

Cablefax Daily™

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What the Industry Reads First

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The Fight Continues: Title II Backers Resurface After Santa Clara Speed Cap

Verizon's misstep with a fire department in California seems to only have added fuel to the Title II fire, even after the company issued an apology and cut its speed cap restrictions for first responders. The story of the Santa Clara fire department's struggles when fighting the Mendocino fire in California is continuing to be used as an argument for repeal of the **FCC's** Restoring Internet Freedom Order. In an email to members, **Free Press** said that when the FCC repealed Title II regulations, it gave the Santa Clara fire department nowhere to go when it was attempting to get its service restored as it attempted to respond to the Mendocino fire. "But when it comes to Net Neutrality and internet access, lives are always on the line," Free Press wrote. "Without the open internet to illuminate police brutality, the family-separation crisis, White supremacy and other injustices, we'll see more violence and atrocities in our communities." Members of Congress aren't ignoring the story either. Sens *Ed Markey* (D-MA), *Ron Wyden* (D-OR), *Richard Blumenthal* and Rep *Anna Eshoo* (D-CA) are set to hold a telephone press conference Tuesday at 11:30am to outline how Supreme Court nominee *Brett Kavanaugh* would be another threat to the restoration of net neutrality rules. They'll also discuss their amicus brief in support of the challenges submitted to the US Court of Appeals's DC circuit court against the FCC's repeal of net neutrality rules. **Consumers Union** filed an amicus for petitioner brief in the docket as well, chronicling the history of Title II regulation and how the internet has benefited from such rules. "Our brief sets the record straight and explains how the FCC has grappled with how to foster the internet's growth and set in place some guardrails to ensure consumers benefited just as much as the big internet service providers for decades," Consumers Union senior policy counsel *Jonathan Schwantes* said. "To have us believe that internet service was never regulated, or even worse, suffered under burdensome regulation flies in the face of both facts and history." Joining together on a petitioner brief were the **Internet Association**, **Entertainment Software Association**, **Computer & Communications Industry Association** and **Writers Guild of America**. The group called the Restoring Internet Freedom Order "arbitrary and capricious," not offering a reasoned basis for the decision to eliminate its conduct rules. Some are still looking to Congress, rather than the FCC or any other body, to create the proper regulations and end the internet war. "It's ironic—but not unexpected—that the companies which have

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become the internet's most powerful gatekeepers are claiming to fight for a free and open internet that exempts them from the very rules for which they are advocating," **USTelecom** pres/CEO *Jonathan Spalter* said regarding the petitioners' briefs. "It's time for Congress to pass legislation that provides uniform consumer protections that apply to all companies in the internet ecosystem, and will truly preserve and protect net neutrality principles for all."

Stay on Sinclair: House Commerce Democrats *Frank Pallone* (D-NJ) and *Mike Doyle* (D-PA) are urging the **FCC** to keep the **Sinclair-Tribune** query alive even if an Administrative Law Judge decides to terminate the hearing proceeding. Meanwhile, the FCC's **Office of the Inspector General** wrapped its report into the FCC's handling of the merger, concluding that there was no evidence, "nor even the suggestion," of favoritism towards Sinclair. With the FCC voting to send the proposed merger to the ALJ, the ball is currently in the administrative law judge's court. Sinclair and Tribune have pulled their plans to merge and requested the ALJ terminate hearing proceedings. If that were to happen, the Dems want FCC chmn *Ajit Pai* to direct the Enforcement Bureau to review Sinclair's conduct to determine if it violated FCC rules and the Communications Act given questions as to whether there was a lack of candor in regards to some of its station divestitures. Earlier this month, the Enforcement Bureau entered a response in the Sinclair-Tribune record saying it does not oppose dismissal of the applications and concurrent termination of the ALJ hearing proceeding. In a letter to Pai, Pallone and Doyle argued that an investigation is needed so it's clear to Sinclair and other licensees that "there are severe consequences for lying to the FCC." As for the OIG report, it comes after Dems, including commish *Jessica Rosenworcel*, called for a probe into whether the agency was acting in ways to benefit Sinclair. "As I said when this investigation was first announced, the suggestion that I favored any one company was absurd, and today's report proves that Capitol Hill Democrats' politically-motivated accusations were entirely baseless," Pai said Monday. The OIG report said the investigation provided the office with insight into meetings and conversations that occurred between Pai and any execs from Sinclair or the Executive Office of the President, as well as all written communications between Pai and FCC staff regarding the merger. The report concluded that Pai's decision to designate the deal for hearing is "significant evidence" that he did not engage in any favoritism toward Sinclair.

Play On: **Comcast** and **Big Ten Network** resolved their ongoing carriage dispute on Saturday, ensuring football fans will still be able to watch their favorite teams on **BTN** and **FS1**. "Under the terms of the agreement, Comcast will continue to offer Big Ten Network to its customers who reside in states with Big Ten universities (Illinois, Indiana, Maryland, Michigan, Minnesota, New Jersey, Ohio, Pennsylvania, and Wisconsin)," a statement from Comcast read. "Xfinity customers in Delaware, the District of Columbia, and the Northern Virginia/Beltway area will also continue to receive the network given their

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proximity to Big Ten schools. In addition, in the coming months, customers outside of the Big Ten states will have access to the Big Ten Network as part of Comcast's Sports and Entertainment Package." The contract between the two was set to expire Sept 1 as was the deal that had all Big 10 games airing on FS1. Network pres *Mark Silverman* warned media last month of a potential blackout, claiming that BTN and FS1 made proposals to Comcast back in February with no "substantive" response after Comcast dropped BTN from out-of-market cable systems. Ten of the 14 schools in the Big Ten are markets where Comcast is the leading cable provider, meaning the loss of BTN would have had a substantial impact on fans. Earlier this month, the conference's prominent coaches entered the fight by releasing a 30-second video on **Twitter**. It featured names like Michigan's *Jim Harbaugh* and Penn State's *James Franklin* speaking to their team's fans.

NAFTA and Copyright: A fact sheet on the US and Mexico's new NAFTA deal says it extends "the minimum copyright term to 75 years for works like song performances and ensure that works such as digital music, movies, and books can be protected through current technologies such as technological protection measures and rights management information." Current copyright law stands at life plus 70 years. Critics argue it's an attempt to work around Congress. The US Trade Representative office could not be reached at deadline for comment. "The inclusion of a copyright term extension in the trade agreement announced today is a staggeringly brazen attempt by the entertainment industries to launder unpopular policies through international agreements," said *Gus Rossi*, global policy director at **Public Knowledge**. "Not only would a copyright term extension never survive domestic debate, but it also violates the instructions Congress gave in trade promotion authority, which directed the US Trade Representative to negotiate intellectual property provisions consistent with existing law. This is a slap in the face to the public interest, to consumers, and to Congress."

Charter's NY State of Mind: **Charter** has until Oct 9 to submit its plan to exit the state of NY, with the state **Public Service Commission** agreeing to push the deadline back two weeks from Sept 25. This all dates back to the PSC's allegations that Charter has failed to meet certain merger conditions related to buildouts and speed upgrades. **New Street Research** analysts view the move as further evidence that the dispute is political maneuvering, with conversations to resolve the matter likely to get easier post elections.

Cox Piracy Settlement: A retrial of **BMG's** piracy suit against **Cox Communications** won't start this week after all, with the two informing a federal court Friday that they've reached a settlement. Financial terms weren't released, but to play the guessing game, a jury had previously awarded BMG a \$25mln settlement. **The Fourth Circuit** reversed the jury's verdict and ordered a new trial, which was expected to delve into whether Cox willfully ignored alleged copyright infringements by its subscribers. The song isn't entirely over... Other music publishers, including **Sony** and **Warner Bros**, filed a similar suit against Cox last month. Cox was recently granted an extension of time to respond in the case, with its pleading now due by Sept 24.

Can't Stop, Won't Stop: The growth of SVOD services isn't coming to a stop anytime soon, with 69% of US households having **Netflix**, **Amazon Prime** and/or **Hulu**. That's up from 52% in 2015, according to **Leichtman Research**. And it's not just one. 63% have more than one of those services, up from 38% in 2015. Overall, 43% of US households have more than one SVOD, a 23% rise from 2015. 30% of adults are streaming an SVOD service daily compared to 52% of those ages 18-34. Also continuing to rise in popularity is watching on non-TV devices. 46% of adults watch video on their home computers, phones and other devices daily.

Storm Watch: Thankfully, Lane was less dangerous than some had feared. On Sunday, the **FCC** deactivated its Disaster Information Reporting System (DIRS) for the storm, which was downgraded to a tropical depression from a hurricane. On Saturday, service providers reported to the FCC that there were 16,417 cable/wirelines subs affected by Lane. By Sunday, that number had dropped to 3,991. One TV station (**KLEI**) was reported out of service Sunday. A **Charter** rep said a very small percentage of its customers were affected, with the number shrinking steadily as power is restored. "Our stores will be open, routine install and service calls are scheduled, all hubs on commercial power," the spokesperson said.

Behind-the-Scenes at the FCC: We're not quite sure it's the next "S-Town," but the **FCC's** joined the world of podcasting. On Monday, the agency launched "**More Than Seven Dirty Words**," a series that will feature interviews with FCC staffers and others to share untold stories, explore policy issues and "maybe even do the impossible: make telecom interesting." The first ep looks at the FCC's response to Hurricanes Irma and Maria last year in Puerto Rico.

People: **Netflix** tapped *Rachel Whetstone* as its new chief communications officer. Whetstone comes to Netflix from **Facebook**, where she served as svp, communications. She also had top roles at **Google** and **Uber**. She is replacing *Jonathan Friedland*, who was fired earlier this summer for allegedly using the N-word at work.