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March 11, 2015

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**Orange County (CA) Register**

Europe may be a synonym for stagnation, but Barcelona still hosts the world's premier mobile telecom conference, and this year the theme was "woe are the carriers." Both the New York Times and The Wall Street Journal produced front-page stories last

An advertisement for the Pivot TV network. At the top, the word "pivot" is written in a lowercase, white, sans-serif font, with the letter "i" in yellow. Below it, the tagline "A new TV network where what you watch does make a difference" is written in a smaller, white, sans-serif font. The central part of the ad features a collage of nine program thumbnails. From top-left to bottom-right, they are: "WELCOME TO FAIRFAX" (a group of people), "FREESTYLE &amp; SUPREME" (a group of people), "PLEASE LIKE ME" (a man's face), "The Internet's Own Boy" (a man's face), "HUMAN RESOURCES" (a group of people), "Buffy" (a woman's face), "THAT WHICH I LOVE DESTROYS ME" (a man's face), and "VERONICA MARS" (a woman's face). At the bottom of the ad, contact information is provided: "For more information, contact: Carla Lewis-Long, VP, Distribution &amp; Affiliate Partnerships, 646.402.9180, PivotAffiliate.com".

week dwelling on the Facebook menace to the industry's traditional voice and messaging revenues. Google used the Barcelona venue to roll out a new free Wi-Fi threat to mobile operators' paying broadband traffic.

So the Barcelonans must have been surprised when the Tom Wheeler reputation salvation tour arrived, pronouncing that black was white, up was down.

Mr. Wheeler is the U.S. Federal Communications Commission chief who just found that telecom operators are actually dangerous monopolists in need of old-style utility regulation. Well, he actually said no such thing. He gives little reason why this step was urgent or necessary. Since applying Title II utility regulation to the Internet, he's spent most of his time apologizing for

his action, insisting why, against all historical precedent, the FCC will nonetheless protect investment and innovation in the vibrant, rapidly changing industry.

Like the Munchausen mommy, Mr. Wheeler has given us Title II so he can protect us from Title II. He claims, for instance, in the tender hands of the FCC, Title II has refrained from stifling investment in wireless amounting to \$400 billion over the past 22

Op-ed: A free Internet too much for government to resist

years. This has been his most incessant talking point. He forgets to mention, though, that in 2007 the FCC specifically ruled that mobile broadband *was not* a Title II service. He forgets to mention that in 2010 the FCC even exempted mobile broadband from net neutrality rules, which have become his diaphanous excuse now for exposing the entire broadband sector to the oppression of Title II.

Somebody should introduce Mr. Wheeler to the industry he regulates. Right after 2007, when Title II was waived, U.S. wireless investment took off, exploding 70% overnight. Compare this performance to the previous mobile broadband leader, Europe, where investment actually declined since 2007. Mobile broadband, since being exempted from Title II, has come to dwarf the carriers' traditional voice and messaging traffic, still covered by Title II. Mobile broadband, exempt from Title II, is what powered the rise of Skype, FaceTime, WhatsApp and other Internet-enabled apps that are now overthrowing those parts of the carrier business model still based on Title II services.

Title II has only hobbled progress where it still applies. A clear example is voice-over-Internet, or VoIP, which continues to be covered by Title II. The result for operators and their customers has been higher network costs and wasted spectrum. We could go on about Mr. Wheeler's prevarications, including his murky rendering of the 1993 congressional act that clearly sought to limit the application of Title II to then-emerging wireless. In his memoir, Bill Clinton's FCC chief, Reed Hundt, boasted the law had "reversed one hundred years of pro-monopoly policy in the telephone and cable industries."

Mr. Wheeler now reopens the molasses vent Congress thought it was closing, and over a much wider Internet industry. His invocation of archaic Ma Bell-era regulation gives interest groups and lobbyists an open-ended invitation to demand price controls, service mandates and new utility taxes on the whole swath of providers and even upstream network operators like Google, Facebook and Netflix (which is why Netflix has suddenly become mumbly about its support for Title II).

Mr. Wheeler's endless rationalizations about how Title II is a bad idea whose time has come are meant to serve a single purpose. It's all about providing supporting bombast for his desperate and implausible insistence that he did not cave to the shortsighted political machinations of the Obama White House. Children, there's a lesson here. A person's moment of truth can come unexpectedly in life, and decisions made in a moment of weakness and timidity can become the legacy of a lifetime. But it's also important to remember that we're all human. We do chicken-hearted things. We make choices we regret. The world forgives. Unfortunately, some people's self-image won't let them shut up. The real death of their reputation is their need to go around trying to justify themselves with tall tales that everyone knows are untrue.

It's been painful to see the FCC chief shrinking before TV interviewers who begin their questioning of him by stating matter-of-factly that he kowtowed to President Obama. Profiles in courage are rare in Washington and Mr. Wheeler is no worse than average. Still it must be said of his current embarrassment: "The judgments of the Lord are true and righteous altogether." – *Wall Street Journal*

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In seeking to figure out why viewership is down across so many cable-TV networks, ad-sales executives from the industry gathered for a frank talk last week by the Cabletelevision Advertising Bureau, said people who attended the session. The primary reason for the steep fall-off in viewership, the trade group said: consumers are spending more time watching subscription streaming-video services like those from Netflix Inc., Hulu and Amazon.com Inc. The CAB said it estimates that about 40% of third- and fourth-quarter TV-ratings declines can be attributed to such subscription video services, the people said. Total TV viewing fell about 10% from a year earlier in the third quarter and about 9% in the fourth quarter, according to an analysis of

Nielsen data by Sanford C. Bernstein.

Bernstein numbers show that the malaise has persisted into the current period, with total viewing so far in the first quarter down about 12%, according to a March 9 research note. "We believe the U.S. television industry is entering a period of prolonged structural decline, caused by a migration of viewers from ad-supported platforms to non-ad-supported or less-ad-supported platforms," wrote Bernstein analyst Todd Juenger. Rich Greenfield, of BTIG Research, says the average Netflix home is watching more than 100 minutes of the service a day. There's "no doubt overall video consumption is growing," but subscription video-on-demand "viewing is eating into TV ratings," he said.

The Diffusion Group estimates that U.S. consumers streamed 5.64 billion hours of Netflix in the fourth quarter, a nearly 31% increase from a year earlier. Analysts and TV executives say there is no way to determine precisely how much of the TV-ratings decline was caused by the migration of viewers to subscription online-video platforms. There isn't enough data to draw a causal relationship. CAB's analysis was based on an extrapolation of Netflix's public comments over the past few years about the rising number of hours its subscribers stream, and traditional TV ratings declines as measured by Nielsen.

Many TV network executives have blamed at least some of the ratings declines on outdated measurement systems that are failing to capture the true viewing of their programming on digital platforms. They say they aren't getting full credit for viewing on mobile devices, for example. But some executives are starting to acknowledge that subscription video services like Netflix are stealing viewers from TV. Over the past few years media companies have found a new and fast-growing revenue stream from licensing content to streaming players.

In an interview last week, Scripps Networks Interactive Inc. Chief Revenue Officer Steve Gigliotti said media executives thought deals with Netflix types "sounded like a good idea" at the time, but "now there are some serious misgivings about it." Netflix didn't reply to a request for comment. Netflix in the past has brushed off such concerns, noting that it has helped seed ratings improvements for shows like "Breaking Bad."

The purpose of the CAB's presentation, according to people familiar with the matter, was to show cable executives that the ratings declines suffered by the industry weren't the result of consumers abandoning TV content, but rather watching it on different devices and services. Jon Steinlauf, Scripps' president of national ad sales and marketing, said his takeaway from the CAB meeting was that the "biggest contributor to the drop is SVOD," referring to subscription video-on-demand. The second-biggest driver, he said, was the increased use of mobile devices like smartphones and tablets to watch TV-platforms that are still not measured by Nielsen. The measurement specialist has said it is working with industry players to address the need for tracking mobile viewing. – *Wall Street Journal*



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