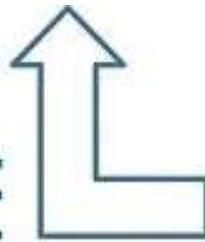


# NEXT LEVE



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[Wall Street Journal ESPN Suit Against Verizon Delayed While Companies Negotiate Possible Settlement](#)

[Politico Poll: Half of Americans say Apple should help FBI unlock iPhone](#)

[TV By The Numbers Cable Top 25 for Week Ending February 21](#)

[Pittsburgh Post-Gazette With current state budget still unfinished, hearings underway for 2016-17](#)

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Whoever becomes our next president will want to notice that net-neutrality activists and the Obama administration have locked the nation into a stance badly at odds with how the Internet actually wants to evolve.

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Internet by 20% without hurting video quality.

Ditto the zero-rating plans put forward by wireless operators like T-Mobile, Verizon and AT&T, allowing some data to pass through to users without being subject to data caps. Net neuts are enraged even as these plans help to make video affordable on wireless.

We come to the most bizarre case of net neuties making lemons out of lemonade. A [Pew survey](#) finds a small but absolute drop in the number of American households subscribing to fixed broadband. Now, no WSJ reader would be so incautious as to conclude the value of the Internet must therefore be falling for many Americans—it costs too much, who needs it! Yet this is exactly the interpretation the neut brigade are peddling, even while Pew quietly acknowledges the truth: Fixed broadband subscriptions slipped slightly because fast wireless is increasingly seen by many customers as an adequate substitute.

Let's see. Mobile devices overtook PCs to account for 55% of Internet traffic in 2014. They accounted for a majority of Google searches by early 2015. Half of Americans use LTE wireless networks, with an average speed of 11 megabits. Is it really a tragedy that some of these Americans now find it unnecessary to pay two broadband bills?

Maybe Pew should start passing out cyanide caplets now in anticipation of 5G in a few years, which will enable wireless speeds well above what the average home user gets

Neuties still face a legal test before the D.C. appeals court but their vision is already failing a reality test. For starters, notice all the developments in the marketplace that neut activists feel obliged to be outraged about, which they imagined the government could stop. Netflix continues to be dunned for interconnection fees by big cable operators. This is a terrible offense against net neutrality, we're told, except that it undoubtedly helped to incentivize Netflix's recent project to reduce the burden of its video on the

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today. Especially paying note should be those frantic about a digital divide. Millions of Americans who are still offline never bought a PC in the first place, and then weren't going to get caught up when the Internet arrived. Now these people are getting a second chance thanks to smartphones and tablets tied to speedy wireless networks. This is bad?

Down the road, something called IP multicast will fulfill the promise of Internet TV, making live TV (not just Netflix) available to millions of viewers simultaneously without bogging down the Internet. You'll be able to watch the Super Bowl on your iPad without hearing about every scoring play from Twitter three minutes before it happens on your screen.

This future can only happen in a non-net-neutrality world. Networks won't be dumb—i.e., the brainless conduits for undifferentiated ones and zeros that net neuters idolize. Network operators will become more hands-on than ever, to enable live TV, telemedicine, virtual reality, etc. No wonder analyst Craig Moffett talks about "the improbable resurrection of cable" even as the TV bundle unravels, because of cable's leadership in broadband.

This is the opposite of what the Federal Communications Commission told you to expect, in keeping with the agency's near-perfect record of obtuseness. It still is reluctant to acknowledge the growing fusion of fixed and wireless. It still insists on the primacy of the cable bundle despite the rise of Netflix.

Its latest initiative, an agenda item left over from the 1990s, would dictate how cable TV feeds must be made compatible with third-party devices. Tune into any conference call: Most cable execs are already keen to drop cable box deployment in favor of "Coam" (customer owned and maintained equipment).

The cable box is a cost center, not a profit center, whatever it says on your bill—and only more so as customers increasingly insist that all their content be available on all their devices, wirelessly.

So clueless is the FCC, while still under such Democratic pressure to be "activist," that the agency has been reduced to playing handmaiden to whichever Obama ally is handiest. In the cable box case, that's Google, which is badly trailing Netflix, Amazon, Apple, HBO, Hulu and others in the premium over-the-top TV race.

Google lobbied for the cable box rule so it can insert itself between you and your cable supplier, to capture information about what you're watching and sell ads against it. On TV, Google has become the thing that Google most shouldn't want to be—a backward-looking opponent to free innovation. No wonder Google increasingly finds a friend at the FCC. – ***Wall Street Journal***

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Joe Garrett, Alabama's deputy revenue commissioner, wants his state to get sued—and the sooner, the better.

Mr. Garrett and like-minded officials in South Dakota, Utah and 10 other states are tired of waiting for Congress to write national rules to let them collect sales taxes from out-of-state Internet retailers. So, in a loosely coordinated effort, they are moving to impose those taxes themselves and daring merchants to challenge them.

The gambit is aimed at creating business blowback and a confusing national patchwork of laws that might prompt Congress to act. Short of that, the states want their moves to be questioned legally so they can ask the Supreme Court to overturn a 1992 ruling that forbids taxation of Internet sales by retailers that lack a physical location in a state.

In Alabama, the revenue department began enforcing an old law it says allows taxation of out-of-state sellers. The first taxes were due Feb. 20, and the state plans to audit companies that don't file returns. "We're confident that some remote sellers will not comply and therefore it will lead to litigation," said Mr. Garrett. "We have been very open about what we're doing."

The moves are a reaction to years of inaction in Congress that have disadvantaged local businesses, said Deb Peters, a Republican state senator in South Dakota. Her bill, which would apply sales taxes to out-of-state purchases, moved through the state Senate last week without opposition. "Our businesses simply can't survive without someone stepping up to make the marketplace fair and even again," Ms. Peters said in an email. "Since Congress has once again failed, it falls to us to fill that void."

Separately, a federal appeals court Monday sided with Colorado on its approach to the issue, giving states another avenue to pursue. The Colorado law requires out-of-state retailers that don't collect taxes to send the state a list of in-state customers. The latest maneuvers reopened fractures within the Republican Party between small-government advocates and business executives.

The state officials, even in heavily Republican states, back brick-and-mortar retailers in favoring broader state taxation powers. But antitax groups, online companies such as eBay Inc. and their allies in Congress call the congressional proposals tax increases that would subject businesses to overlapping audits in states where they don't have employees. "The biggest threats are in these red states," said Christine Harbin, director of federal affairs and strategic initiatives at Americans for Prosperity, a conservative group. "They purport to be tough on taxes. They purport to be tough on spending."

The Supreme Court ruled in 1992, in *Quill Corp. v. North Dakota*, that states can apply sales taxes only to companies with a physical presence in the state. As tax-free Internet sales expanded, states and big-box retailers grew increasingly frustrated with the ruling, which dates to the mail-order-catalog era of commerce.

Technically, customers must pay a so-called use tax on out-of-state purchases, but almost no one does. A University of Tennessee study estimated that states lost \$23.2 billion in revenue in 2012 because of remote sales; others say the number is significantly lower.

Congress has clear authority to regulate interstate commerce. States pressed for a law that would let them tax sales from out-of-state retailers, and the Senate passed one on a 69-27 vote in 2013. But the bill languished in the House, where it divides Republicans. Even though Senate Majority Leader Mitch McConnell (R., Ky.) promised another vote this year, states are taking matters into their own hands.

Utah's Senate **will soon consider a bill that would expand its definition of a retailer's physical presence** to include certain third-party delivery companies, said its sponsor, Republican Wayne Harper. Other bills have been introduced in at least 11 more states, including Nebraska, Mississippi and Louisiana, according to the National Conference of State Legislatures. Unlike the more direct South Dakota and Alabama approaches that challenge the Quill ruling, Utah's bill is "nuisance" legislation because it would require online retailers to adhere to a different taxation system in that state but not others, said Steve DelBianco, president of NetChoice, an e-commerce trade group. He said litigation and renewed efforts in Congress would likely start, but was doubtful states will get the result they want.

State officials are buoyed by a comment from Supreme Court Justice Anthony Kennedy in a concurring opinion last year involving the Colorado case. He wrote that "dramatic technological and social changes" since 1992 have made the states' argument stronger, adding that "the legal system should find an appropriate case" for the court to reconsider the Quill ruling.

The Colorado law requires online retailers to report in-state customers' names and their purchases to the state government, allowing Colorado to enforce its use tax. The 10th U.S. Circuit Court of Appeals this week affirmed that power, while also distinguishing it from the Quill precedent that prohibits Colorado from forcing out-of-state retailers to collect the taxes themselves.

Amazon.com Inc., which backs the states' preferred bill in Congress because it could

bring national uniformity to online tax rules, doesn't collect taxes on goods shipped to Alabama or South Dakota. The company declined to comment. "Nobody really wants this to be the way this problem is addressed," said Joe Henchman, vice president of legal and state projects at the Tax Foundation, a Washington group whose board members include former Republican officials. "Everybody would say that Congress is the best place to resolve this." – *Wall Street Journal*

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The trouble with Republicans who hold the majority in the Pennsylvania Legislature is that they're just too darn nice.

Lawmakers authorized a tardy budget of \$23.4 billion in December. But since July 1, the beginning of the current fiscal year, the administration of Democrat Gov. Tom Wolf has spent \$37.5 billion. Mr. Wolf spent \$24.7 billion during the budget impasse. He has spent about \$12.8 billion since the first of the year. So, the governor has spent millions of dollars never authorized by the Legislature. That is, dollars never appropriated by the legislative branch have been spent unconstitutionally — illegally — by the executive branch.

And how did the GOP defenders of the Pennsylvania Constitution and the rule of law react? They want state Auditor General Gene DePasquale to audit the spending. "We're concerned about the checks and balances," said Senate Republican spokesman Jennifer Kocher. Woot! Woot! Really? Is that all you got? One senator had the courage to use the word "illegal." A representative dared to threaten subpoenas to track the roguish behavior. But here's a better idea: Have the Capitol police haul Wolf before the Legislature.

We certainly understand the need for decorum and civility in the conduct of the public's business. But the governor's lawlessness certainly isn't decorous or civil. – *Pittsburgh Tribune-Review* editorial



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