

CableFAX Daily™

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What the Industry Reads First

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Loophole Narrowed: FCC Gives Cable Rivals a Shot at Terrestrial Nets

In a move telegraphed weeks ago, the **FCC** approved an order Wed that would allow cable competitors to file complaints at the Commission when they are denied terrestrially delivered sports programming. **Cablevision**, the most vocal cable proponent of the terrestrial exemption, was also the most vocal cable operator after the 4-1 vote. **Verizon** has complained for years that it can't get Cablevision's **MSG** in HD, and the new FCC order says HD and SD will be treated as separate services for complaints. The rules will apply primarily to terrestrially delivered sports nets, as news and community nets can be replicated, the FCC said. Cablevision said it was pleased Verizon and **AT&T** won't receive "an FCC bailout that will allow them to capture **News 12**, **MSG Varsity** and other programming that we have developed for our customers." Comments at the meeting suggest the FCC worries cable ops are using the terrestrial loophole to withhold must-have programming. But Cablevision's statement stressed that the Commission declined to outright prohibit withholding terrestrial programming despite lobbying from Verizon, **DirecTV** and others. Instead, it instituted a case-by-case complaint process, with cable ops getting 45 days for rebuttal. "If the phone companies complain that they are unable to compete, we are confident that we can prove that it is for a variety of reasons, none of which have to do with HD sports programming," Cablevision said. "Verizon and AT&T do not need a regulatory bailout in order to compete." Of course, Verizon, AT&T and other cable rivals see it differently. Verizon filed a program access complaint against CVC in July over the denial of HD versions of its regional sports programming. "This is a big-time victory for television sports fans" that "puts viewers in the driver's seat," said Verizon svp, regulatory affairs *Kathleen Grillo*. AT&T sent out a similar message on its blog ([attpublicpolicy.com](http://publicpolicy.com)). The lone dissenter in Wed's vote was Republican *Robert McDowell*, who suggested a legal challenge was likely as he believes the Commission overstepped its authority. His Republican colleague *Meredith Attwell Baker* disagreed, saying she thinks the order is narrowly tailored. Cable is already prevented from withholding satellite-delivered programming. The order includes a standstill provision that applies to terrestrial- and satellite-delivered programming, in which the FCC would consider temporary standstills of price, terms and other conditions of an existing programming contract by a program access complainant seeking renewal of such a contract. Cable has long argued that the same program access rules should apply to DirecTV, which has exclusive access to NFL's Sun Ticket. However, nothing changes there, with

The CableFAXIES awards

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The CableFaxies Awards salute the year's most outstanding communications initiatives and programs in the highly competitive and dynamic Cable arena. The coveted awards set the industry benchmark for excellence across all areas of PR and marketing.

The Winners of the CableFAXIES Awards are from networks, operators, PR firms, vendors, corporations, agencies and other entertainment companies who took chances, made tremendous strides and understand the power of PR and marketing in the cable industry. The winners and honorable mentions will be saluted during an awards event in April 2010 in New York City.

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DirectTV saying Wed that it's looking forward to offering its subs the local sports programming they "have been denied for so many years." Satellite, which has been denied **Comcast Sports Net Philly**, stands to be the biggest beneficiary of the change, with **Sanford Bernstein** estimating that DBS only has about 16% of the Philly market share. But more importantly, Bernstein sees the fact that the FCC acted on this now and not as a condition of the Comcast-NBCU deal, as a clear signal that it's looking for bigger concessions to approve the merger. Stay tuned. Meanwhile, the first Comcast-NBCU Hill hearing is slated for Feb 4 in the **Senate Judiciary's Antitrust** subcmte. Four committees plan hearings.

In the Courts: Microsoft filed suit against TiVo in a San Fran federal court Tues, claiming patent infringement/illegal use of technology related to program information displays and video delivery. Reports posit the claims as an attempt by Microsoft to counter an earlier suit TiVo filed against **AT&T**, which uses Microsoft tech in its **U-verse TV** service. In Aug, TiVo filed complaints against both AT&T and **Verizon** for infringement of 3 patents covering time shifting and automatic playback technologies, a move akin to its lengthy court battle with DISH. In response to Microsoft's suit, TiVo said the actions "do not bear on whether the AT&T products and services that are the subject of TiVo's complaint infringe the patents asserted by TiVo... [and] are part of a legal strategy to defend AT&T. We remain confident in our position that AT&T will be found to infringe on the TiVo patents asserted." **S&P** maintained its 'buy' rating on TiVo shares, saying "we would be surprised if this development derails TIVO's momentum on so far successful patent claims against DISH." --

Outdoor Channel filed in OK a trademark infringement suit against **In Country TV** and owner-operator **Performance One Media**, alleging the defendants knowingly, willingly and unlawfully infringed or contributed to the infringement of trademarks including The Outdoor Channel, Outdoor Channel, Bring the Outdoors Home and The Wingshooter. Outdoor Channel seeks damages, attorney's fees and a permanent injunction barring In Country from the infringing acts.

Research: Over the last 5 years, the amount of time young people (8-18) spend with media/day increased by 20%, to 7 hours and 38min, according to a **Kaiser Family Foundation** study, although consumption of regularly-scheduled TV declined by 25min/day from '04-'09—marking the 1st drop in the metric since the study's inception. However, KFF said total TV consumption has actually increased, to 4 hours and 29min/day, owing to new video platforms such as the Internet, handsets and iPods. All told, 59% of young people's TV viewing consists of live TV on a TV set, while 41% is time-shifted, DVDs, online, or mobile. Not surprisingly, young people now spend more time listening to music, watching TV and playing games on their handsets than they spend talking on them, by an approx 2-to-1 margin. Also of note: Black and Hispanic children consume nearly 4.5 hours media/day more than white children do (13 hours for Hispanics and Blacks, approx 8.5 for Whites), and some of the largest differences are in TV viewing: Black children spend nearly 6 hours/day watching TV and Hispanics just under 5.5 hours, compared to roughly 3.5 hours/day for white youth.

At the Portals: The **FCC** is launching a Consumer Task Force to advance the Commission's consumer agenda and promote collaboration across the agency. Consumer and Governmental Affairs Bureau chief *Joel Gurin* will head the cross-agency task force. "We expect it to lead to fast decision making commission wide," as consumer issues can be spotted earlier on and addressed, said FCC chmn *Julius Genachowski*.

Competition: DISH is upgrading its **SeaChange** Spot ad platform to support delivery of more than 600 HD channels.

Broadband \$\$\$: **NTIA** announced grants totaling \$63mln to expand broadband access and adoption in MA, MI and NC. The announcement has NTIA now awarding about \$200mln under the broadband stimulus program. The latest grants include \$895K to Michigan State Univ for a public computer center.

Film Fest: With the **Sundance Film Festival** kicking off Thurs, count on **Sundance Channel** to be everywhere. The partnership has paid handsomely. For example, Sundance interviewed the entire cast of Golden Globe winner "Precious" at last year's festival—before it won the event's Grand Jury Prize and 10 months before it hit theaters. This year, Sundance Channel takes over a 3-story art gallery on Main St. for its TV studio. "We're literally going to shoot 3 figures worth of pieces while we're at the festival, thousands of photographs and blogs. It's our Olympics," Sundance Channel and **IFC** pres *Evan Shapiro* said. "What comes out of this festival changes film for the foreseeable future. It's like the CES of film." As part of the "Direct from Sundance Film Festival" initiative, 3 films being screened there will simultaneously hit nationwide VOD through Sundance Selects: "The Shock Doctrine," (premieres Jan 28) "Daddy Longlegs" (Jan 22) and "7 Days" (Jan 22). Belgian beer Stella Artois has renewed as the title sponsor of the net's month-long Sundance tribute, "31 Days of Sundance."

BUSINESS & FINANCE

Ratings: The Mon debut of Nickelodeon's "Big Time Rush" became the net's highest-rated and most-watched live-action premiere with kids, tweens (2.8mln) and total viewers (6.8mln). Also, lead-in "iCarly" notched series highs among kids 2-11 (5.7mln), kids 6-11 (4.7mln), tweens 9-14 (4.5mln) and total viewers (11.2mln). -- The Tues return of **USA's** "White Collar" posted series highs among 18-49s (2.1mln) and 18-34s (983K), plus 2.2mln 25-54s and 4.7mln total viewers.

Programming: **IONTV's** 1st original non-scripted series, "The Emeril Lagasse Show," bows Mar 28 with celebrity guests, a house band and field pieces. -- **AMC** ordered pilots of "The Walking Dead," based on a comic book written by *Robert Kirkman*, and "The Killing," based on a Danish drama series about the murder of a young girl and the ensuing investigation. -- **A&E** greenlit an untitled docu-series based on the life of *David Hasselhoff*. -- **Univision's** *Don Francisco* hosts a special edition of "Sábado Gigante," Sat to raise funds for Haiti relief efforts. -- "A Different World" and "Lincoln Heights" join **TV One's** lineup Mon at 10:30pm ET and 11pm ET, respectively. -- **Fox Business** and **Tennis** expanded their partnership. During each Grand Slam tourney this year, **FBN's** "Imus in the Morning" will feature Tennis recaps from the previous day's matches. Tennis will lead into its nightly Grand Slam coverage at market close with the "Fox Business Network Update."

CableFAX Daily Stockwatch

| Company | 01/20 Close | 1-Day Ch | Company | 02/20 Close | 1-Day Ch |
|------------------------------|----------------|-------------|-----------------------|----------------|-------------|
| BROADCASTERS/DBS/MMDS | | | | | |
| BRITISH SKY: | 36.74 | (0.25) | AMPHENOL: | 44.10 | 0.02 |
| DIRECTV: | 33.18 | (0.5) | AOL: | 24.93 | (0.02) |
| DISH: | 19.88 | (0.28) | APPLE: | 211.72 | (3.31) |
| DISNEY: | 31.19 | 0.18 | ARRIS GROUP: | 11.19 | (0.22) |
| GE: | 16.50 | (0.04) | AVID TECH: | 13.16 | (0.68) |
| NEWS CORP: | 15.47 | (0.32) | BIGBAND: | 3.33 | (0.04) |
| MSOS | | | | | |
| CABLEVISION: | 27.01 | (0.25) | BLNDER TONGUE: | 1.10 | 0.00 |
| COMCAST: | 16.52 | (0.29) | BROADCOM: | 29.43 | (0.24) |
| COMCAST SPCL: | 15.80 | (0.2) | CISCO: | 24.41 | (0.44) |
| GCI: | 6.05 | (0.15) | CLEARWIRE: | 7.24 | (0.24) |
| KNOLGY: | 11.18 | (0.52) | COMMSCOPE: | 29.51 | 0.37 |
| LIBERTY CAPITAL: | 24.94 | 1.02 | CONCURRENT: | 4.00 | 0.19 |
| LIBERTY GLOBAL: | 24.36 | 0.70 | CONVERGYS: | 11.51 | 0.08 |
| LIBERTY INT: | 10.99 | (0.24) | CSG SYSTEMS: | 18.45 | (0.32) |
| MEDIACOM: | 4.50 | (0.22) | ECHOSTAR: | 19.35 | (0.31) |
| RCN: | 9.93 | (0.69) | GOOGLE: | 580.41 | (7.21) |
| SHAW COMM: | 19.55 | (0.24) | HARMONIC: | 6.34 | (0.15) |
| TIME WARNER CABLE: | 46.56 | (0.42) | INTEL: | 21.08 | 0.03 |
| VIRGIN MEDIA: | 16.69 | (0.57) | JDSU: | 8.63 | (0.18) |
| WASH POST: | 442.81 | (5.79) | LEVEL 3: | 1.38 | (0.03) |
| PROGRAMMING | | | | | |
| CBS: | 13.56 | 0.13 | MICROSOFT: | 30.59 | (0.52) |
| CROWN: | 1.49 | (0.09) | MOTOROLA: | 7.48 | (0.16) |
| DISCOVERY: | 32.15 | (0.25) | OPENTV: | 1.51 | 0.00 |
| GRUPO TELEVISA: | 20.17 | (0.12) | PHILIPS: | 29.34 | (1) |
| HSN: | 19.36 | (0.4) | RENTRAK: | 18.01 | (0.43) |
| INTERACTIVE CORP: | 21.61 | 0.26 | SEACHANGE: | 6.48 | (0.33) |
| LIBERTY: | 37.60 | (0.56) | SONY: | 33.25 | (0.74) |
| LIBERTY STARZ: | 50.09 | 0.19 | SPRINT NEXTEL: | 3.55 | (0.13) |
| LIONSGATE: | 5.50 | (0.07) | THOMAS & BETTS: | 34.84 | (0.68) |
| LODGENET: | 6.20 | 0.08 | TIVO: | 10.57 | 0.17 |
| NEW FRONTIER: | 2.07 | (0.01) | TOLLGRADE: | 6.33 | 0.04 |
| OUTDOOR: | 5.37 | (0.06) | UNIVERSAL ELEC: | 25.11 | (0.79) |
| PLAYBOY: | 3.46 | (0.11) | VONAGE: | 1.54 | (0.03) |
| RHI: | 0.43 | 0.03 | YAHOO: | 16.38 | (0.37) |
| SCRIPPS INT: | 45.72 | (0.49) | TELCOS | | |
| TIME WARNER: | 28.62 | (0.11) | AT&T: | 25.83 | (0.37) |
| VALUEVISION: | 4.71 | (0.19) | QWEST: | 4.46 | (0.05) |
| VIACOM: | 32.52 | 0.01 | VERIZON: | 30.71 | (0.52) |
| WWE: | 16.25 | 0.15 | MARKET INDICES | | |
| TECHNOLOGY | | | | | |
| 3COM: | 7.56 | (0.03) | DOW: | 10603.15 | (122.28) |
| ADC: | 6.50 | (0.14) | NASDAQ: | 2291.25 | (29.15) |
| ADVANTAGE: | 2.15 | 0.07 | | | |
| ALCATEL LUCENT: | 3.59 | (0.02) | | | |
| AMDOCS: | 28.52 | 0.02 | | | |

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The **FUTURE**
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Think about that for a minute...

Smudge

It's hard to miss the increasing level of smudge at the bottom, side, or even the entire back page of advertisements these days. You know what I'm talking about; just look at any DISH ad in your local newspaper. There's this growing black smudge of very tiny print oozing up from the bottom of the page.

Of course, you can't really read it that well, and it isn't meant for you to read. It's all the explanations, disclaimers, government mandated "transparency" and the like



Steve Effros

that the lawyers say must be part of the ad. It's gotten so bad in some of the pharmaceutical ads that the smudge takes up a whole page! The ad is on one side, with the two folks in the bathtubs, and the entire next page in the magazine is virtually unreadable smudge with multi-syllabic chemical names and diagrams and

warnings of imminent death if you actually use the product.

That whole regime of requiring "full disclosure" sure works, doesn't it! Ever read the disclosure documents from your mutual fund? They send you a small book every so often, killing lots of trees. I'm willing to bet the vast majority of those books never even get opened, let alone read. But the theory apparently is that the company has now somehow fully "disclosed" everything to the consumer, so now it's ok, we're now all informed, and we can go about our business.

Sorry, folks. It doesn't work, and we all know it doesn't work that way. The government and the lawyers are creating requirements for smudge in order to claim they have been fully transparent about things that are essentially opaque to begin with. We should stop making believe that the smudge cures the problem and start dealing with it in a whole different way.

Here's a simple suggestion; if we educate consumers (starting with the kids) to understand what is real, they will have a much better chance of making smart decisions than if we simply require more smudge. This is not hard. For instance, if we explain from day one that there is "...no such thing as a free lunch," we can start getting to the reality of "free TV" or "2 Ounces Free!" on every bottle of shampoo. No, it's not free. It's paid for one way or another.

Sure, we could require some smudge at the bottom of the shampoo ad that says, well—it's not really that the two extra ounces we have included in this bottle are actually free, since you have to buy the other ten ounces at a price that has been increased (or not) to cover the cost of the additional two ounces—or we can simply teach people that when they see the "free" ads, they should know that something else is likely to be going on. Check it out.

We have done such a poor job of teaching that concept that we now have a whole generation thinking information and entertainment on the web is "free." That just proves the point that they have not been reading the smudge, and don't understand.

Where am I going with all this? Well, I would hope that before the government and the "public interest" groups get too wound up in more "transparency" requirements, they look at how successful those disclosures have been to date and consider the possibility that we—both industry and government—should look for a different way to educate consumers. I'm all for that education and for full disclosure and explanations, but just requiring more smudge won't do it.

Steve

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