

Indie MSOs Advised To Tread Carefully On Broadband Caps, Usage-Based Policies

With Network Neutrality Uncertainty Ahead, They're Urged To Proceed With 'Extreme Caution'

Tampa – NCTC Winter Educational Conference – Lawyers and lobbyists who are looking out for the best interests of the nation's independent operators have a message to share with those that are considering new usage-based broadband policies after a court vacated much of the Internet Open Internet rules: tread carefully.

"Proceed with extreme caution," Barbara Esbin, senior counsel at Cinnamon Mueller who also provides council to the American Cable Association, said here Tuesday on a panel that covered a wide range of regulatory issues that pertain to smaller MSOs.



She said much uncertainty is ahead. New FCC Commissioner Tom Wheeler has promised to pursue the network neutrality issue, and there's some who believe he might move to reinstate the vacated rules or adopt a new form of them, as the court that vacated parts of the original order, including the anti-blocking and unreasonable discrimination provisions for wireline broadband, upheld the FCC's broad authority on broadband.

Title II classification is a possible route, but few believe the FCC "would go to that extreme position," Esbin said. "That's an unlikely scenario...but that option is still there," she warned

Everyone on the panel expects action given that the current administration has about two years left and net neutrality has been at the forefront of communications policy.

"He [Wheeler] is experienced and he has an experienced crew," said Tom Cohen, an attorney with Kelly Drye & Warren. "My sense is he [Wheeler] will push things forward and be fearless about it."

"This is not an issue that's going to go away," Esbin agreed.

Esbin also pointed out that Comcast continues to adhere to the old vacated rules under the conditions of its NBCUniversal deal through 2018, and has agreed to extend that to the systems it's poised to take over via its proposed acquisition of Time Warner Cable.

That, she said, could be exported to the rest of the cable industry, including smaller operators.

Panelists also touched on the potential impact of the [proposed CableCARD bill](#), and other potential affects from the Comcast/TWC deal.

Rep. Robert Latta (R-Ohio) and Rep. Gene Green (D-TX) and others working toward a bill that would remove the burdensome requirement for cable operators to deploy set-tops with CableCARDs, but still require them to support them in TiVo boxes and other retail devices.

It's possible that they will look to attach it to the December must-pass satellite viewership reauthorization bill. It's a complicated possible outcome, but Latta "is very, very committed to this issue and seems very hopeful that it's something that could be included in the satellite reauthorization this year," said Ansley Erdel, vice president of the Alpine Group.

Erdel also suggested that the same satellite bill might also pave the way for the attachment of smaller retransmission reforms.

Panelists said to expect tier 2/3 operators to have a voice in the coming review of the Comcast/TWC deal particularly when it comes to the power the combined company will have with respect to controlling programming costs.

Those concerns will likely closely follow those expressed during the review of the Comcast/NBCU deal when it came to vertical integration, along with "some twists and turns," Cohen predicted.

And the deal presents a potential horizontal issue. Smaller operators will have concerns, Cohen pointed out, if and when TWC's regional sports networks get packaged and shopped together with NBC in the broadcaster's owned and operated markets.

Cohen also called on independent operators to put together evidence showing the potential harms of the deal and to present "serious filings" on the matter. "You want to put in that detailed work upfront," he said. "You need to play seriously on this, and we need your help."