



WARREN'S Washington Internet Daily

Covering Legislative, Regulatory and Judicial News Affecting Internet Business. From the Publishers of **Communications Daily**.

THURSDAY, APRIL 10, 2014

VOL. 15, NO. 69

Today's News

FINAL FTC COMMISSIONER confirmed, tipping majority to Democrats. (P. 1)

IANA TRANSITION requires education on the Hill, say stakeholders. (P. 2)

FTC SEEN AS OPTION for FCC Internet work, with eye toward reducing industry uncertainty, agency costs. (P. 4)

LAWMAKERS DUBIOUS OF COMCAST'S TWC acquisition plans, despite strong defense from Cohen. (P. 6)

SPY AGENCY 'ETHICAL CODE' sought by CoE lawmakers. Parliamentary Assembly approves resolution on user protection in cyberspace. (P. 9)

TELECOM ACT FRAMERS QUESTION how Congress could overhaul it again, with cautious optimism. (P. 10)

IP INTERCONNECTION NEEDED in new Telecom Act, CLECs say. ILECs not so sure. (P. 13)

CLARIFYING MVPD DEFINITION could be swept up in retrans, program access issues to be considered in possible Telecom Act update. (P. 15)

McSweeney Confirmation Seen Possibly Increasing FTC Digital Consumer Protection Work

The Senate confirmed Terrell McSweeney as an FTC commissioner by a 95-1 vote Wednesday. That fills the final commissioner seat, vacant since Jon Leibowitz left March 7, 2013. The Democrats now hold a 3-2 majority among commissioners, which has caused some observers to wonder if the FTC will take a more proactive stance on data privacy issues. "This may result in cases or issues being brought up that wouldn't have been with an evenly split commission, for example in the privacy/data security area," said Thomas Lenard, president of the industry-backed Technology Policy Institute (TPI), by email.

The floor vote was months in the works. President Barack Obama said in June he would nominate McSweeney (WID June 24 p7). McSweeney had a Senate Commerce Committee hearing on her nomination in September, but her confirmation was held up along with two FCC nominations and delayed because of the government shutdown (WID Oct 3 p8). The FCC nominees eventually cleared the Senate, but McSweeney's nomination continued to languish, despite clearing the Senate Commerce Committee twice. The vote wasn't close; Sen. David Vitter, R-La., was the only vote against confirmation.

McSweeney has been senior counsel-competition policy in the Justice Department's Antitrust Division. Former colleagues said her experience there has given her wide ranging antitrust knowledge she will bring to the FTC (WID June 28 p3). McSweeney also previously worked as a deputy assistant to Obama, as a domestic policy adviser to Vice President Joe Biden and as counsel to the Senate Judiciary Committee for then-Sen. Biden, D-Del.

Privacy is another interest for McSweeney, “particularly children’s privacy and protecting other vulnerable groups such as the elderly,” said Michelle Cohen, an Internet privacy lawyer with the Ifrah law firm. Cohen said the commission under Obama has already been the most active FTC on privacy issues she has seen in over 20 years, so “tipping the majority will likely continue to push the FTC forward on its enforcement initiatives.”

The four sitting FTC commissioners have mostly voted unanimously on issues, with exceptions including a dissent from Commissioner Joshua Wright on the commission’s \$32.5 million settlement of a complaint with Apple over in-app purchases without proper consent (WID Jan 16 p1). TPI’s Lenard said McSweeney’s confirmation gives FTC Chairwoman Edith Ramirez “a clear majority at the commission. ... Hopefully, this will not result in the FTC taking action where there is no clear evidence of market failure or consumer harm.” Jeff Chester, executive director for digital privacy advocate Center for Digital Democracy, said “the FTC has had a long tradition of working on a bipartisan basis.” But with McSweeney’s confirmation and a Democratic majority, “consumer groups expect ... the FTC will further expand its work to protect consumer privacy and [on] digital consumer protection matters,” Chester said.

McSweeney has also “expressed interest and or concerns with data collection,” Cohen said. The FTC has been active through both its research and testimony on Capitol Hill on data broker business practices (WID Dec 20 p1). The release of an FTC report on data brokers has been expected for several months now. “We may see further attention paid to these issues, as well as a continued focus on data security and privacy issues, including children’s privacy,” Cohen said. — *Cory Bennett* (cbennett@warren-news.com)

Government Control DOA

Legislation to Block or Delay IANA Transition Not Helpful, Say Experts

Legislation to delay or prohibit NTIA’s transition of the Internet Assigned Numbers Authority (IANA) functions may not achieve the results the bills’ supporters desire, said Internet governance experts in interviews. Members have produced three bills seeking to block or delay the proposed transition, including the DOTCOM Act (HR-4342), which seeks to delay any transition proposal until a study is done by the GAO (WID April 3 p1). The DOTCOM Act will have a markup vote at the House Communications Subcommittee Thursday at 9 a.m. in 2123 Rayburn. The subcommittee held a hearing Wednesday afternoon in which seven subcommittee members gave opening statements on the act. Of the seven, all five Republicans supported the DOTCOM Act and two Democrats opposed it. GOP backers of the bill at the hearing included two co-sponsors: Reps. Marsha Blackburn, R-Tenn., and John Shimkus, R-Ill. Reps. Henry Waxman, D-Calif., and Anna Eshoo, D-Calif., expressed opposition to the act. The House Judiciary Internet Subcommittee will hold a hearing on the NTIA transition Thursday at 9 a.m. in Rayburn 2141.

Lawmakers need to become better educated on Internet governance issues, while trying to find appropriate mechanisms or multistakeholder groups to continue to hold ICANN accountable, said stakeholders. NTIA Administrator Larry Strickling and ICANN CEO Fadi Chehade continued to promise the transition (WID March 17 p1) will happen only if the IANA functions are transferred to and through a multistakeholder process, at a Computer and Communications Industry Association (CCIA) event Wednesday.

“We hope to build more and more support” in Congress for the multistakeholder approach, said Strickling at the CCIA event, when asked whether he was concerned if Congress is trying to delay or stop