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MORE is better than less.

Dear Friends:

Making predictions can be a tricky business. (Just ask the political pundits who ended up with post-election egg on their faces.) In fairness, politics is a harder subject to take on than technology. With technology we can see trends, track new developments, read about obstacles and plans to overcome them. With politics, on the other hand, one has only to witness the field of Republican aspirants and a Democrat whose path forward seemed clear to know that political fortunes can blow up virtually overnight. With that drama behind us, we have a year of new drama and uncertainty ahead, as problems and their proposed solutions work their way through a Congress whose parties make the Road Runner and Wile E. Coyote look like best buds, and as IoT technology speeds ahead. In this issue, we will tackle politics; next issue, technology.

We look forward to the MFM/BCCA 57th annual conference, "Media Finance Focus 2017," May 21-24, at the Hyatt Regency Grand Cypress in Orlando, Florida. Szabo is pleased to sponsor the opening night party, featuring "Switch," at the House of Blues.

Best wishes for a wonderful spring,

Robin

Robin Szabo, President
Szabo Associates, Inc..

Politics and Change . . .
2017 Predictions for Media

The sands have shifted. A sea change is upon us. Enough with the tortured metaphors. Elections have consequences, and 2017 is ushering in a slew of changes that promise to have a significant impact on business.

President Trump's policies reflect a clear departure from the "big government" policies of the previous administration. From his cabinet choices, his efforts from day one to fulfill a myriad of campaign promises, and Republican majorities in both houses, we can predict numerous edicts and legislation that will impact the way companies conduct business.

Federal Communications Commission.
Over the past few years, the FCC imposed several regulations, approved by the Obama administration, which now have a good chance of reversal. If the actions of newly-appointed FCC Chairman Ajit Pai (who vowed in December to take a "weed whacker" to unnecessary FCC rules) are any indication, the agency will support free-market policies that encourage competition and reduce burdens on market participants.

Privacy Rules. Intending to preserve online users' privacy, the FCC, in late 2016, passed rules that required broadband internet service providers to get consent from consumers before marketing sensitive data to third parties. A consumer's geographic location, browsing history, and app usage information, all of which were deemed integral for data-driven advertising efforts and online commerce, were now off-limits for ISPs to monetize unless and until the user took action to "opt in." Marketers, who rely on consumers' digital data to build consumer profiles and target ads, were also adversely affected. In contrast, the privacy rules from the Federal Trade Commission (FTC) that govern dominant edge providers such as Google and Facebook required that customers must "opt out" of arrangements to market their personal data.

The irony here is that it was the FCC itself that created a perceived void in consumer protection. By reclassifying ISPs as common carriers in 2015, the agency divested the FTC of its statutory authority to regulate them. The privacy rules were enacted to fill the void.

Incoming FCC Chairman Ajit Pai opposed the rules, accusing the commission majority of "corporate favoritism" that benefitted businesses such as Google. Other opponents maintained that the rules failed to protect consumers as intended. For example, ISPs could easily bury the permission provisions within a lengthy Terms and Conditions document, at the end of which consumers could either "accept this agreement" or look elsewhere for service. In January, the Association of National Advertisers (ANA), the 4A's, the Interactive Advertising Bureau (IAB), and other industry groups filed a formal petition with the FCC to overturn the rules. Replacement of the rules with an FTC standard could result in increased competition for online advertisers and a level playing field for privacy protection.

Set-Top Box Proposal. Former FCC Chairman Tom Wheeler issued a proposal to "unlock"

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set-top boxes, allowing third parties, such as Google and Amazon, to introduce their own. Proponents argue that more competition could benefit consumers. Opponents, including the satellite and cable industry, contend that giving up control of hardware access points for their services would substantially reduce their revenue streams.

FCC Chairman Pai was opposed to the proposal in his former role as FCC commissioner. Believing that set-top boxes will soon go the way of the eight-track player, replaced by Smart TVs, apps and wireless connectivity, Pai chooses to focus on regulations that address the needs of new technology. Other concerns were that the proposal failed to protect the intellectual property of content owners and would have a disproportionate negative impact on small companies without the financial means to comply with the FCC rules.

Net neutrality. The February 2015 Open Internet Order codified the idea that all internet traffic should be treated the same, forbidding internet service providers from blocking or slowing Web traffic. In other words, everybody gets to use the HOV lane regardless of the occupancy.

While protecting consumer access to Web content sounds like a good idea, internet providers contend that the rules make it more difficult to manage internet traffic and make investment in additional capacity less likely. While FCC Chairman Pai supports a "free and open internet," he opposes the net neutrality rules, which reclassified broadband providers and regulates them as public utilities.

Chris Hogue, VP of digital marketing service Isobar US, a proponent of net neutrality, argued in a January article in *Campaign* that "removing these safeguards clears the way for ISPs to choose whose content to throttle and opens the door for them to charge companies for delivering their content at faster speeds." This would potentially raise costs for companies such as Netflix, (which, asserts Hogue, accounts for over one-third of all internet traffic), Google (YouTube), Facebook, and CBS (All Access), while benefitting broadband providers such as Verizon and Spectrum.

In his January 25th article in *The Hill,* opinion contributor Scott Cleland wrote that the Obama-supported order depended on three political assumptions: the D.C. Circuit Court of Appeals affirmation of the Open Internet Order, Obama's veto power, and a Democratic presidential candidate winning in 2016. Now, the FCC, Congress, or Supreme Court can overturn the order. Cleland asserts that the old political calculus was not about net neutrality itself; rather, it was about the FCC asserting and gaining court deference in order to, in effect, legislate internet policy via unbounded, sweeping regulatory authority. This "means to the end" is widely opposed; however, reasonable bipartisan legislative compromise on net neutrality is a possibility.

Into the future. Last September, Pai outlined a "Digital Empowerment Agenda," a blueprint of policies designed to spur investment in internet networks and close the digital divide between rich and poor. The agenda includes plans to expand access to mobile broadband and reduce regulatory barriers to broadband deployment. In January, he announced the formation of a Broadband Deployment Advisory Committee (BDAC) to identify regulatory barriers to infrastructure investment and to make recommendations to the FCC on reducing or removing them.

In January, the House of Representatives unanimously passed an FCC process reform bill amending the Communications Act of 1984 to provide greater transparency and efficiency in agency procedures. In February, Pai announced steps to increase transparency of the FCC, including releasing the text of all proposals to the public well in advance of the commissioners' vote. Standard agency practice has been to release the text of rules only after the vote had taken place. The transparency issue was much discussed in 2015, as Pai, lawmakers, and industry stakeholders urged prior Chairman Wheeler to release the text of the 300-plus page Open Internet Order before the commissioners' vote. They argued that not only was the order significant but also it deviated from both the intent of the Notice of Proposed Rulemaking (NPRM) and Chairman Wheeler's previous statements that providers would not be reclassified. The NPRM is the notice the FCC provides the public when considering a new rule, allowing public input on how it should be developed prior to debating and voting on an order. Simply put, the NPRM and the Order are the bookends of the process. Wheeler stated that he was following agency precedent, and a federal appeals court upheld the order.

Pai's assertion that the FCC should be held to the same standard as Congress, allowing anyone to read a bill prior to debate, was put to the test during the FCC's February 23rd open meeting. At the meeting, the FCC sought comment on a proposal to let TV broadcasters use a new broadcast standard known as ATSC 3.0, or Next Gen TV, on a voluntary basis. The ATSC 3.0 standard will improve television quality, provide improved access to programs via mobile phones, and let broadcasters "wake up" a receiver to send emergency alerts. A non-profit industry committee including the broadcasting, consumer electronics, cable, computer, and motion picture industries created the standard.

The FCC is proposing to require broadcasters to keep the existing signals as they roll out advanced broadcasts. Pai stated that the new internet protocol-based system will "enable better audience measurement, which in turn will make for higher-quality advertising." The downside is that next generation signals will not work on existing televisions, necessitating new purchases of TVs or converter equipment. Another possible downside is the additional costs of advanced broadcast signals, and whether broadcasters will be able to pass along the costs through higher retransmission fees.

Labor.

Overtime pay rules. Many business groups, including the ANA and 4A's, opposed Department of Labor regulations approved by the Obama administration in March 2016 that require businesses to pay overtime to workers who make less than about $50,000 annually, double the previous threshold. Faced with the inevitability that the rule would go into effect in the fall

of the same year, businesses scrambled to figure out ways to budget millions more in staffing costs: Rely more on freelancers and technology? Require senior staff to do more? Explain to clients why the costs of their services must go up?

Last November, a federal judge blocked the rule, imposing a preliminary nationwide injunction at the request of 21 states, the U.S. Chamber of Commerce, and other business groups, stating that the regulation exceeded the authority granted it by Congress. It is unlikely that the Republican-controlled Congress will support it either.

Cost of Money.

Interest rates. When interest rates are high, businesses pay more in interest and the cost of capital rises. Customers, who must pay interest on personal, home, and car loans, can become cash-strapped and less able to support businesses. On the other hand, during periods of high interest rates, businesses can invest their excess cash in interest-bearing accounts to make more money. When rates are low, banks' opportunity to make money through loans decreases, making them less likely to take risks. Businesses subsequently find it difficult to borrow for start-ups, expansion, or improvements, and short-term loans to cover cash-flow problems are scarce.

The Federal Reserve has kept the cost of borrowing very low for years. In 2008, Fed Chairman Ben Bernanke justified the zero interest rate policy (ZIRP) as a way to boost spending, borrowing, and investment. The ZIRP era lasted seven years, during which time the Fed paid interest to big banks if they placed excess reserves at the Fed bank, making it more profitable for banks not to loan money or invest in a speculative market. The country's enormous debt was serviced mostly by government bonds, and low rates helped Treasury pay its bills while also inflating the stock market.

One year after the Federal Reserve raised the key interest rate for the first time in nearly 10 years, it raised it again in December. It has implied that it may tighten policy gradually this year while waiting to see if President Trump's policies provide a significant fiscal stimulus through tax cuts and infrastructure spending.

Corporate Taxes.

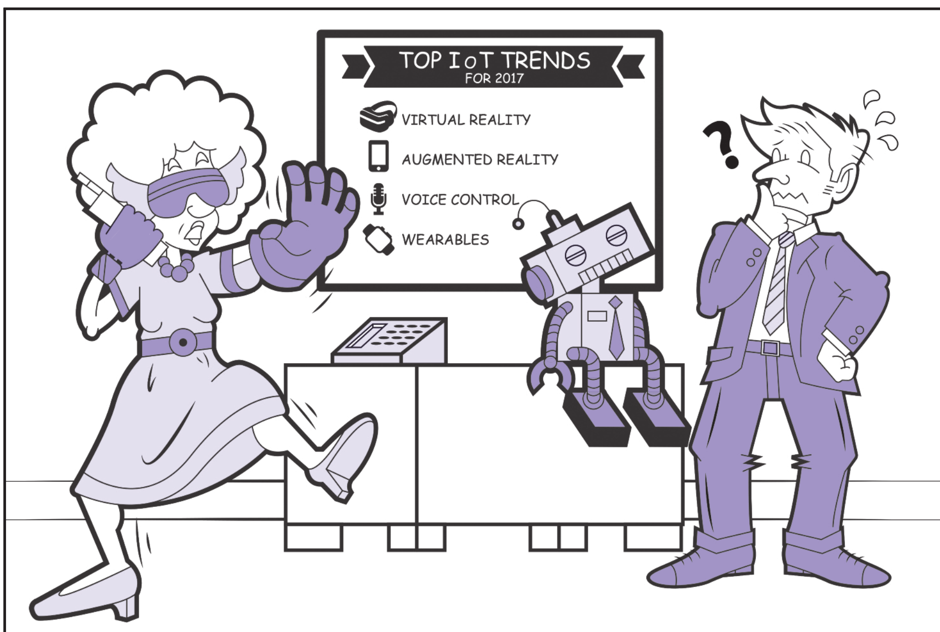
At the time of this writing, White House Press Secretary Sean Spicer told reporters that the White House was working on an outline of the most comprehensive business and individual tax overhaul since 1986. President Trump, during a February 10th news conference, said the soon-to-be-released tax measure would be guided by an "incentive-based policy." The president's director of the National Economic Council, Gary Cohn, is leading the effort to craft the overhaul. Cohn has said that all options for corporate tax reform are being considered, including the plan favored by House Majority Leader Paul Ryan. Cohn also favors using proceeds from a special tax on U.S. companies' offshore earnings to help fund a large public-works program. Of course, with any legislation, sometimes you win, sometimes you lose.

Tax rate cut. This is a part of the House plan that most businesses can get behind. U.S. companies suffer the burden of a 35 percent tax rate, currently the highest among developed countries.

Border adjustment. U.S. businesses that rely heavily on imports (Walmart, Target, and many others) do not favor this most controversial aspect of the plan, while those who heavily export (Dow Chemical, Boeing and many others) stand in favor. Companies would not be able to deduct the cost of imported goods from taxable profits, while export revenue would be exempt from company tax bases. Proponents argue that the value of U.S. dollar will immediately rise, offsetting any negative effects by increasing the buying power of importers and making U.S. exports more expensive overseas. Some opponents argue that the adjustment is "regressive," harming low- and middle-income consumers. Additionally, other low-tax countries that have welcomed U.S. companies would be negatively impacted.

Global profits. Only U.S. earnings of companies would be taxed, ending the taxation of profits from their foreign affiliates. Existing offshore money would be taxed a one-time 8.75 percent tax, a boon for companies with large stashes of money parked overseas. The policy would create a territorial taxation system used by all G7 countries with the exception of the U.S., allowing corporations to compete on a level playing field.

Interest on Debt. Companies would no longer be allowed to deduct interest payments on loans from taxable profits. While this could curb high-risk high-debt



"Boss, Sales wants to know if the three-foot guy who arrived this morning is a new salesperson or the admin assistant he's been asking you for."

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Media Collection Professionals,
3355 Lenox Rd. NE, Suite 945, Atlanta, Georgia 30326
Tel: 404/266-2464, Fax: 404/266-2165
Website: www.szabo.com
e-mail: info@szabo.com

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investments, companies that depend on financing would suffer.

Expensing. Companies would be able to write off capital investment in the year it was made. Currently, it must be written off gradually over the life of the equipment, structures, etc. Companies with large capital expenditures would benefit greatly.

Dodd-Frank.

President Trump has called this 2010 financial regulatory law a "disaster." Although industry analysts say that a complete dismantling of the law is unlikely, certain provisions could substantially be revised. According to Frank Chaparro in his February 4th article in *Business Insider,* the administration is looking at three key areas of the rule:

"Systemically important financial institutions" (SIFIs) are corporations designated by the Federal Reserve as large enough to pose a risk to the economy should they fail. A regulatory burden accompanies the designation, creating multimillion dollar costs that slow growth, according to Economic Council Director Cohn. He has said that nonbank firms, in particular, should not be designated as SIFIs.

"Orderly Liquidation Authority" was implemented in response to the enormous bank failures during the 2008 financial crisis. Its intention was to provide mechanisms to at-risk financial institutions to efficiently liquidate without a government bailout. According to Chaparro, Cohn believes that orderly liquidation has never proven itself to be viable. Additionally, other Wall Streeters feel that it represents a dangerous expansion of regulatory power.

"The Volcker Rule" was established to prevent banks from making speculative trades with their own money (proprietary trading), which many lawmakers believed made the 2008 crisis worse. The Rule's many critics blame it for affecting market liquidity. According to Chaparro, the Federal Reserve staff recently published a paper stating that the Volcker Rule had a negative effect on corporate bond liquidity, or the ease with which buyers and sellers can find each other.

The Courts.

Commercial free speech. For the last couple of decades, Supreme Court cases involving commercial free speech in advertising have generally resulted in support of First Amendment protection. Justice Antonin Scalia, the conservative constitutionalist who passed away last year, often cast the deciding vote. The president's choice of Judge Neil Gorsuch, whose philosophy and record is much like his predecessor, portends that the balance will remain for now as it was prior to Scalia's death.

States' intervention. While the Trump administration may kill regulations that many businesses oppose, there is always the risk that states will step in and impose regulations of their own. If that is the case, marketers and advertisers will have additional challenges in planning their strategies. ♦