

CableFAX Daily™

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What the Industry Reads First

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Capital Grilling: Court Questions FCC Authority in Comcast Broadband Fight

In a case that could affect the FCC's efforts to enact net neutrality rules, federal judges on Fri appeared highly skeptical that the Commission under former chmn *Kevin Martin* had the authority to slap **Comcast** for its bandwidth management practices in 2008. At times, oral arguments at the U.S. Appeals Court, D.C., resembled an inquisition, with judges repeatedly pressing the FCC to justify an order based on a policy statement rather than a specific statute. "You don't get an unbridled, roving commission to go about doing good," Chief Judge *David Sentelle* told FCC Acting Gen Counsel *Austin Schlick*, who retorted that Congress has given the agency broad authority to facilitate broadband. "This is the core of the Commission's mission," he said. But judges said such reasoning could be taken to extremes, with Judge *David Tatel* asking whether the FCC could limit people's use of email or social networking sites. Schlick said no but couldn't give specifics on how FCC authority should be limited, prompting Tatel to ask whether the FCC could even use its broad authority to regulate broadband prices. "It's theoretically possible if necessary," Schlick said. Meanwhile, Wiley Rein's *Helgi Walker*, who argued the case for Comcast, said the FCC's order "simply lacked any legal force or effect" because it wasn't based on a statute. "Isn't it possible that the Commission's order could stand based on its ancillary authority?," asked Tatel. Not without a specific statute on which to base it, she replied. FCC chmn *Julius Genachowski*, who was at CES in Las Vegas on Fri, told **CableFAX**: "We think the FCC had the authority to do what it did, and we will continue to defend it vigorously. But we also recognize there is a need to bring clarity and certainty to this area so that people understand the rules of the road for an Internet we all want to see open and free." He said the proceeding has not been about the FCC's ability to regulate. "It would create enormous confusion for the FCC to say it does not have jurisdiction to adopt policies" in this area, he said. In any event, cable probably shouldn't celebrate quite yet. While the judges appeared to go harder on the FCC than Comcast Fri, cable lawyers may recall 1997 when a seemingly sympathetic U.S. Supreme Court ruled against the industry on must-carry. In federal court, anything can happen.

Diversity Shuffle: Do you still miss Diversity Week in NYC? Good news: It's ba-aa-aa-ck. Sources tell us contracts are signed and the rumored split of diversity-related activities from cable's "connection" weeks (**Cfax**, 11/20) is finally a go, with festivities resuming Sept 13-15 at the Hilton New York—just like old times. **NCTA**'s official announcement

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is expected Mon. According to sources, here's the breakdown: **WICT** Leadership Conference (Sept 13-14); **NAMIC** conference (Sept 14-15); **Kaitz** Dinner (Sept 15). Also on the week's agenda is the **ACC** meeting (Sept 15-16), whose attendance declined at Fall Connection. NAMIC and Kaitz, meanwhile, saw Denver declines of 53% and 46%, respectively. The NCTA will also hold a board meeting on Sept 15. Some diversity events, however, will remain part of the Connection weeks. At Spring Connection, WICT's Red Tie Gala Lunch and NAMIC's Annual Awards Breakfast are still on for May 11 and 13, respectively. And WICT will still hold its Tech It Out breakfast during Fall Connection on Oct 20.

CES Notebook: Stepping into the spotlight at the CES, **FCC** chmn *Julius Genachowski* blamed the Commission's plea for a 30-day delay in releasing the national broadband plan (*Cfax*, 1/8)—originally due Feb 17—on the need to research data from 50-plus public hearings and workshops. He said the plan will have far-reaching ramifications. "In addition to economic opportunities, we see a bucket of social opportunities and common goals around education, health care, energy and public safety. We see on [CES] show floor new innovative ideas that take advantage of broadband and apply it to provide better services at lower cost." On the wireless spectrum squeeze, he said: "The tsunami is coming. We have to take seriously the need to find spectrum for mobile broadband, licensed and unlicensed. We have to look at spectrum-related policies that can allow more efficient use of spectrum and also look at things that can remove barriers for wireless companies to do more to take advantage of spectrum they have." -- While attendees ogled at all the 3DTV demos (geek glasses notwithstanding), panelists at one session sounded off about who should foot the bill for online video. Said **Comcast Interactive Capital** pres *Sam Schwartz*: "We need to think about what these new business models mean to the future of content creation. With some, it just doesn't add up." Hollywood and the TV studios took a beating, with **CBS Interactive** CEO *Quincy Smith* calling the studios' existing strategy of protectionism "dinosaurous... The best way to avoid piracy is to make it available. The irony is they are fighting it so much... but piracy has actually gone down since they've made content more available." But *Terry Denson*, **Verizon** vp, content strategy and acquisition, noted that "license owners have invested so much money in content, and monetization is so critical to them, that they do need to make sure they get a return on their investment. Free sounds great, but at some point somebody has to pay for it." Calling DRM "a necessary evil" that **Boxee** begrudgingly supports, CEO/co-founder *Avner Ronen* noted: "People don't expect that content will be free. The beauty of Internet TV is that it is open, and anyone can access the platform and develop stuff they think is cool." -- *Cathy Applefeld Olson*

Competition: **DISH** added Indian religious channel **Jus One** and Hebrew channels **Israel One** and **Good Life Israel**.

CES Notebook: **AT&T U-verse** customers will gain access to the service though **Xbox 360** consoles later this year, said **Microsoft** CEO *Steve Ballmer*.

Technology: **Time Warner Cable**, **Cox** and **CableLabs** are among the members of the **Digital Living Network Alliance**, which is working to develop standards for the playback of premium commercial video and music across devices including digital TVs, game consoles and set-tops. -- **HSN's Shop By Remote** app will be offered on select '10 **Samsung** HDTVs, Blu-ray players and Home Theater Systems. The app allows viewers to access live streaming HSN video and make purchases using their remotes.

VOD: Theatrical and VOD label **Sundance Selects** will make 3 films being screened at the Sundance Film Festival simultaneously available on demand.

Ratings: **TV Guide Net** notched a record 35mIn total viewers in Dec with big help from "I Dreamed A Dream: The Susan Boyle Story" (0.9/715K), now the net's highest-rated TV special ever. -- From Dec 28-Jan 3, **Lifetime Movie Net** earned its most-watched week ever in total day among total viewers (654K), HHs (514K), women 18-49 (177K), women 25-54 (211K), and women 18+ (432K). -- **E!** scored its most-watched week (520K) from Dec 28-Jan 3, during which it also set weekly ratings records among 18-49s (.30), 18-34s (.35), women 18-34 (.48) and women 18-49 (.39).

Programming: **FX** acquired the TV rights to "Avatar" beginning in '12. -- **ESPN Deportes'** news and info show "Los Capitanes en ESPN" (Mon) will air Mon-Fri at 3pm ET.

People: **Comcast Cable** upped *Grace Killelea* to svp, talent.

CableFAX Week in Review

Company	Ticker	1/08 Close	1-Week % Chg	YTD %Chg
BROADCASTERS/DBS/MMDS				
BRITISH SKY:	BSY	36.11	(0.3%)	(0.3%)
DIRECTV:	DTV	34.12	2.31%	2.31%
DISH:	DISH	21.16	1.88%	1.88%
DISNEY:	DIS	31.88	(1.15%)	40.50%
GE:	GE	16.60	9.72%	9.72%
NEWS CORP:	NWS	16.42	3.14%	3.14%
MSOS				
CABLEVISION:	CVC	26.28	1.78%	1.78%
COMCAST:	CMCSA	16.92	0.36%	0.36%
COMCAST SPCL:	CMCSK	16.15	0.87%	0.87%
GCI:	GNCMA	6.40	0.31%	0.31%
KNOLOGY:	KNOL	11.46	4.95%	4.95%
LIBERTY CAPITAL:	LCAPA	25.37	6.24%	6.24%
LIBERTY GLOBAL:	LBTYA	23.94	9.37%	9.37%
LIBERTY INT:	LINTA	11.50	6.09%	6.09%
MEDIACOM:	MCCC	4.93	10.29%	10.29%
RCN:	RCNI	10.46	(3.59%)	(3.59%)
SHAW COMM:	SJR	20.15	(2.04%)	(2.04%)
TIME WARNER CABLE:	TWC	41.51	0.29%	0.29%
VIRGIN MEDIA:	VMED	17.04	1.25%	1.25%
WASH POST:	WPO	454.04	3.28%	3.28%
PROGRAMMING				
CBS:	CBS	14.15	0.71%	0.71%
CROWN:	CRWN	1.50	3.45%	3.45%
DISCOVERY:	DISCA	32.78	6.88%	6.88%
GRUPO TELEVISIA:	TV	20.76	0.00%	0.00%
HSN:	HSNI	20.97	3.86%	3.86%
INTERACTIVE CORP:	IACI	21.02	2.64%	2.64%
LIBERTY:	L	37.89	4.24%	4.24%
LIBERTY STARZ:	LSTZA	49.22	6.65%	6.65%
LIONSGATE:	LGF	5.84	0.52%	0.52%
LODGENET:	LNET	5.39	(2.53%)	(2.53%)
NEW FRONTIER:	NOOF	1.90	0.53%	0.53%
OUTDOOR:	OUTD	5.56	(4.14%)	(4.14%)
PLAYBOY:	PLA	3.44	7.50%	7.50%
RHI:	RHIE	0.34	11.03%	11.03%
SCRIPPS INT:	SNI	43.74	5.40%	5.40%
TIME WARNER:	TWX	28.76	(1.3%)	(1.3%)
VALUEVISION:	VVTV	4.98	3.75%	3.75%
VIACOM:	VIA	31.73	0.73%	0.73%
WWE:	WWE	16.30	6.33%	6.33%

Company	Ticker	1/08 Close	1-Week % Chg	YTD %Chg
TECHNOLOGY				
3COM:	COMS	7.61	1.47%	1.47%
ADC:	ADCT	6.73	8.37%	8.37%
ADVANTAGE:	AEY	2.01	2.03%	2.03%
ALCATEL LUCENT:	ALU	3.77	13.55%	13.55%
AMDOCS:	DOX	28.49	(0.14%)	(0.14%)
AMPHENOL:	APH	45.18	(2.17%)	(2.17%)
AOL:	AOL	25.68	10.31%	10.31%
APPLE:	AAPL	211.98	0.59%	0.59%
ARRIS GROUP:	ARRS	10.70	(6.39%)	(6.39%)
AVID TECH:	AVID	12.81	0.39%	0.39%
BIGBAND:	BBND	3.58	4.07%	4.07%
BROADCOM:	BRCM	30.71	(2.41%)	(2.41%)

Company	Ticker	1/08 Close	1-Week % Chg	YTD %Chg
CISCO:	CSCO	24.66	3.01%	3.01%
CLEARWIRE:	CLWR	7.69	13.76%	13.76%
COMMSCOPE:	CTV	27.49	3.62%	3.62%
CONCURRENT:	CCUR	4.14	4.55%	4.55%
CONVERGYS:	CVG	11.04	2.70%	2.70%
CSG SYSTEMS:	CSGS	18.47	(3.25%)	(3.25%)
ECHOSTAR:	SATS	19.96	(0.89%)	(0.89%)
GOOGLE:	GOOG	602.02	(2.9%)	(2.9%)
HARMONIC:	HLIT	6.51	3.01%	3.01%
INTEL:	INTC	20.83	2.11%	2.11%
JDSU:	JDSU	8.92	8.12%	8.12%
LEVEL 3:	LVL	1.56	1.96%	1.96%
MICROSOFT:	MSFT	30.66	0.59%	0.59%
MOTOROLA:	MOT	7.76	0.00%	0.00%
OPENTV:	OPTV	1.48	8.84%	8.84%
PHILIPS:	PHG	30.59	3.91%	3.91%
RENTRAK:	RENT	18.05	2.15%	2.15%
SEACHANGE:	SEAC	6.61	0.76%	0.76%
SONY:	SNE	30.41	4.86%	4.86%
SPRINT NEXTEL:	S	3.95	7.92%	7.92%
THOMAS & BETTS:	TNB	36.29	1.40%	1.40%
TIVO:	TIVO	10.75	5.60%	5.60%
TOLLGRADE:	TLGD	6.26	2.45%	2.45%
UNIVERSAL ELEC:	UEIC	24.08	3.70%	3.70%
VONAGE:	VG	1.59	13.57%	13.57%
YAHOO:	YHOO	16.70	(0.48%)	(0.48%)

Company	Ticker	1/08 Close	1-Week % Chg	YTD %Chg
TELCOS				
AT&T:	T	27.10	(3.32%)	(3.32%)
QWEST:	Q	4.65	10.45%	10.45%
VERIZON:	VZ	31.75	(4.17%)	(4.17%)

Index	Value	1-Week % Chg	YTD %Chg
MARKET INDICES			
DOW:	DJI	10618.19	1.82%
NASDAQ:	IXIC	2317.17	2.12%

WINNERS & LOSERS

THIS WEEK'S STOCK PRICE WINNERS

COMPANY	CLOSE	1-WK CH
1. CLEARWIRE:	7.69	13.76%
2. VONAGE:	1.59	13.57%
3. ALCATEL LUCENT:	3.77	13.55%
4. RHI:	0.34	11.03%
5. QWEST:	4.65	10.45%

THIS WEEK'S STOCK PRICE LOSERS

COMPANY	CLOSE	1-WK CH
1. ARRIS GROUP:	10.70	(6.39%)
2. VERIZON:	31.75	(4.17%)
3. OUTDOOR:	5.56	(4.14%)
4. RCN:	10.46	(3.59%)
5. AT&T:	27.10	(3.32%)

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