

CableFAX Daily™

Tuesday — February 26, 2013

What the Industry Reads First

Volume 24 / No. 038

On the Ropes: Court of Appeals Fires Away at FCC in Comcast-Tennis Case

The FCC's 1st decision finding that a cable operator violated program carriage rules appeared in jeopardy Mon morning, with a 3-judge panel of the DC Circuit Court of Appeals hammering the Commission with questions about its '12 ruling that **Comcast** discriminated against **Tennis Channel** (*Cfax*, 7/25). It's never over until the court issues its opinion, which could take 2-4 months, but the line of questioning at Mon's oral arguments didn't seem to bode well for the FCC. Judge *Harry Edwards* latched onto the statute of limitations, while Judge *Brett Kavanaugh* raised 1st Amendment concerns. This all harkens back to Tennis' Jan 2010 program carriage complaint that claimed Comcast discriminated against it in favor of its own channels, **Golf** and **Versus** (now **NBC Sports Net**). Tennis was relegated to a sports tier in most systems, while Golf and Versus have much broader distribution. An administrative law judge sided with Tennis in Dec '11 and the Commission, over the objections of Republicans *Robert McDowell* and *Ajit Pai*, upheld the ALJ decision last July. The DC Circuit stayed the FCC's order requiring Comcast to make Tennis available to virtually all its subs as it challenged the decision. **NCTA** has backed the MSO. Comcast has argued since Day 1 that Tennis' complaint should have been dismissed because the statute of limitations bars claims brought more than 1 year after the parties enter into a contract. In this case, that would mean Tennis' chance to bring forth such a claim expired in '06. Edwards repeatedly stated that the FCC's rules "make it absolutely clear" that there is a 1-year statute of limitations and even questioned why the court was hearing the case, saying the FCC's interpretation would make a contract "silly." "It's rare you get something so clear," he said. Comcast has rights under its contract, "you can turn that on its head." FCC deputy gen counsel *Peter Karanjia* argued that in '08, Tennis Channel had a number of improvements, including the rights to the US Open and HD rights, so "it was a very different network" and that reopened the issue of how it was carried. If the 3-judge panel decided the statute of limitations was violated, Tennis' program carriage complaint would be moot and the court could throw it out as untimely. Edwards was the only judge to pursue that line of questioning, so it's unclear if the other judges share his concerns. Judge Kavanaugh suggested the FCC had failed by finding that Comcast engaged in discrimination but didn't demonstrate that it had market power—saying that both elements were necessary because vertical integration is assumed to be pro-competitive unless there is market power that can be abused. Kavanaugh said it seemed the FCC has "serious problems" with the 1st Amendment in this case. FCC attorney Karanjia said the agency didn't believe it was necessary to show market power, but believed it could by focusing on the impact on advertising. And he asked that the FCC be given a chance to show Comcast had market power, if the court found it necessary to uphold the regulation. That could mean the court remands the decision to the FCC to show evidence of market power. Analysts at **Stifel Nicolaus** agreed that Comcast is likely to win a favorable ruling. "The D.C. Circuit panel questioned Comcast's attorney, but at times the 3 judges seemed to agree with him or prod him to sharpen his points. On the other hand, the judges repeatedly pushed back against the arguments of the FCC and Tennis Channel attorneys, going way over the allotted time for each," the analysts said in a research note. Comcast attorney *Miguel Estrada* argued that

100
CableFAX

Best Advice/Motto Series



"First pick your boss, then the job."

Nancy Dubuc
President, Entertainment Media
A+E Networks

Sponsored By:  **MOTOROLA**

MOTOROLA MEDIOS+
MAKING ANY SCREEN YOUR MAIN SCREEN REALITY

www.motorola.com/videosolutions

Check out the best advice from our CableFAX 100 honorees at cablefax.com/cablefaxmag

CableFAX

Top Ops AWARDS

Who are cable's best operators?

Nomination Deadline April 12, 2013 — Free to Enter!

Help us compile this influential list of MSOs and Independent Operators by nominating the companies and executives you think should be included in our annual list of leading cable operators. The categories recognize excellence in a variety of areas, including marketing, technology, finance, lifetime achievement, customer service and community involvement. The winners will be honored in our annual Top Operators magazine and during CableFAX awards events later in the year.

Independent Operator Awards*

- Independent Operator of the Year
- Independent Marketer of the Year
- Independent System Executive of the Year
- Independent Customer Service Award
- Independent Technology Award
- Independent Project Launch of the Year
- Independent Financial Exec of the Year
- Independent Lifetime Achievement Award

* In Conjunction with NCTC and ACA

MSO Awards Categories

- MSO of the Year
- Sales Team of the Year
- Community Service Award System-level
- Technology Award
- Financial Exec of the Year
- Regional Executive of the Year
- Customer Care
- Project Launch of the Year
- Leadership Award
- Lifetime Achievement Award

Fill out Form or Enter Online at: www.cablefax.com/awards

Category of Award: _____

Name of Award Candidate: _____

Title of Person or Campaign: _____

Address: _____

Email: _____

Phone: _____

Name of Nominator: _____

Title: _____

Address: _____

Email: _____

Phone: _____

In 400 words or fewer, why does this person/campaign deserve to win an award? (Please be specific and include as much detail as possible.)

Please support the candidacy with any additional material (testimonials, press clippings etc) that you see fit.

CableFAX

Top Ops AWARDS

Send Entry to:

Mfrench@accessintel.com or
Mary Lou French
CableFAX Top Ops
4 Choke Cherry Rd, 2nd Floor
Rockville MD 20850

Our Top Ops list will be honored in CableFAX: The Magazine's July issue and during an awards luncheon in September coinciding with CableFAX's annual Program Awards.



Enter Online at: www.cablefax.com/awards

CABLEFAX DAILY (ISSN 1069-6644) is published daily by Access Intelligence, LLC ● www.cablefaxdaily.com ● fax:301.738.8453 ● Editor-in-Chief: Amy Maclean, 301.354.1760, amaclean@accessintel.com ● Exec Editor: Michael Grebb, 323.380.6263, mgrebb@accessintel.com ● Editor: Joyce Wang, 301.354.1828, jwang@accessintel.com ● Community Editor: Kaylee Hultgren, 212.621.4200, khultgren@accessintel.com ● Advisor: Seth Arenstein ● Group Publisher, Media Entertainment: Denise O'Connor ● Assoc Publisher: Amy Abbey, 301.354.1629, aabbey@accessintel.com ● Sales Mgr, Susan, Kim, 301.354.2010, skim@accessintel.com ● Marketing Dir: Laurie Hofmann, 301.354.1796, lhofmann@accessintel.com ● Prod: Joann Fato, jfato@accessintel.com ● Diane Schwartz, SVP Media Comms Group ● Subs/Client Svcs: 301.354.2101 ● Group Subs: Amy Russell, 301.354.1599, arussell@accessintel.com

Comcast has a 1st Amendment right to give priority to affiliated networks, as long as it's not for anti-competitive reasons. He likened it to the *NY Times* being required to give employment to freelance writers and put them on the front page, even if other publications had them on "page 6 next to the car ads." Meanwhile, cable is still waiting for the 2nd Circuit to rule on a challenge by **Time Warner Cable** and NCTA to the FCC's program carriage dispute resolution, including standstill provisions, for independent programmers. Oral arguments occurred back in Oct.

Piracy: Mon marked the start of the implementation of the Copyright Alert System (CAS) designed to combat P2P piracy. Over the next few days, participating content providers will begin sending notices of alleged P2P copyright infringement to ISPs, and the ISPs will forward those notices to consumers. We're told **Verizon, Comcast** and **Time Warner Cable** will start sending the alerts later this week. Other ISPs participating in CAS include **AT&T** and **Cablevision**. Under the program, a 3rd-party will monitor file-sharing networks, collect and submit to ISPs the IP addresses of suspected copyright violators. Consumers whose accounts have been used to illegally share copyright content over P2P networks will receive alerts meant to educate rather than punish, and direct them to legal alternatives, said *Jill Lesser*, exec dir at **Center for Copyright Information**, which coordinates the efforts. For consumers who believe they received alerts in error, "an easy-to-use process" will let them seek independent review of the alerts, Lesser said in a blog post Mon.

Green Cable: One outcome of the voluntary Set-Top Box Energy Conservation Agreement that **NCTA** and **CEA** announced in Dec is the creation of a steering committee to ensure that efforts are on track (*Cfax*, 12/7). During the 1st committee meeting last week, **Comcast** svp, premises technology *Steve Reynolds* was elected chmn. *Jeff Dygert*, **AT&T's** exec dir of public policy, was elected secretary, and **DirectTV** engineering dir *Steve Dulac* will serve as treasurer. "We remain confident that the voluntary agreement will accomplish real and significant energy savings for millions of Americans well before any government proceeding could," a joint blog post said. The Dept of Energy continues to explore a rulemaking about setting standards for set-tops.

Carriage: Former **Time Warner Cable** and **Scripps Nets** exec *Lynne Costantini* has joined *Glenn Beck's TheBlaze* as pres, biz dev as the channel ramps up carriage efforts. Already an Internet channel, TheBlaze launched GettheBlaze.com Mon aimed at getting MVPDs beyond DISH to carry it. Fans are encouraged on the Website to ask their MVPDs to add the net. Costantini negotiated TheBlaze's DISH deal as an outside consultant.

Moto Doings: **Motorola** extended its DreamGallery technology, the user navigation component of its multiscreen platform, to more devices with some help from **ActiveVideo's** virtualized cloud-rendering technology. Traditionally, DreamGallery requires set-tops running on HTML5, but the new virtual module renders HTML5 in the cloud. It's designed to let providers offer "advanced, dynamic and personalized" services to more subs.

Sports Deals: Ahead of the '13 Major League Soccer season, **FC Dallas** and **Time Warner Cable** renew a deal that allows TX-based **TWC SportsChannel** to air 22 FC Dallas regular-season games. The extension means all games will be in HD. Among the extended programming this season and in the future will be pre- and post-game shows, dedicated programming about FC Dallas, and FC Dallas programming within other TWC SportsChannel shows. -- The **Big East Conference** reached a 7-year deal with **ESPN**, which includes 7 years for men's basketball ('13-'30) and 6 years for football ('14-'20). The conference's current basketball media rights deal with **ESPN** and **CBS** reportedly expires after the '12-'13

CTDAILY
FOR COMMUNICATION TECH DECISION-MAKERS

A new e-letter for communications-technology executives who procure essential products and services needed to upgrade broadband networks

Advertising opportunities please contact: Amy Abbey,
Associate Publisher, aabbey@accessintel.com

21554

"It's a real benefit to be able to see the full CTDaily copy without having to click away from the newsletter."

Paul Schneider,
Paul Schneider Public Relations, Inc.

BUSINESS & FINANCE

academic year while the football deal with ESPN will expire after the '13-'14 academic year. The new year will "sync" both sports through the '19-'20 academic year. Reports peg the deal's value at about \$130mln.

TVE: Starz's authenticated online services Starz Play and Encore Play are available now for Verizon FiOS TV Starz and Encore subs.

On the Circuit: The Cable Center named Brian Lamb the '13 Bresnan Ethics in Business Award recipient. The C-SPAN founder will be presented the award at the Cable Hall of Fame Celebration June 10 in DC, in conjunction with the Cable Show '13.

Intl: HBO Asia will launch HBO Go to now TV's HBO subscribers. Now TV's the first provider in Asia to launch the TVE service.

Breakin': TLC picked up a 2nd season of "Breaking Amish" and is now shooting 8 hour-long eps to debut in May. -- Sundance acquired the off-air rights to sibling AMC's "Breaking Bad." It will run the series from the start Mon nights beginning next week.

Business & Finance: In light of the merger with Sportsman Channel-owner InterMedia Outdoors Holdings, Outdoor Channel Holdings intends to voluntarily delist its common stock from NASDAQ. The company expects the transaction to close on or about Mar 14, after which the new stock of IMOH is expected to be listed for trading on NASDAQ.

CableFAX Daily Stockwatch

Company	02/25 Close	1-Day Ch	Company	02/25 Close	1-Day Ch
BROADCASTERS/DBS/MMDS					
DIRECTV:	48.41	(0.68)	CSG SYSTEMS:	19.65	(0.46)
DISH:	34.85	(0.24)	ECHOSTAR:	37.67	(0.69)
DISNEY:	53.59	(0.66)	GOOGLE:	790.77	(8.94)
GE:	22.81	(0.58)	HARMONIC:	5.54	(0.14)
NEWS CORP:	28.45	(0.58)	INTEL:	20.23	(0.19)
MSOS					
CABLEVISION:	15.02	(0.11)	JDSU:	14.15	(0.47)
CHARTER:	83.30	(1.72)	LEVEL 3:	20.12	(0.48)
COMCAST:	39.41	(0.5)	MICROSOFT:	27.37	(0.39)
COMCAST SPCL:	37.74	(0.08)	RENTRAK:	21.05	(0.45)
GCI:	8.34	(0.26)	SEACHANGE:	11.24	(0.35)
LIBERTY GLOBAL:	65.20	0.34	SONY:	13.79	(0.28)
LIBERTY INT:	20.98	(0.35)	SPRINT NEXTEL:	5.73	(0.09)
SHAW COMM:	23.35	(0.55)	TIVO:	12.24	(0.69)
TIME WARNER CABLE:	86.61	0.22	UNIVERSAL ELEC:	18.42	(1)
VIRGIN MEDIA:	44.80	0.13	VONAGE:	2.60	(0.02)
WASH POST:	394.88	(12.25)	YAHOO:	20.73	(0.49)
PROGRAMMING					
AMC NETWORKS:	58.07	(0.97)	MARKET INDICES		
CBS:	42.36	(1.01)	DOW:	13784.17	(216.4)
CROWN:	1.91	(0.14)	NASDAQ:	3116.25	(45.57)
DISCOVERY:	69.90	(0.57)	S&P 500:	1487.85	(27.75)
GRUPO TELEVISIA:	26.51	(0.99)			
HSN:	49.97	(3.66)			
INTERACTIVE CORP:	41.17	(0.7)			
LIONSGATE:	20.71	(0.01)			
OUTDOOR:	7.68	(0.12)			
SCRIPPS INT:	61.63	(0.93)			
TIME WARNER:	51.64	(1.35)			
VALUEVISION:	2.82	(0.14)			
VIACOM:	60.10	(1.72)			
WWE:	8.42	(0.17)			
TECHNOLOGY					
ADVANTAGE:	2.21	(0.09)			
ALCATEL LUCENT:	1.36	(0.05)			
AMDOCS:	35.62	(0.25)			
AMPHENOL:	69.17	(1.63)			
AOL:	36.94	(0.85)			
APPLE:	442.80	(8.01)			
ARRIS GROUP:	16.97	(0.16)			
AVID TECH:	6.98	(0.68)			
BLNDER TONGUE:	1.35	0.03			
BROADCOM:	33.81	(0.72)			
CISCO:	20.66	(0.24)			
CLEARWIRE:	3.14	0.01			
CONCURRENT:	7.12	0.02			
CONVERGYS:	16.23	(0.28)			

The CableFAXIES awards

DEADLINE: MARCH 1, 2013

ENTER AT: www.CableFaxiesAwards.com

Entry Questions: Mary-Lou French at 301-354-1851; mlfrench@accessintel.com

Sponsorship Opportunities:

Amy Abbey at 301-354-1629; aabbey@accessintel.com
Susan Kim at 301-354-2010; skim@accessintel.com

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 May 2013 in New York City.