

# Washington Internet Daily

The news source for Internet policy



A service of **WARREN COMMUNICATIONS NEWS**

THURSDAY, MARCH 12, 2015

VOL. 16, NO. 48

## Table of Contents

### Top News

Increase in Sexting, Sexual Videos Leaves Minors Vulnerable to Revenge Porn.....	1
FCC To Hold Privacy Workshop After Net Neutrality Order, Wheeler Says.....	3
Prep for Anticipated Suits Over FCC Muni Broadband Pre-emption Awaits Order's Release.....	5
Delay in Release of Net Neutrality Order Only Adds to Uncertainty, AT&T CFO Says.....	6
DirectTV Says FTC 'Flat-Out Wrong' on Allegations It's a Deceptive Advertiser.....	7

<b>White House</b> .....	<b>9</b>
--------------------------	----------

<b>Capitol Hill</b> .....	<b>9</b>
---------------------------	----------

<b>Agencies</b> .....	<b>10</b>
-----------------------	-----------

<b>International</b> .....	<b>11</b>
----------------------------	-----------

<b>Intellectual Property</b> .....	<b>11</b>
------------------------------------	-----------

<b>Security</b> .....	<b>12</b>
-----------------------	-----------

<b>Industry Notes</b> .....	<b>12</b>
-----------------------------	-----------

<b>Internet People</b> .....	<b>13</b>
------------------------------	-----------

### Issue of Consent

## Increase in Sexting, Sexual Videos Leaves Minors Vulnerable to Revenge Porn

Minors aren't immune from becoming victims of revenge porn, opponents of websites that release intimate videos and photos without the subjects' permission said in interviews this week. Kids appear on all revenge porn sites that law and technology blogger Adam Steinbaugh came across, he said. In some instances, a police report saying the girl is underage accompanies the pictures, Steinbaugh said. All sexual images and videos of children 15 and younger, as tracked by the U.K.-based Internet Watch Foundation, have been taken from an original online location and uploaded to another site, according to

an IWF [study](#) sponsored by Microsoft and released Tuesday. Sixteen states have revenge porn-specific legislation, but none has a specific clause addressing how children are affected because those images already are covered by child pornography laws, said Cyber Civil Rights Initiative (CCRI) Executive Director Holly Jacobs. Adults have also complained about revenge porn, and the FTC has acted to shut down a site (see [1502040042](#)).

Of the 3,803 images and videos IWF identified on 230 sites September through November 2014, 17.5 percent featured children 15 and younger, the group reported. During a similar study in 2012, no one under age 13 was spotted, IWF said. Of those 15 or younger, 86 percent used a webcam to take nude or semi-nude images or videos, the IWF found. Just 8.5 percent were taken with a mobile phone, “challenging the belief that the majority of ‘sexting’ photos are captured via cellphone,” the IWF said. Microsoft Chief Online Safety Officer Jacqueline Beauchere said in a [blog post](#) that the company will work to “create and deploy appropriate technology, raise awareness and help to educate the public” about the risks associated with suggestive “selfies.”

The youngest revenge porn victim that Carrie Goldberg, an attorney specializing in cases involving Internet privacy and survivors of sexual assault, has represented is 13. For those under 18, the sexually explicit images were typically shared consensually in the context of a private relationship, Goldberg said, but there’s no single reason for which the photos are later shared publicly. An ex-partner may show a photo to a few people, forward it via text message or in some cases post the photos on Instagram or Twitter to “humiliate, harass and abuse” after the relationship ends, Goldberg said. On 4Chan and Reddit, some have turned nude pictures into a competitive game and will post the photos for money, bitcoins or “just the fun of it,” she said. As seen with a celebrity photo hack last year, someone’s computer, email account or cloud can be hacked and the photos then shared, Goldberg said.

“There’s no standard perpetrator,” said lawyer Elisa D’Amico, among the revenge porn specialists at K&L Gates. Sometimes it’s an ex-lover, but sometimes it’s an unknown Internet user or complete stranger who saved the image and reposted it, or it’s the ex-boyfriend’s new girlfriend, she said.

### **Child Porn Law**

A victim’s age affects the forensic evidence that can be gathered, as it’s illegal to take screen shots of pornographic photos of anyone younger than 18, D’Amico said. There is less concern over who took the photo and who owns the copyright, as child pornography is illegal content, she said. When rumors spread that some of the photos released in the “Celebgate” hack were taken while the celebrities were underage, the images disappeared immediately, D’Amico said. “It’s quite powerful,” she said, talking about the child porn law. Websites are more responsive when images of children under the age of 18 are involved, Goldberg said. “We need federal and state criminal laws to deter the behavior,” and have sites take some responsibility for the images, Goldberg said. “Perpetrators of revenge porn are more likely to respond to the threat of criminal prosecution than other tools victims currently have such as suing a perpetrator in civil court or copyright infringement.”

Child porn laws predate the Internet, Goldberg said. Very few law enforcers arrest victims and perpetrators for creating and distributing child porn, but the victims theoretically could be charged, Goldberg said. Sometimes underage victims or their parents are told by law enforcement that if they take on a child’s revenge porn case, the victim could be charged with the creation and distribution of child porn, Jacobs said. States with sexting laws give prosecutors and judges an option to send victims and

perpetrators to a one-day program about cyberbullying and cybersafety instead of charging a child with child porn charges, Goldberg said, but that doesn't happen everywhere. Last summer six people in a New Jersey school, including victims whose images had gone viral, were charged with child pornography, Goldberg said.

“It's immoral to arrest victims of revenge porn,” Goldberg said, as they already are dealing with the “humiliation of their private sexual information being distributed.” Even if the charges are later reduced, there is the stress of having to defend oneself against a felony, with consequences including jail time or inclusion on the sex-offender registry, in addition to the time and money for the defense, she said.

### Legislative Efforts

Federal legislation banning revenge porn is expected in the next few months, Rep. Jackie Speier's, D-Calif., office told us last month (see [1502040042](#)). Legislation to protect revenge porn victims has been applauded by privacy advocates and criticized by free speech advocates. That is why Speier's legislation is tailored to protect free-speech rights while securing people's privacy, her office said.

Sexting is illegal if the image is of anyone under the age of 18, no matter who sends the photo, according to a recently released Microsoft [fact sheet](#) on sexting. A 2010 FBI [report](#) said sexting continues to rise in popularity among teens. Sexting can lead to criminal child porn charges in 30 states, the fact sheet said. Twenty states have passed laws reducing the charges to a misdemeanor, it said. The Department of Justice's current [legislative proposal](#) doesn't address revenge porn specifically, but “this is certainly an area of enforcement that we are investigating and prosecuting,” a DOJ spokesman told us.

“New laws prohibiting nonconsensual pornography should be generally applicable to people of all ages,” as child porn laws shouldn't be used against victims, CCRI Tech Policy Director Mary Anne Franks said. Instead, Franks, also an associate professor at the University of Miami School of Law, recommended teenagers who engage in consensual sexual conduct not be punished. “We've heard of cases in which a minor victim tells police that she sent her boyfriend a naked picture and that he distributed it without consent, and she's the one who gets prosecuted for producing and distributing child pornography and he won't get charged with anything,” she said. “A teenager taking a naked picture of herself should under no circumstances be considered a criminal, nor should she be considered a criminal for sending it to the person she is dating.” — *Katie Rucke*

### Outlines Priorities

## FCC To Hold Privacy Workshop After Net Neutrality Order, Wheeler Says

Recognizing FCC approval of net neutrality regulations raised questions about preserving the privacy of customer information, including the FTC's role (see [1502240070](#)), FCC Chairman Tom Wheeler said his agency will hold an April workshop for stakeholders to discuss how best to move forward. Wheeler did not give more specifics Tuesday night as he spoke at the Center for Democracy & Technology's annual dinner. The agency Wednesday didn't provide more information.

Erik Stallman, director of CDT's Open Internet Project, said he expects the agency workshop to deal with issues like the FTC loss of jurisdiction over broadband service after it was reclassified in

the order as common carriage. Changes to FCC privacy rules that better tailor them to broadband could also be discussed, Stallman said. Details in the order—which the agency hopes to release Thursday (see [1503110048](#))—will drive much of what needs to be done, Stallman said. Wheeler also said at the event that the FCC and the FTC are trying to work more closely together. The FTC didn't comment.

Wheeler was feted at the event. CDT had backed a Communications Act Title II net neutrality approach. CDT President Nuala O'Connor called Wheeler "a man of courage," but told him during a one-on-one conversation on stage that the group has concerns about privacy issues after the net neutrality vote.

Wheeler mentioned privacy as he laid out his priorities for his remaining 22 months as chairman before a new administration potentially leads to a change at the agency's helm. He also cited increasing the availability of spectrum, promoting competition and advancing such public safety issues as E-911. "Twenty-two months is a short amount of time to get a lot done," he said.

Wheeler also again explained the evolution of his thinking in backing a Title II approach, having initially contemplated basing rules on Telecom Act Section 706. He said his senior adviser and former Public Knowledge president Gigi Sohn "dragged" him to meetings around the country with consumers and innovators. Those meetings helped him recognize the inadequacy of basing net neutrality rules on Section 706's "commercially reasonable" standard, which could be seen as one considering what's reasonable commercially instead of what would protect an open Internet, Wheeler said.

Wheeler, a historian, noted that he is leading the agency "during the greatest network revolution of the last 15 years." A priority in his remaining time in the chairman's office, Wheeler said, is to unleash the potential of broadband by making sure it's available to those with lower incomes and to residents in rural areas. He cited the agency's efforts to make Internet access more available to schools and libraries through December's E-rate order (see [1412110049](#)), as well as a potential Lifeline overhaul. He had noted that at

<h1>Washington Internet Daily</h1>	<p>EDITORIAL &amp; BUSINESS HEADQUARTERS 2115 Ward Court, N.W., Washington, DC 20037</p>	<p><b>Business</b></p>
<p>(ISSN 1537-3088) PUBLISHED BY WARREN COMMUNICATIONS NEWS, INC.</p>	<p>Albert Warren <i>Editor &amp; Publisher 1961–2006</i></p>	<p>Brig Easley..... Exec. VP-Controller Deborah Jacobs..... Information Systems Manager Gregory Jones..... Database/Network Manager Annette Munroe..... Dir. Marketing &amp; Circulation Katrina McCray .. Sr. Sales &amp; Mktg. Support Specialist Loraine Taylor..... Sales &amp; Marketing Support Assistant Tim Wysong..... Billing &amp; Renewal Associate</p>
<p>Jonathan Make..... Managing Editor</p>	<p>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 Rebecca Day..... Senior Editor Monty Tayloe..... Associate Editor Kery Murakami..... Associate Editor John Hendel..... Assistant Editor Jimm Phillips..... Assistant Editor Joe McKnight..... Assistant Editor Marlena Chertock..... Assistant Editor Katie Rucke..... Assistant Editor Samantha Madison..... Assistant Editor</p>	<p><b>Television &amp; Cable Factbook</b></p>
<p>Warren Communications News, Inc. is publisher of Communications Daily, Warren's Washington Internet Daily, Consumer Electronics Daily, Television &amp; Cable Factbook, Cable &amp; Station Coverage Atlas, and other specialized publications.</p>	<p><b>International Trade Today</b></p>	<p>Michael Taliaferro..... Managing Editor Kari Osel..... Sr. Ed. &amp; Editorial Supervisor Colleen Crosby..... Sr. Ed. &amp; Editorial Supervisor Bob Dwyer..... Senior Research Editor</p>
<p>Send news materials to <a href="mailto:newsroom@warren-news.com">newsroom@warren-news.com</a></p>	<p>Tim Warren..... Managing Editor Brian Feito..... Associate Editor Brian Dabbs..... Assistant Editor</p>	<p><b>Sales</b></p>
<p>Follow <i>Washington Internet Daily</i> on Twitter: <a href="https://twitter.com/Internet_Daily">https://twitter.com/Internet_Daily</a></p>	<p>Copyright © 2015 by Warren Communications News, Inc. Reproduction in any form, without written permission, is prohibited.</p>	<p>William R. Benton..... Sales Director Agnes Mannarelli..... National Accounts Manager Jim Sharp..... Account Manager Brooke Mowry..... Account Manager Kara Durante..... Account Manager Mark Hobson..... Account Manager</p>
<p>Follow Warren Communications News on Facebook: <a href="https://www.facebook.com/WarrenCommunicationsNews">https://www.facebook.com/WarrenCommunicationsNews</a></p>		
<p>Phone: 202-872-9200 Fax: 202-318-8984 <a href="http://www.warren-news.com">www.warren-news.com</a> Email: <a href="mailto:info@warren-news.com">info@warren-news.com</a></p>		
<p>By using our email 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 email. 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 <a href="http://www.communicationsdaily.com/privacy">www.communicationsdaily.com/privacy</a>.</p>		

the December commission meeting, there seemed to be enough support on the commission to add broadband coverage to Lifeline subsidies. A priority is increasing access for people with disabilities, he said.

With the increasing importance of Wi-Fi for broadband access, he said, “you’re going to have to have enough spectrum,” said Wheeler. Competition, he said, “is the consumer’s best protector and the innovator’s best friend.” — *Kery Murakami*

## **AGs Reviewing**

### **Prep for Anticipated Suits Over FCC Muni Broadband Pre-emption Awaits Order’s Release**

Preparations for much-anticipated state challenges to the FCC’s pre-emption of municipal broadband laws in North Carolina and Tennessee appear to be largely in a holding pattern until the commission releases the text of its pre-emption order, industry lawyers said in interviews. Spokeswomen for North Carolina Attorney General Roy Cooper, a Democrat, and Tennessee Attorney General Herbert Slatery, a Republican, said separately that the AGs were considering whether to seek petitions for review and would review the order once it’s released. Baller Herbst lawyer Jim Baller, who represented the Electric Power Board of Chattanooga, Tennessee, and Wilson, North Carolina—the two entities that petitioned the FCC for pre-emption—said he hasn’t received any further information on when the commission might release the order.

The FCC is reviewing the language in the order so it addresses the dissents filed by Commissioners Mike O’Rielly and Ajit Pai, Baller and other lawyers said. The FCC voted 3-2 Feb. 26 to grant the pre-emption petitions (see [1502260030](#)). An FCC spokesman declined to comment. He directed us to a March 2 blog post by commission General Counsel Jon Sallet on the forthcoming net neutrality order in which he [said](#) that FCC staff needs time to make “final proofreading and nonsubstantive ‘clean up’ edits” to any agency order and wait for all five commissioners to sign off.

AGs Cooper and Slatery, seen to be the likeliest parties to lead a legal challenge on pre-emption, can’t file lawsuits on the FCC action until after the commission publishes the pre-emption order in *The Federal Register*, said Squire Patton communications lawyer Jack Nadler. The actual petition for review would itself be relatively short and could be filed quickly after the order’s publication, but any briefs the parties file afterward would require a more thorough reading of the order’s text, he said. “I would imagine that there are obviously things that can be done now—you can look to *Nixon v. Missouri Municipal League* for precedent,” Nadler said. “Until you see the logic that the FCC uses in greater detail, it’s very hard to really sit down and write the brief. It just wouldn’t be an efficient way of proceeding.”

Possible interveners in a legal challenge to FCC pre-emption likewise would be dependent on the language in the commission’s order because interveners’ briefs “are bound by the issue statements of the petitioners,” said NARUC General Counsel Brad Ramsay. NARUC members would need to indicate interest in the group filing as an intervenor but they have previously backed NARUC filing comments in opposition to the Chattanooga and Wilson petitions, Ramsay said. NARUC has only opposed FCC pre-emption of state laws and hasn’t taken a position on the merits of municipal broadband, he said. Any intervenor filing in opposition to the FCC would likely need to go beyond an argument that the commission’s actions are unconstitutional because they impinge on the 10th Amendment, since “lawyers know that courts try to avoid relying on the Constitution to decide anything because once you decide something as a constitutional issue,

you're stuck with it," Ramsay said. "So they typically prefer to go by a text-based approach, which in this case would be based primarily on the FCC's reading of [Telecom Act] Section 706."

FCC use of Section 706 as its primary legal justification for granting the pre-emption petitions is likely to make the regional circuit courts—the 4th U.S. Circuit Court of Appeals in the case of North Carolina and the 6th U.S. Circuit Court of Appeals in the case of Tennessee—a more attractive venue for legal challenges than the D.C. Circuit, Nadler said. "I think the states would be much better off if their case ended up in a circuit court that's not the D.C. Circuit," given that the FCC's current reading of Section 706 stems from the D.C. Circuit's ruling in *Verizon v. FCC*, Nadler said. "The D.C. Circuit has obviously read Section 706 very expansively, but the other circuit courts aren't bound by that interpretation. If you take this to another circuit, the first argument can be that Section 706 isn't an independent grant of authority. If the case is in the D.C. Circuit, that argument is pretty much foreclosed." — *Jimm Phillips*

### Order Set for Release

## **Delay in Release of Net Neutrality Order Only Adds to Uncertainty, AT&T CFO Says**

AT&T Chief Financial Officer John Stephens Wednesday called on the FCC to release its Feb. 26 net neutrality order reclassifying broadband as a common carrier service. Reclassifying broadband under Title II of the Communications Act will "stymie" investment and innovation, he warned. The FCC hopes to release the order Thursday, an agency official said.

"We need to see the order," Stephens said emphatically, during remarks at a Deutsche Bank financial conference. "Any kind of uncertainty is not good for investment." Stephens noted that the industry has spent more than \$250 billion on networks since the FCC decided to apply a light regulatory touch on broadband during the Clinton administration. "There's no problem with what's going on," he said. "Investment has been great. Innovation has been great."

AT&T CEO Randall Stephenson Tuesday sharply criticized the FCC's moves on net neutrality in a letter accompanying the company's annual report (see [1503100064](#)). FCC officials have explained that release of the order won't be instantaneous and finalization takes time since staff must respond to comments, including the dissents filed by the FCC Republicans (see [1502270045](#)).

AT&T's concerns are well founded, said Craig Moffett, analyst at MoffettNathanson. "Telecommunications companies make long duration investments, with long payback periods and useful lives that are sometimes measured in decades," he said Wednesday. "It is very hard to make those kinds of investments without at least some measure of certainty about how regulation might inform returns. And in this case it is particularly difficult, as the principal controversy is around whether the order does or doesn't introduce a real risk of price regulation." Moffett predicted the release of the order won't do much to settle the "core controversy" over whether the FCC will impose rate regulation as a result of the rules.

Former FCC Commissioner Robert McDowell, now at Wiley Rein, agreed that the likely chilling effect on investment is very real. "This isn't a faux issue," he said. "The manufacturers and suppliers of the expensive components of what makes the 'Internet' have been warning of this scenario for years, and they are perhaps the most clear-eyed and objective parties in this debate. Title II is about regulating the economics of networks and, therefore, slowing down the velocity of capital needed to improve the networks of

tomorrow. What we are seeing today is only the prologue to what will be a long tragedy.” McDowell represents various clients opposed to the rules.

The effect of the decision itself, not the timing of release, is the issue, said Cinnamon Mueller attorney Barbara Esbin, who represents ACA and other cable clients. “Having said that, until we see the order, we can’t measure just how bad the damage will be,” she said. “The publicly available information on what is in that 300-page document is actually pretty thin.”

Michael Calabrese, director of New America’s Wireless Future Project, said the comments are nothing new from AT&T. “AT&T and Verizon would do better to explain why they paid over \$28 billion for more spectrum just weeks ago if they truly believe Title II with extensive forbearance is such a drag on future business prospects,” Calabrese said. AT&T and Verizon were the biggest and third biggest bidders, respectively, in the AWS-3 auction (see [1501300051](#)).

The wireless industry has “boomed” under Title II and light-touch nondiscrimination rules since the early 1990s, Calabrese said. “Sprint has honestly stated the new rules won’t stop dominant and incredibly profitable companies like AT&T from investing and there is no evidence to suggest otherwise.”

“It’s amazing that broadband providers, along with their favorite analysts and lawyers, can keep shouting about harms to investment with zero evidence backing up their arguments,” said Free Press Policy Director Matt Wood. “They keep saying it, and they keep getting ink for it, but it’s just not true. Every claim they’ve advanced has been debunked—not only by the in-depth analysis from advocates like Free Press, but by the cable and telecom companies’ own statements to their investors.” The emperor has no clothes, but he “keeps strutting down the street anyway,” Wood said. “Randall Stephenson might want to look in the mirror and notice how threadbare his own story is.”

Everyone is anxious to see the order and delays in release speak to process issues at the FCC, said Randolph May, president of the Free State Foundation. “But I doubt very much that seeing the text of the order will resolve much uncertainty,” he said. “And I have no doubt that investment will be dampened. But because we will never know what investment would have been absent reclassification, it will be impossible to know the amount of foregone investment.” — *Howard Buskirk and Kery Murakami*

### **Agency 'Very Confidential'**

## **DirecTV Says FTC 'Flat-Out Wrong' on Allegations It's a Deceptive Advertiser**

The FTC is “flat-out wrong” in filing a federal complaint alleging DirecTV has engaged in deceptive advertising practices dating back to 2007, spokesman Robert Mercer emailed us Wednesday. “We will vigorously defend ourselves, for as long as it takes,” Mercer said.

DirecTV in its advertising goes “above and beyond to ensure that every new customer receives all the information they need, multiple times, to make informed and intelligent decisions,” Mercer said. “For us to do anything less just doesn’t make sense.”

However, “this is a case where we allege that consumers did not have the information they needed to make a fully informed choice,” Jessica Rich, director of the FTC’s Bureau of Consumer Protection, said

Wednesday in a phone briefing with reporters. “In fact, we allege DirecTV gave its customers false and misleading information,” Rich said of the [complaint](#) the FTC filed Wednesday in U.S. District Court in San Francisco. The commission believes consumers “should be able to make an informed choice when shopping for goods and services in the marketplace,” Rich said.

DirecTV ads claim consumers can receive satellite TV packages for as low as \$19.99 a month for 12 months, Rich said. “Our complaint focuses on what DirecTV does not tell consumers,” she said. “We allege that DirecTV hid important terms in order to trick consumers into buying its satellite TV packages.”

For example, Rich said, DirecTV “did not clearly inform consumers” that they’re obligated to commit to a two-year contract when they sign up for the \$19.99 monthly package and can face penalties as high as \$480 for early cancellations. “We also allege that DirecTV does not clearly tell consumers that the monthly price for their satellite TV service drastically increases in the second year of service, typically by \$25 to \$45 per month. Thus, after 12 months, consumers must make a difficult choice. They must choose between paying a substantial amount of money to cancel DirecTV or to pay more than they thought they bargained for to keep it.” DirecTV also advertises free access to HBO, Showtime and other premium channels for a three-month trial period, she said. “Our complaint alleges that the company does not properly notify consumers that they will be automatically billed each month for the premium channels if they don’t cancel before the end of the three-month trial period.”

The complaint, which alleges violations of the FTC Act and the 2010 Restore Online Shoppers’ Confidence Act, seeks a permanent injunction to prevent future violations and cash damages “to redress injury to consumers,” including possibly refunds, payment of restitution or “the disgorgement of ill-gotten monies.” Rich’s “ballpark” estimate is that “many millions of dollars, potentially” could be in play in refunds or other money damages if the litigation is successful, she said in Q&A. Of DirecTV’s roughly 20 million subscribers, “many of them were affected by these practices and there were a number of ways consumers were harmed,” including through early termination fees, she said. “All of that adds up to many millions of dollars, but the exact amount will be determined in litigation.”

The FTC takes DirecTV at its word that the company “will vigorously defend themselves in court,” Rich said. As for DirecTV’s statement that the FTC’s complaint is “flat-out wrong,” the agency is “very confident of our allegations,” she said. “They are detailed in our complaint, which is quite specific in that it does contain exhibits showing what we’re talking about. So we are very confident that we’re going to be able to prove this case.”

Asked whether she thinks regulators will or should factor the allegations into their review of AT&T’s planned buy of DirecTV, Rich said: “This case has nothing to do with any evaluation of that merger. It’s totally separate, and I have no comment on how it might affect it.”

Responding to our question about what possible consent-decree negotiations the FTC had with DirecTV before filing the complaint, Rich declined to comment “on what dealings we may have had with the company.” As for the volume of complaints from grass-roots consumers that led up to Wednesday’s filing, Rich said that “thousands of consumers have complained about these practices” dating back to 2007. But she sidestepped questions about why the agency waited until now to file a complaint.

The FTC deserves praise for “going after these kinds of deceptive and misleading offers,” Delara Derakhshani, policy counsel for Consumers Union, said Wednesday in a statement. “The price you see in

the ad ought to be the price you pay, and if it's not, the company should be the one that gets penalized, not the customer." The FTC allegations weren't based on "an isolated incident," Derakhshani said. "The FTC complaint details how these problems with DirecTV have been cropping up for years."

Sen. Claire McCaskill, D-Mo., also weighed in with a statement Wednesday, backing the FTC for "finally taking a swing for consumers." When McCaskill chaired the Senate Consumer Protection Subcommittee, "the feedback we got from consumers last year showed that most Americans know all too well the problem of confusing, deceptive billing practices by cable, satellite and other pay-TV companies," said McCaskill, now ranking member on the Senate Investigations Subcommittee. She wants to see more FTC complaints filed of the type it filed against DirecTV "as I continue to look at what can be done from Congress to crack down on such abuses," she said. McCaskill unsuccessfully tried to organize a hearing last year on pay-TV billing practices (see [1412030047](#)). — *Paul Gluckman*

## White House

The White House is "taking steps to improve" privacy and is now using encryption by default HTTPS on its website WhiteHouse.gov, the site's Twitter account [tweeted](#) Wednesday morning. Last week the FTC became the first government agency to use encryption by default on its site (see [1503060055](#)).

## Capitol Hill

The Marketplace Fairness Act was reintroduced in the Senate Tuesday by the same sponsors as last year's Marketplace and Internet Tax Fairness Act (S-2609): Sens. Mike Enzi, R-Wyo., Dick Durbin, D-Ill., Heidi Heitkamp, D-N.D., and Lamar Alexander, R-Tenn., said a joint [news release](#). Enzi introduced the MFA in 2013, which later passed the Senate 69-27. The bill would let states tax remote sellers with annual revenue exceeding \$1 million. The bill is "identical" to its 2013 counterpart, with the exception of an amendment that would require states to delay the enactment of MFA for 180 days after its approval, plus an exemption for the "first Holiday shopping season" after passage, said an Enzi spokesman. He didn't clarify which season. MFA critics have said the bill has been a thorn in the side of the Internet Tax Freedom Act, which would permanently bar Internet access taxes (see [1409230083](#)). House Judiciary Chairman Bob Goodlatte, R-Va., reintroduced the Permanent Internet Tax Freedom Act (HR-235) Jan. 11 (see [1501090042](#)). MFA was a "bad bill in the last Congress and it's still a bad bill now," R Street Institute Executive Director Andrew Moylan said in a [news release](#) Wednesday. "By wiping away geographic limits to state tax authority, the legislation would impose serious burdens on Internet retail and undermine basic tax policy principles." Sens. Roy Blunt, R-Mo., Jack Reed, D-R.I., Bob Corker, R-Tenn., Sheldon Whitehouse, D-R.I., and Angus King, I-Maine, also signed on as MFA co-sponsors, the joint release said.

---

The House Judiciary Committee secured FCC Chairman Tom Wheeler, Commissioner Ajit Pai and FTC Commissioner Joshua Wright as witnesses for its antitrust-focused net neutrality hearing, a committee notice said Wednesday. The hearing will take place March 25 at 10 a.m. in 2141 Rayburn. Chairman Bob Goodlatte, R-Va., originally had planned the hearing for next week on the same day that the House Oversight Committee had scheduled a hearing with Wheeler. "Many experts agree that the FCC's recent

approval of net neutrality rules, placing burdensome regulations on the provision of Internet service, will result in consumers having fewer choices while paying higher prices,” Goodlatte said in a statement. “The Internet doesn’t need an inflexible ‘one-size-fits-all’ government mandate to ensure net neutrality. The key to an open and free Internet lies in strong enforcement of our nation’s antitrust laws.” Several prominent Judiciary Committee Democrats told us they worry the hearing could be a partisan attack on the FCC (see [1503050047](#)). They do not believe legislation is necessary, while Goodlatte wants Congress to act. Wright, a Republican, testified before House Judiciary on net neutrality last year and has agreed with Goodlatte on an antitrust approach.

## Agencies

Globalstar’s proposed authenticated Wi-Fi terrestrial low-power service (TLPS) wouldn’t interfere with neighboring Wi-Fi networks at 2.4 GHz and could relieve congestion, Guggenheim Securities analyst Paul Gallant said in a note Wednesday. Globalstar [released](#) results of its TLPS demonstration at the FCC Technology Experience Center on March 6 and 9. The test was conducted by test lab AT4 Wireless, venture fund Jarvinian Ventures and technology consultant Roberson & Associates, Globalstar said. “American consumers will benefit significantly from the provision of TLPS across 22 megahertz of additional broadband spectrum in the 2.4 GHz band,” it said in an [ex parte notice](#) posted Wednesday in docket 13-213. TLPS works well with Wi-Fi operations on IEEE 802.11 channel 11 and Bluetooth device operations in the unlicensed Industrial, Scientific and Medical band at 2400 to 2483.5 MHz, it said. Globalstar will likely win FCC approval in the first half of 2015, Gallant said. The commission asked for a technical demonstration at a Feb. 6 roundtable to address engineering concerns, and Globalstar, Bluetooth, NCTA and the Wi-Fi Alliance developed joint test plans at the commission on March 6 and 9, he said. Opponents of the system might file their own analysis of the tests, he said. The TLPS test created “meaningful improvement in existing Wi-Fi,” including a 40 percent increase in overall throughput when Wi-Fi traffic is spread across TLPS, Gallant said. “Greater congestion relief is likely in a noisier, real-world environment with many Wi-Fi access points contending for Wi-Fi channels.” Gerst Capital filed an opposition [comment](#), questioning if any device operating on Wi-Fi Channel 14 was subject to Part 15.247 testing, to measure emissions limits at 2495 MHz instead of 2483.5 MHz. Deploying an inferior legacy standard isn’t a viable option for TLPS, said manager of Gerst Capital Greg Gerst in his comment. “Publically available data refutes many key statements that Globalstar has made,” said Gerst, who has an engineering background. He found discrepancies in Globalstar’s tests. “I suspect there’s something wrong in their test setup. They’re salesmen. All the so-called testing they’ve done is superficial at best, dubious at worst.”

---

Charter Communications “has never prevented customers from attaching their own modems to Charter’s network,” it said in an [ex parte notice](#) Feb. 26 in FCC docket 14-57. A Charter spokesman noted that Charter addressed Zoom Telephonics’ issues in the ex parte notice. Charter restricted subscribers from attaching customer-owned modems for more than two years with rules for certification of cable modems, Zoom said (see [1503100030](#)). This statement is incorrect and based on an erroneous FAQ page on Charter’s website and “was never Charter’s policy,” Charter said in the filing. Charter customers used third-party modems during this time, it said. Several third-party modems were “inhibiting signal delivery and preventing customers from obtaining advertised speeds,” so Charter had a right to restrict the attachment of devices

that could harm its network, it said. Charter's standards "are necessary to protect Charter's network and ensure a positive customer experience," it said.

## International

Broadcom's BCM7252 system-on-a-chip (SoC) is "powering" the world's first Ultra HD set-top box for Android TV, the chip maker [said](#) Wednesday. The SoC is embedded in the Freebox set-top offered by Free, the French Internet TV provider, Broadcom said. The BCM7252 delivers the performance and security levels required for Android TV certification and also is the first device to support HEVC-encoded, 10-bit 4K content at 60 frames a second, it said. The BCM7252 is in production and the Freebox is being shipped to subscribers starting this month, Broadcom said.

---

EarthLink selected Level 3 to provide secure, global connectivity to support enterprise customers from EarthLink's Middle East location, a Level 3 [news release](#) Wednesday. It said the selection was made in the face of demand for enhanced online security and connectivity to worldwide markets from customers in sectors such as the financial services and oil industries.

## Intellectual Property

Last week's U.S. Trade Representative Special 301 report on "notorious" IP markets claimed that domain "registrars are required ... to take action by locking or suspending domains when they receive a notice about one of their domains facilitating illegal activity," an Electronic Frontier Foundation [blog post](#) said Tuesday. "This isn't true, and by claiming it is, USTR is here repeating the United States entertainment industry's current talking points," notably those of MPAA and RIAA, it said. ICANN has an agreement with registrars that they should act when "notified of illegal activity," including piracy and counterfeiting, the [report](#) (see [1503050040](#)) said. "On the same day as the Notorious Markets list was published, the RIAA wrote a [letter](#) to ICANN claiming that it is not 'appropriate' for registrars to deny any obligation to respond to their members' complaints," EFF said. MPAA, RIAA and USTR didn't comment.

---

The "fundamental emphasis" of Monday's letter to Congress by pro-fair use groups and law experts was "misplaced," said Free State Foundation President Randolph May in a news release Wednesday. The [letter](#)'s signatories included the Computer and Communications Industry Association, Electronic Frontier Foundation, Internet Association, Internet Infrastructure Coalition and Public Knowledge (see [1503090038](#)). The letter "studiously avoids mentioning 'property,' 'intellectual property,' or 'property rights,'" May said. He took aim at the letter's use of the phrase "public domain," which it characterized as a "core component of creativity and knowledge." The "most important attribute of private property is the ability of property owners to exclude others," May said: "'Public domain' is just the opposite." While "there is a place for a properly delimited public domain, in general, government-mandated 'free' access will not encourage creative content, nor will it allow creators to allocate their works in the manner of their choosing or lead to economic benefits for society as a whole," he said. "We're not talking about property,

because we're talking about copyright," Sherwin Siy, PK vice president-legal affairs, said in an interview. "The question of whether or not [copyright] is property is kind of irrelevant when it comes to what the law is," he said. The letter sought to address the "balance between the holder of the domain and the public," because there are "values in both private and public property," Siy said. It's not a "mischaracterization" to refer to copyright as "regulation," as May suggested, he said. Copyright is "regulation," he said. CCIA and EFF didn't comment.

## Security

The Department of Justice advocated for the passage of an amendment proposed by the Obama administration that would "add activities like the operation of a botnet to the list of offenses eligible for injunctive relief," in a [blog post](#) Wednesday by DOJ Assistant Attorney General-Criminal Division Leslie Caldwell. Criminals use botnets to steal usernames, passwords and other personal and financial information, or to infect computers with criminal malware to hold computers and computer systems ransom, Caldwell said. The DOJ has used the civil injunction process to thwart these attacks successfully in the past, she said. "If we want security to keep pace with technological innovations by criminals, we need to ensure that we have a variety of effective tools to combat evolving cyber threats," Caldwell said. Enacting the Obama administration's [proposed](#) amendment, which would add to list of offenses eligible for injunctive relief activities that may not be technically considered fraud or illegal wiretapping—such as stealing sensitive corporate information, harvesting email account addresses, hacking computers, or executing distributed denial of service (DDoS) attacks—would "provide the government with an effective tool to shut down illegal botnets or certain widespread malicious software to better match the ways that criminals are using these technologies," Caldwell said. Under the administration's proposed update to the criminal code, the legal safeguards that currently apply to civil injunctions such as civilly suing the defendant, the defendants' right to notice and ability to have a hearing before a permanent injunction is issued, and the defendants' ability to move to "quash or modify any injunctions," would still apply, Caldwell said.

## Industry Notes

Apple's deal with HBO to exclusively offer HBO's mobile app (see [1503090035](#)) is exciting for most of the communications industry other than some multichannel video programming distributors, CBS President Les Moonves said Wednesday at a Deutsche Bank investor conference webcast from Palm Beach, Florida. Apple's HBO deal paves the way for others, and there will be a similar offering from CBS-owned Showtime "in the not too distant future," he said. The popularity of subscription VOD has made this the best time to monetize video content, Moonves said. "It is far better to be in broadcast than some of the other businesses out there." CBS' over-the-top offering, CBS All-Access, will launch nationwide in a few months, Moonves said. He also spoke on the FCC incentive auction and said he is actively looking at participating in it with spectrum from CBS's CW and independent licenses. CBS could be "a major player" in the auction, Moonves said. Though he said NAB initially characterized the auction as a bad thing, his company's analysis of the numbers makes it seem like a profitable option, he said. If CBS could put up the spectrum of its CW and other independent stations and make \$2 billion, it would be "dumb" not to participate, he said. "You're gonna see us being a full-fledged participant."

The Alliance of Automobile Manufacturers and Association of Global Automakers joined the Intelligent Car Coalition, the [coalition said](#) Wednesday. They join AT&T and the Computer and Communications Industry Association on the steering committee for the newly formed group. “Connected cars benefit all of society by using advanced technologies to save lives, fuel, money, and carbon emissions,” said Catherine McCullough, coalition executive director. “The automotive, telecom and tech fields were separate, but now they are merging. These innovations are developing at a rapid pace, and we must engage with each other in a nimble, coordinated way to ensure that the safety, mobility, and environmental benefits of connected cars are available to everyone.”

---

The market for streaming video devices priced at \$99 and below is becoming increasingly crowded and competitive, with Apple, Amazon, Google and Roku competing for the top spot. Last year, Google shipped 8.7 million Chromecast sticks, beating out Apple TV’s 8.3 million units, analyst Paul Erickson of IHS Technology forecasts in a new report. Shipments of Chromecast sticks are expected to continue exceeding those of Apple TV by a close margin for the near future; though Apple TV has dropped to \$69 neither its fundamental capabilities nor its iOS-centric market focus has changed, Erickson said. To beat Google, Erickson said, Apple needs to continue expanding overall capabilities and the selection of marquee content partners as well as release updated hardware.

---

Bitcoin payment processor Coinbase joined the Internet Association, which already includes Amazon, Facebook, Google and Netflix as members, an IA [news release](#) said Wednesday. “Our vision for bitcoin as a free and open, global payments system aligns with IA’s own commitment to online freedom and innovation,” said John Collins, Coinbase head of government affairs. The company raised \$75 million in a Series C funding round in January, which, at the time, was the single largest financing round for a bitcoin company (see [1501200046](#)).

---

Over 1.5 billion, or one in three, airline boarding passes will be issued via mobile devices by 2019, said a [report](#) by Juniper Research. Airports’ transition to mobile near field communication ticketing will be delayed, it said. About 745 million boarding passes will be delivered through mobile devices this year, Juniper said. Frequent flyers are more likely to use mobile boarding passes, it said. Fifty-three percent of airlines have mobile boarding passes via apps, which will increase to 91 percent by 2017, according to airline IT specialist SITA, Juniper said. Local bus and subway NFC-ticketing will increase because of the frequency of consumer purchases, it said.

## Internet People

Goodwin Procter hires **Marcia Sundeen**, ex-Kenyon & Kenyon, as partner, IP Litigation Group ... Media General hires **Richard Levine**, ex-AT&T Services, as head-distribution ... Endgame, cybersecurity firm, hires **James Butler**, ex-FireEye and Mandiant, as chief scientist ... Splunk adds to board **Amy Chang**, Accompani.