

Philadelphia Inquirer
[With Comcast's backing, Telemundo ready to compete](#)

Philadelphia Inquirer
[Moving into Center City, where the tech talent is](#)

Home Media Magazine
[Analyst: ESPN Not Ready to Go Direct-to-Consumer](#)

Business Insider
[What Hulu needs to beat Netflix](#)

Detroit Free Press
[Internet speed wars heating up in Michigan](#)

York Daily Record
[Gov. Tom Wolf has 4 Pa. budget options](#)

Allentown Morning Call
[PA state lawmakers' expenses up, again](#)

Lancaster Intelligencer
[Editorial: If](#)

The traditional pay-TV industry isn't falling off a cliff, despite feverish news reports about the cord-cutting trend, according to Leichtman Research Group.

While cable and satellite television firms have seen a gradual decline in video subscribers, the big, headline-grabbing declines are seasonal and tend to occur in the second and third quarters. The industry tends to post gains in the first and fourth quarters, but those



quarters' subscriber additions are under-reported, Bruce Leichtman, LRG president and principal analyst, said in a report Wednesday.

"As seen over the past five years, the first quarter of each year has the most net pay-TV gains, and the second quarter has the most losses," Leichtman said. "While these seasonal trends are readily apparent, it seems that every year following second-quarter results, many reporters and analysts are quick to proclaim that the tipping point in the decline of the industry has transpired. Then, as the industry follows its typical path of improved results over the next three quarters, some pundits ignore the predictable trends, while others yo-yo their opinions on the state of cord-cutting in the U.S."

The thesis of the cord-cutting trend is that consumers are fed up with high prices for cable and satellite TV service, cancelling their

subscriptions to save money and switching to over-the-top Internet TV services like Netflix, Amazon.com Prime Video and Hulu. But cord-cutting supporters overlook the seasonal aspects of subscriber gains and losses, Leichtman said. Broadband Internet services and Netflix also see seasonal patterns in subscriber acquisition, he said. "As with the pay-TV results, broadband net adds are also highest in the first quarter and lowest in the second quarter," Leichtman said. "In fact, over the past five years, broadband net adds in the first quarter of each year were greater than in the second and third quarters combined."

The seasonal trends shown for pay TV and broadband also exist for Netflix, he said. "Over the nearly four years that Netflix has reported the number of streaming subscribers in the U.S., it is again evident that the first quarter has the most net adds, while the second

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quarter has the fewest," he said. "As in the case of broadband additions, Netflix net paying streaming additions (not including free adds) in the first quarter have been greater than those in the second and third quarters combined in each of the past four years."

Traditional pay-TV services do appear to be experiencing some secular decline, however. "Annual additions are clearly trending down, but the industry is not in collapse," Leichtman said. "Top pay-TV providers report a combined loss of about 1 million subscribers since the peak in Q1 2012."

In the first three quarters of 2015, Comcast has lost 93,000 video subscribers, ending Q3 with 22.26 million subscribers. During the same period, Time Warner Cable lost 82,000 video subscribers, leaving it with 10.98 million subscribers. The two satellite TV services also lost subscribers during the first three quarters of the year. AT&T-owned DirecTV lost 95,000 subscribers and ended Q3 with 19.57 million total. Dish Network lost 64,000 subscribers, leaving it with 13.91 million. – *investors.com*

For the first 20 years of the Internet, entrepreneurs were free to focus on their computer code that changed everyone's life. Now regulators are forcing technologists to cope with a different kind of code—the legal system. Unlike the disciplined operation of digital software, the legal code depends on human willingness to obey its rules.

This month the federal appeals court in Washington heard make-or-break arguments against new regulations micromanaging the Internet. The rules issued earlier this year for the first time gave bureaucrats power to block new Internet products, services, pricing and technologies. These regulations violate the bipartisan congressional consensus retained since the Clinton administration to keep the Internet free of regulation. Ever since the Telecommunications Act of 1996, congressional policy has been to "preserve the vibrant and competitive free market" for the Internet "unfettered by federal or state regulation."

Federal judges are now deciding what to do about the Obama administration's scheme to get around Congress by pressuring the supposedly independent Federal Communications Commission to fetter the Internet through regulations designed more than a century ago for railroads and the telephone monopoly. The three-judge appeals panel included David Tatel, a Clinton appointee whose legal opinions blocked the FCC's earlier Internet regulations. During the oral argument, he demanded to know why the agency in February suddenly opted to regulate the Internet as a utility instead of pursuing the lighter regulatory approach the agency had called its "blueprint."

Judge Tatel tried asking the FCC's lawyer this key question three times: "The commission even called it the 'blueprint' offered by the D.C. Circuit. That's the commission's word, not mine. And so what, how do you describe the commission's reasons for abandoning that approach. What's the policy explanation for that decision?" When Judge Tatel got no answer, he tried again: "What changed [the commission's] mind? It couldn't have been changed circumstances, right? The circumstances are all essentially the same. What is the crispest answer?" After another evasive answer, Judge Tatel said, "It couldn't have been changed facts. Right? It had to be a different perception of what was happening. What was that?" And finally: "What drove the commission?"

Everyone in the courtroom knew why the FCC's lawyer wouldn't answer with the truth: What "drove" the agency was the politically motivated demand by the Obama White House that the agency submit the Internet to the heavy-handed regulations now known as Obamanet. This pressure included a video by President Obama and organized demonstrations outside the home of Tom Wheeler, the FCC chairman. Mr. Wheeler sent an email to his staff, later obtained by a congressional committee, expressing shock over strong-arming by the White House. A page-one article in The Wall Street Journal detailed how administration staffers dictated policy to the agency.

This political interference is clear abuse by the executive branch. The independent regulatory agencies created during the New Deal have a precarious constitutionality even

without a president dictating orders. The Constitution says only Congress can make laws. The separation-of-powers justification for “independent” agencies’ issuing rules assumes that apolitical experts run agencies without pressure from the White House, and that they craft careful factual records before regulating. With Obamanet, the FCC failed these tests.

Judge Tatel himself warned against politicized agencies in a speech on administrative law published in 2009 in the Harvard Environmental Law Review. “It looks for all the world like agencies choose their policy first and then later seem to defend its legality,” he wrote. That “entirely backwards” approach, he added, “effectively severs the tie between federal law and administrative policy, thus undermining important democratic and constitutional values.”

Judges are hard to predict, so there is no guarantee that the appeals court, when it rules, will have the courage of Judge Tatel’s conviction that agencies must operate independently. But by overturning the Obamanet regulations, judges would protect both the law and the Internet. This month the FCC sent letters to T-Mobile, AT&T and Comcast demanding that they appear before agency staff by Jan. 15 to justify new pricing plans. These offer cost-conscious consumers data programs with unlimited, so-called “zero rating,” access to selected services such as video and music. Net neutrality absolutists oppose these plans even though the offerings create more consumer choice.

Only last month, Mr. Wheeler praised as “innovative” the T-Mobile pricing plan his agency now challenges. He even chided critics for predicting that innovators would have to plead, “Mother, may I?” with the FCC. The agency now demands that companies beg for regulatory approval. Republican FCC commissioner Ajit Pai said the agency should not “haul in companies left and right,” warning that “the era of permissionless innovation is over.” The appeals court will rule on the case in early 2016. Invalidating Obamanet would uphold the understanding shared by Silicon Valley and Congress that innovation, not regulation, drives the success of the Internet. — *Wall Street Journal*

Re “**Caught in the Stream**” (Arts & Leisure, Dec. 20):

Your readers may not be aware that the Federal Communications Commission is considering sweeping new regulations for television programming that are supposedly needed to create new competition in video devices and services. But your article on the rise of streaming and the changing boundaries of TV storytelling shows why these rules aren’t needed.

The market is exploding with choices for video consumers, from streaming services like Netflix, Hulu and YouTube to hardware devices like Apple TV, Roku and Amazon Fire TV. And anyone who wants to launch an online service of his or her own can simply negotiate for programming rights.

But the extraordinarily intrusive “AllVid” rules being considered at the F.C.C. would shut down this vibrant innovation by forcing existing television providers to simply hand over their programming rights to competitors on an “unbundled” basis. Why would YouTube or Netflix create shows or negotiate for programming rights if the F.C.C. requires cable and satellite TV companies to give them that same programming for free?

It is hard to imagine a healthier or more dynamic market than consumer television and video programming — a market in which, as your article notes, you can watch “The Walking Dead” on your phone. This is the last place government should be clamping down new regulations. — **letter to the *New York Times* by David Balto, former policy director at the FTC’s Bureau of Competition and attorney in the Justice Department’s antitrust division**



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