the FCC's "meddling in program carriage negotiations is welcome news," said two senior Republicans on the House Commerce Committee in a joint news release Wednesday. On Tuesday the court ruled that the FCC can't force Comcast to carry the Tennis Channel on the same tier as the operator's own Golf Channel and NBC Sports, in a 3-0 rul-

ing (<http://1.usa.gov/12gefp0>). "American viewers have unprecedented choice in the content they watch, the services that deliver it, and the devices that display it," said House Commerce Committee Chairman Rep. Fred Upton, R-Mich., and House Communications Subcommittee Chairman Greg Walden, R-Ore. "In a dynamic market characterized by increased competition, rapidly developing technologies, and evolving business models, government intervention typically increases costs for consumers and reduces innovation. Our hope is that Acting [FCC] Chairwoman [Mignon] Clyburn and her eventual successor will take note of this decision and begin reducing the agency's intervention in the television marketplace."

Wireline

As a participant in the trial of direct access to numbers, VoIP provider Level 3 would seek IP interconnection with other service providers, it told FCC Wireline Bureau officials Tuesday. That experience will help Level 3 "identify best practices and standard terms for such agreements in the future, as they become more common," it said. The trial will also help resolve issues related to routing and terminating traffic in an "efficient" manner, Level 3 said. Level 3 intends to include both wholesale and enterprise lines in the trial, which is consistent with the commission's desire to "test direct access to numbers in 'a variety of factual scenarios,'" Level 3 said, quoting the commission's order approving the trials (<http://bit.ly/16pW15I>).

The Mississippi Public Service Commission concurs with NARUC and the other state commissions that have filed in the FCC's rural call completion docket, it said in comments Tuesday (<http://bit.ly/16pT4Cn>). It also "appreciates" the FCC's enforcement actions, it said. "The MPSC urges the FCC to expand its rulemaking scope to incorporate NARUC's suggestions to ensure call failure causes are timely identified and either resolved or enforced in a meaningful way," the commission said. Call completion problems don't only plague rural customers, the Massachusetts Department of Telecommunications and Cable (MDTC) said (<http://bit.ly/16pTmsO>). "While call completion is characterized as a rural issue, the problem can extend to suburban and urban areas in Massachusetts as these calls may originate or terminate anywhere in the United States," the state department said. MDTC also agrees with NARUC and the state commissions' call for the FCC to expand its rulemaking.

Wireless

Mobile Future Chairman Jonathan Spalter asked acting FCC Chair Mignon Clyburn in a letter sent Wednesday to keep wireless issues and spectrum clearly in her sights during her period heading the agency. "Nowhere in the FCC's domain is the opportunity more vast, the need so urgent, and the right policy so vital to achieving demonstrable results for the U.S. economy, consumers and the continued global leadership of American innovators," Spalter wrote. Topping Mobile Future's wish list is advancing spectrum auctions. "The FCC must move aggressively in its efforts to advance timely, well-executed spectrum incentive auctions and rules for the 65 MHz of spectrum that the Spectrum Act requires be auctioned and licensed prior to February 2015," the letter said. "These rules must maximize the amount of spectrum to be reallocated and guarantee that all qualified entities are able to participate. With spectrum exhaust already threatening cities around the country, delay is not an option." Spalter also discussed the need to repurpose federal spectrum to commercial and to look for other vehicles for making more spectrum available for wireless broadband. "As President [Barack] Obama has made clear, it is essential that excess government spectrum be reallocated to help expand mobile broadband for American consumers,"

he wrote. “The FCC serves a vital role in this process. The FCC, in conjunction with NTIA, should initiate proceedings to establish commercial operating rules for federal spectrum already specified, and to identify additional government spectrum for reallocation.”

The FCC Office of Engineering and Technology sought comment on the 45-day public test of Google’s white spaces database, which ended April 17. The database, one of several that has been tested, is part of the FCC’s push to open up unused TV channels for “super Wi-Fi.” The FCC has already certified databases operated by Spectrum Bridge and Telcordia. Comments are due June 13, replies June 30, a public notice said (<http://bit.ly/17tJ7E9>). OET also released a report Google filed on its field tests (<http://bit.ly/1134vH2>). Some 16,000 “unique users” visited the trial site, generating more than 36,000 page views, Google said. More than 30 percent of visits were from outside the U.S.

Sony is still working to get distribution for its coming portable wireless server (PWS) in the “mass retail” channel before the device ships next month, Viviano Cantu, director-consumer media, said Wednesday. But Sony’s usual accounts in the specialty photo/camera channel already agreed to carry the device, model WG-C10, he said. The mass retail channel includes retailers such as Best Buy and Target. The PWS was unveiled with little fanfare at CES early this year. At the time, Sony said it would ship a version of the device at \$89.99. But the company will also field the device bundled with a 16-GB SD memory card at \$99.99, Cantu said Wednesday. The device features no onboard memory, he said. The device gives consumers new options for storing and sharing content from mobile devices including smartphones, tablets and PCs, said Sony. The WG-C10 also serves as a battery charger and card reader/writer, giving users added control when managing data including photos, videos, music files and office documents, it said. The PWS can connect several devices at one time via Wi-Fi, allowing up to eight users to simultaneously share and play back different content on their mobile device, it said. One scenario where the device would come in handy is when a smartphone’s memory is full and the user can’t upload photos to Facebook from the camera, said Cantu. Via a wireless connection, users can transfer content to and from smartphones, tablets or PCs, and the PWS also lets users easily expand the storage capacity of their mobile device by using a memory card, said Sony. The PWS also functions as a back-up power source for mobile devices or cameras, said Sony. The device can be used for up to 10 hours of continuous operation on a full charge, said Cantu. It also becomes a Wi-Fi memory card reader/writer, which he said is a convenient option for smartphones or tablets that don’t have memory card slots, like iPhones and iPads. All controls are managed by a smartphone or tablet via the free PWS Manager app that’s available for download through Google Play or the Apple App Store, said Sony. — **JB**

Acacia Research’s suit against Huawei and ZTE alleging infringement of Access Co.’s PalmSource patents is scheduled for trial in mid-2014 in U.S. District Court, Marshall, Texas, said Acacia President Matthew Vella at the Cowen and Co. investor conference Wednesday in New York. Acacia reached agreement with Access in 2010 to license PalmSource patents to cellphone suppliers and has since generated “in the nine digits” of gross revenue through settlements and licensing pacts, he said. Among the five patents at the heart of the Huawei-ZTE suit was one granted Palm in 2002 covering a method for displaying and manipulating multiple calendars on a personal digital assistant (PDA). Palm’s PalmPilot was among the first PDAs when it was introduced in the mid-1990s. A second patent issued in 2010 described a method for making a phone call from an electronic device with an address list. Acacia, which gets about 40 percent of a given settlement, has licensed PalmSource IP to Apple, Google, HTC, Samsung and others, Vella said. Access, best known for its NetFront Internet browser, paid \$325 million in 2005 for PalmSource, which was spun off from Palm two years earlier. At the time, analysts questioned the value of PalmSource’s IP. Acacia is taking a similar approaching

to licensing 4G LTE technology it acquired in buying Adaptix last year for \$160 million. It has licensing pacts with Microsoft and Samsung so far, Vella said. Among Adaptix's more than 130 issued patents are those covering broadband orthogonal frequency division multiple access technology dealing with channel allocation as well as multiple-input and multiple-output IP. Acacia bought Adaptix from Baker Capital. Acacia has 257 patents under license and typically approaches negotiations for 5-7 portfolios containing 10-20 patents each, Vella said. Acacia expects to typically generate a return on its investment in the patents within 18 months, he said.

Internet

The National Institute of Standards and Technology hopes its second cybersecurity framework workshop will conclude with an "initial consensus" on standards to be included in the industry-developed framework, said Director Patrick Gallagher Wednesday. NIST expects participants at the event, which is being webcast and continues through Friday at Carnegie Mellon University in Pittsburgh, to begin creating the initial set of standards, best practices and procedures that will be included in the voluntary framework. NIST and the Department of Homeland Security are leading development of the framework as directed by President Barack Obama's cybersecurity executive order (CD Feb 14 p1). The participants will also begin identifying themes that cut across the different critical infrastructure sectors that are involved in the framework's development. Participants will base their discussions on the comments NIST collected in its initial request for information, as well as a NIST analysis of those comments that identifies common themes and issues (<http://1.usa.gov/10u8IYf>). It's important that the workshop result in a "best in class" initial consensus because the workshop's output will directly affect what's discussed at the next workshop, scheduled to run from July 10-12 at the University of California, San Diego, Gallagher said. "These workshops must build on each other." NIST hopes the July workshop will be able to focus on selecting framework components, said Adam Sedgewick, NIST senior information technology policy advisor. A fourth workshop, to occur in September, will help finalize what's included in the draft framework that goes public in October, he said. While there will eventually need to be a consensus on the entire framework, "not all of the discussions this week will meet with unanimous consent," Gallagher said. A lack of consensus in some areas is fine, however, because "the framework will be better if we bring in all viewpoints" at this stage in its development, he said. NIST's

It's Against the Law . . .

. . . to copy, fax or electronically transmit this newsletter -- including by email forwarding -- without our permission. Federal copyright law (17 USC 101 et seq.) makes it illegal, punishable with penalties up to \$150,000 per violation, plus attorney's fees.

Warren Communications News, Inc. frequently has taken action against individuals and firms that violated our copyright, and we will continue to do so. We request that subscribers advise their staffs of the law and of the financial penalties that will result from illegal copying by any method of this publication, which subsists primarily on subscription revenue. To ensure electronic delivery accuracy and copyright compliance, we may request return receipt confirmation.

role is only to support the industry participants, not to “choose or develop particular standards or solutions,” Gallagher said. “This is your work product, not ours.” — **JP**

Measurement data for multi-platform video content viewing is “only starting to improve,” but the much-needed improvement is “visible now,” Viacom CEO Philippe Dauman told the Nomura investor conference in New York Wednesday. “There’s a huge opportunity” to make TV Everywhere, which has been discussed for a long time, “a reality” now, he said. That’s “good for everybody,” including consumers, distributors and content owners, he said. The one major obstacle to providing TV content outside viewers’ homes remains the lack of a measurement system, he said. “We would like to see it happen more quickly,” and “a lot of progress has been made,” but “a lot of work needs to be done” still to achieve TV Everywhere, said Dauman. “I’m very excited by the mobile opportunity overall,” he also said. Viacom will “continue to develop” and improve its Nickelodeon app, and “it has been very successful” so far, he said. Viacom will start an MTV app “very soon and our other brands will be rolling out apps” in addition to the existing, “standard” apps that it has for individual TV shows including *The Daily Show* and *The Colbert Report*, he said. “We will innovate in this area. We are applying more and more internal resources” towards app initiatives, he said. — **JB**

The world’s content is increasingly “findable,” said venture capital firm Kleiner Perkins partner Mary Meeker’s annual Internet Trends report, released Wednesday (<http://bit.ly/16pZelO>). The amount of global digital information created and shared has grown nine times over the past five years, to nearly two zettabytes in 2011, the report said. A zettabyte is a trillion gigabytes. YouTube uploads are continuing to skyrocket, with 100 hours of video uploaded every minute, compared to around 75 million hours last year, the report said. The Internet is seeing continued robust growth, with 2.4 billion Internet users worldwide, it said. But Americans are below average in survey respondents indicating they share “everything” or “most things” online, the report said: Fifteen percent of surveyed Americans say they do, compared to a world average of 24 percent. For the first time, China has surpassed the U.S. in the number of active iOS and Android devices in use, the report said.

Pandora isn’t weighing an increase in the annual subscription price in the “short term,” but it’s “definitely a conversation we’re having internally” as the company seeks balance with ad revenue, Chief Financial Officer Michael Herring said Wednesday at the Cowen and Co. investor conference in New York. Pandora is considering a fee for a “small segment” of content or live streaming, charging for something that “creates a customized user experience,” Herring said. Most of Pandora’s 70 million listeners use the free music service, with about 2.5 million paying a \$36 annual subscription fee. In releasing earnings last week, Herring left the door open to increasing the fee as a hedge against rising content costs (CD May 28 p10). Pandora paid 64 percent of fiscal Q1 revenue for royalty fees to musicians and copyright holders, the CFO said Wednesday. Pandora’s user interface is or will be available in 90 vehicles, the bulk of which will go on sale in 2014-2015, he said. About 10-20 percent of Pandora’s listeners access the service through smartphones connected to a vehicle’s Bluetooth or auxiliary jack, he said. With the arrival of Wi-Fi-equipped vehicles expected from General Motors and other automakers in 2015, Pandora will be more easily accessible, Herring said. In the first year of availability, wireless will likely have a “single-digit” percentage install base in vehicles, Herring said Wednesday. Pandora expects the number of users bumping up against the company’s 40-hour monthly limit on listening will remain “steady” at 3-4 percent of the total base, or about 3 million users in fiscal Q1, Herring told us. Heavy users went past the cap in “a matter of days” after Pandora started imposing the limit earlier this year, Herring said. In the cases where there were multiple users on a single account, Pandora worked to set up separate registrations to lessen some listeners’ chances

of surpassing the monthly limit, Herring said. Pandora also is relying on when the service times out due to inactivity to help with avoid having users go over the limit, he said. The subscription-based service times out after three hours, while streaming ends after 1.5 hours of inactivity, Herring said. Pandora is adding software this week that allows users to monitor timeout settings, he said. Pandora, in seeking to increase ad revenue, may eventually seek to double the amount of audio spots that air with the service to three minutes per hour, against the 13-15 minutes common with broadcast radio, Herring said at the conference. “In the right context, certainly that’s a possible outcome.” Pandora has fully integrated Triton Digital’s national and local audience measurements with Strata’s and Media Ocean’s ad media planning and buying software, the latter having come on line in April. — *MS*

State Telecom Activities

Rural Kansans are demanding high-bandwidth services, said collocation center 1102 Grand (<http://yhoo.it/ZeYOcx>). Kansas Fiber Network, a customer of the center and consortium of 29 Kansan companies, upped its network capacity to 100 Gbps as a result, it said Wednesday. The network “will utilize the 1102 Grand DealCenter, an online meeting management system for customers of 1102 Grand, to drive core transport and other network service opportunities,” 1102 Grand said.

Central Texas will soon require 10-digit dialing for customers in the 512 area code, the Texas Public Utility Commission said in a press release Wednesday (<http://bit.ly/17u1eJX>). Callers will need to dial all 10 numbers starting June 1. The 512 area code will be exhausted by late 2013, it said. “The change is needed to accommodate new area code 737,” the PUC explained. “Telephone providers can issue new numbers with the 737 area code beginning Monday, July 1, 2013.” It noted that the new area code is needed to “handle regional growth along with the added demand for new wireless phone numbers and business landlines.”

International Telecom

Nokia asked the International Trade Commission to block imports of several HTC smartphone models that allegedly infringe its patents. The May 23 complaint said the allegedly infringing models include the HTC One S, One V, One X, Evo 4G LTE, Droid Incredible 4G LTE, Droid DNA, One X+, One VX, First and One. Nokia requested cease-and-desist and limited exclusion orders barring imports of the cellphones. It also asked that the limited exclusion order block imports of components of the infringing cellphones, such as chipsets, to prevent evasion of any import ban. Nokia had no immediate response.

Telecom Notes

Adak Eagle Enterprises and subsidiary Windy City Cellular have spent a great deal of time, energy and resources “sincerely and diligently responding” to FCC Wireline Bureau requests for information to supplement their waiver requests, the companies told bureau chief Julie Veach May 23, said an ex parte filing released Tuesday (<http://bit.ly/16pXyJ5>). Given the applicable waiver standard and the commission’s promise of “no flash cuts,” there “must be a way to reach a positive result,” they said. The companies are

“working rapidly” to submit a revised proposal based on FCC suggestions on how to further reduce operating expenses, they said. Adak Eagle and Windy City have sought waivers of some of the caps on high-cost USF support, without which they say operations would become unsustainable (CD Sept 19 p10).

Broadcast

The Coalition for Broadcast Investment asked the FCC to relax rules limiting foreign investment capital for broadcasters in a meeting with aides to all three commissioners, according to an ex parte letter filed Wednesday (<http://bit.ly/12iZVw3>). According to the letter, the coalition said broadcasters are facing increasing competition from “pay-television program networks, ‘over the-top’ providers and online services that are not subject to foreign investment limitations.” The coalition also said increasing access to capital would improve opportunities for minority media ownership and that “national security concerns” could be vetted with other agencies.

Cable

American Cable Association members are mostly small businesses that will face “inordinately substantial” burdens responding to the FCC’s special access data request, the association told Wireline Bureau officials May 23, according to an ex parte filing posted Wednesday (<http://bit.ly/16pWkNU>). To ACA, the “three most burdensome” requests are for fiber maps, location information and revenue information. Many member companies don’t have the mapping information and would have to create it, ACA said. Most ACA members do have automated billing records but don’t have access to much of the requested information, such as revenue from Dedicated Service based on bandwidth speeds or by LEC rate element. ACA wants to work with the commission to find “less burdensome alternatives that would still provide the Commission with what it needs to understand the special access market,” it said.

Time Warner Cable petitioned to be excluded from municipal rate-setting for basic-video and some other prices in 11 New York communities this week, said filings posted in FCC docket 12-1. The petition cited video competition from DirecTV and Dish Network. The proposed deregulation would affect just under 21,000 households, including the communities of Falconer, Lakewood and Jamestown (<http://bit.ly/13ZeX7Q>).

Mass Media Notes

Seventy percent of media consumers said they "enhance their entertainment experience by simultaneously using another device," said an Edelman study, the results of which the PR firm released Wednesday (<http://prn.to/ZtIYx7>). Two-thirds of respondents said watching and sharing entertainment online has increased their sense of global connection, it said. People were also more open to watching online videos from more distant locales than they were in 2012, it said. On social media, people are five times more likely to share a positive entertainment experience than a negative one, it said. The Global Entertainment Study, by the PR firm's research affiliate Edelman Berland, was done last month among 6,500 consumers in eight countries.

CEA attacked a Telecommunications for the Deaf and Hard of Hearing report (CD May 17 p7) on problems with closed captions over Internet Protocol and said it should be disregarded. The TDI report complained of a lack of captions on mobile Web browsers more than seven months before the deadline for compliance, the association wrote the FCC Wednesday in docket 11-154 (<http://bit.ly/117QWHx>). "TDI's failure to even acknowledge the January 1, 2014, compliance deadline for the apparatus closed captioning rules casts serious doubt on the credibility of the TDI Report," wrote CEA Vice President-Regulatory Affairs Julie Kearney. "Any claims made in the TDI Report regarding apparatus closed captioning capability are at best premature and should be disregarded."

Correction: NCTA corrected that it and CEA's estimate of pay-TV companies' voluntary set-top box energy conservation annual residential electricity savings is \$1.5 billion (CD May 29 p13).

The media ownership study that prompted a pause in approving FCC rules may be done soon, said the head of the group paying for the research on cross-ownership's impact on minority ownership. The research has been completed and is being peer-reviewed, Minority Media and Telecommunications Council Executive Director David Honig told us Tuesday. "We're hoping to get it finished and published before the end of this week, but you never know," he said. "It's that close to done." Then-FCC Chairman Julius Genachowski in February paused a vote on ownership rules to give time for MMTC to do the study, and Friday the agency released a study design on barriers to entry, research that a public notice said relates to ownership rules (CD May 29 p2). MMTC had expected the research to be given to the agency Wednesday, said a May 2 filing in docket 09-182 (<http://bit.ly/12iVzVE>). It said the reviewers are professors Philip Napoli of Fordham University, Allen Hammond of the Santa Clara School of Law and Jannette Dates, ex-dean of Howard University's School of Communications. NAB continues to think "modest reform of media ownership rules — many of which stem from the 1970s — are warranted," an association spokesman told us. "As the events of Superstorm Sandy, the Boston Marathon bombing and the Oklahoma tornadoes have proven, local broadcasting still matters, and it's time to adopt ownership rules that allow radio and TV stations to remain competitive with national pay media providers." — *JM*

Satellite

Galaxy Broadband Communications deployed the Hughes HX System 4.0 to provide IP networks for resource, government and enterprise markets in North America. Galaxy, based in Canada, bought a Hughes HX gateway and HX90 and HX200 satellite terminals, Hughes said in a press release (<http://bit.ly/18vaehK>). With the addition of the HX System 4.0, Galaxy is expanding its existing Ku-band services in Canada and the U.S., "as well as adding a new Ka-band service covering the resource-rich areas of Ontario, Quebec, Newfoundland and Labrador," Hughes said.

Dish Network launched its Social app for the Hopper. The app allows consumers to join social conversations about their favorite shows on their TV screen, Dish said in a press release (<http://bit.ly/ZeRRrX>): "Fans can multitask between watching a show on TV and following social posts about it on the same screen." Consumers can link up to four Twitter accounts and four Facebook accounts to the app, Dish said. The app contains a data bar that displays stats and relevant information related to the program being watched, it said.

SES and Intelsat urged the FCC not to expand the use of unlicensed national information infrastructure (U-NII) devices in the 5.9 GHz band as proposed in the commission's NPRM to amend Part 15 rules on operations of such devices. The FCC should "defer consideration of any such expansion until additional analysis of the impact on C-band FSS uplinks has been completed," they said in joint comments in docket 13-49 (<http://bit.ly/12OY391>). The NPRM fails to take into account the need to ensure that conventional C-band fixed satellite service operations in spectrum immediately adjacent to the 5.9 GHz band "are not subject to harmful interference from U-NII devices," they said: Protection of C-band satellite services is essential "given the importance of, and investment in, those services," they said. "Conventional C-band FSS serves as the backbone for distribution of media content globally." The FCC must ensure that FSS investment and services aren't stranded "as a result of any actions taken to expand capacity for U-NII devices," they said. Globalstar urged the commission to maintain its prohibition on outdoor operations in the U-NII-1 band at 5150-5250 MHz "and ensure that Globalstar's feeder link operations at 5096-5250 MHz are protected from harmful interference," it said in its comments (<http://bit.ly/117XjKO>). Globalstar said it supports most of the NPRM's proposals, including the proposed revisions to the operating rules for U-NII-2A and U-NII-3 devices, "as well as the commission's proposal to make available an additional 195 MHz of spectrum for use by U-NII devices," it said.

Row 44 joined the Satellite Industry Association, "further augmenting the association's representation of the dynamic satellite-based in-flight entertainment and connectivity sector," SIA said in a news release Wednesday. As a satellite-based service provider of in-flight broadband to about 500 commercial aircraft on four continents, "Row 44 will lend considerable experience to SIA's active regulatory and spectrum activities that support the satellite sector's ongoing innovation and investment in mobility capabilities," said the association.

New Skies Satellites seeks modification of the terms of U.S. market access for its NSS-806 satellite. The Netherlands-based company plans to relocate the satellite to 47.5 degrees west "and authorize flexibility to repoint the satellite's steerable Ku-band spot beam," said its application to the FCC International Bureau (<http://bit.ly/117GdN1>). Production & Satellite Services separately requested commission authority to operate a transmit-receive temporary-fixed earth station for the purpose of transmitting video programming, including news and entertainment from various locations to its customers (<http://bit.ly/13iIg2M>).

Communications Personals

CBS Executive Vice President-Planning, Policy and Government Affairs **Marty Franks** retiring, effective Sept. 30 ... Senate confirmed **Claire Kelly** and **Mark Barnett** as judges on the U.S. Court of International Trade ... Source Photonics hires **Doug Wright**, ex-United Technologies, as president and CEO, succeeding CEO **Near Margalit**, named chief product officer, new position at provider of optical communication products for telecom systems and data networks ... Neustar hires **John Caldwell**, ex-National Geographic Society, as vice president-media and new ventures ... RLJ Entertainment hires **Drew Wilson**, ex-Discovery Communications, as chief financial officer, succeeding **John Avagliano**, who left to pursue other opportunities ... Turner Broadcasting System hires **Chris Linn**, ex-MTV, as truTV president and head of programming ... Journal Communications promotes WTVF Nashville President/General Manager **Debbie Turner** to vice president of the company ... Uber hires **Andrew Noyes**, ex-Facebook and Warren Communications News, to manage communications and be based in San Francisco office, effective June 17.