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Cablevision-Viacom: How's the Camel's Back Today?

After years of grumbling about the wholesale bundling of networks, an MVPD did something about it Tues and the floodgates opened. **Cablevision** filed an antitrust lawsuit against **Viacom**, claiming it illegally forces it to carry and pay for lesser-watched nets that its customers don't want in order to carry "must-have" channels. Hours after Cablevision announced the action, several MVPDs and independent programmers piled on with statements challenging the practice. But is it the straw to break the camel's back? It's not the 1st time the issue has been tested, and the courts have consistently sided with the networks. Last year, the 9th Circuit Court of Appeals affirmed a '09 decision that bundling channels in video packages does not hamper competition and unduly harm consumers. That case—which listed Viacom and Cablevision as codefendants along with several other MVPDs and programmers—was the result of a group of cable customers trying to stop the industry from bundling expanded basic channels. It claimed forcing consumers to buy programming packages is a violation of federal antitrust laws. Sound familiar? The Cablevision case tackles it more from the wholesale distribution level. It is filed under seal, so it's not clear yet if the MSO has a new take. The bundling practice also has been challenged over the years at the **FCC**, including by **ACA**, but nothing has happened. Programmers argue that they do offer their channels on an a la carte basis, while distributors complain that the standalone price is so high that they are forced to take to the bundled package. There is no redacted, public version of Cablevision's complaint yet (we'll likely see it by the end of the week). In late Dec, Cablevision reached an 11th hour deal with Viacom that kept any of the nets from going dark. But the MSO is not happy with the deal, asking for declaratory relief that would void the carriage agreement. "Viacom effectively forces Cablevision's customers to pay for and receive little-watched channels in order to get the channels they actually want," the MSO said. "Viacom's abuse of its market power is not only illegal, but also prevents Cablevision from delivering the programming that its customers want and that competes with Viacom's less popular channels." Cablevision said music nets **Palladia, MTV Hits** and **VH1 Classic** are ancillary nets tied to must-have nets **Nick**, **MTV**, **BET** and **Comedy Central**. Cablevision said it was coerced into carrying 14 less popular ancillary channels by Viacom threatening to impose financial penalties. Cablevision owns music net **fuse**, which was relaunched on **Time Warner Cable** as part of a carriage deal for its RSNs **MSG** and **MSG+**

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in '12. Viacom said it will "vigorously defend this transparent attempt by Cablevision to use the courts to renegotiate our existing 2-month-old agreement." As for bundling, the programmer maintains that such arrangements have been upheld by a number of federal courts and on appeal. "At the request of distributors, Viacom and other programmers have long offered discounts to those who agree to provide additional network distribution. Many distributors take advantage of these win-win and pro-consumer arrangements," the programmer said. Here's what you can count on: a lengthy and very expensive court battle.

CVC-Viacom Reax: Distributors sympathetic with **Cablevision** had plenty to say about the lawsuit against **Viacom** Tues. "We applaud Cablevision's efforts to rein in programming costs," **Charter** said. "These costs continue to increase at rates that exceed the pace of inflation at a time of significant economic turmoil. If programmers force us to purchase less desirable programming in order to secure 'must have' programming, programmers can unreasonably increase costs significantly for us and our customers while blocking other market participants and new entrants. We believe lawsuits like the one brought by Cablevision today send a clear message to programmers that unlawful and irresponsible market tactics will not be tolerated." **DirecTV**, which lost Viacom nets for 9 days last summer during carriage negotiations, also had strong words. "There's no question that the current all-or-nothing system dictated by programmers is completely broken," a spokesperson said. "Our customers have told us time and time again they don't want to pay for channels they don't watch. For programmers to force this system on all pay-tv customers, just so they can line their pockets with extra profits, is shameful." Independent networks also chimed in. **GMC** said it has taken the issue to DC before, but the problem continues to hurt indie nets. Vice chmn *Brad Siegel* released a statement saying that the "aggressive stance taken by large media conglomerates leaves less room and money to go around for independent, vibrant programmers." **Ovation** COO *Chad Gutstein* had similar concerns. His net was dropped at the first of the year by **Time Warner Cable**, which called the net low performing. "They've [TWC] been a bad actor, but they're part of a broader storyline. I think what Cablevision did today is shining a light on some of the anticompetitive practices that exist in the television pay TV industry that make it a completely unfair playing field for independent networks and small businesses like Ovation to compete," he said. "Ovation and other independents every single day have to prove our value. We have to earn our slot. **Centric** doesn't have to earn its slot. **Logo** doesn't have to earn its slot. Every single day we compete for distribution, affiliate fees, viewers, ad sales. It's really hard to compete effectively when you don't even get the same level of distribution and you don't get paid the same amount of money that the bundled networks do." Time Warner Cable does agree with Ovation on at least one point—there's a problem. "We frequently have pointed out that there are serious problems with the current programming environment. We think this lawsuit raises important issues, and we look forward to their resolution in the courts," TWC said. **ACA**, which has consistently complained about tying and bundling, said the matter is a problem for its hundreds of small and medium-sized cable ops. "If the courts can address this problem, then we believe this would be a good outcome for consumers," said ACA's *Matt Polka.*

In the Courts: The wheels of justice aren't always slow. About a month after hearing oral arguments, a 3-judge panel unanimously upheld the **FCC**'s '11 pole attachment order. Utilities challenged the order, which set the cable rate as the uniform pole attachment rate. **NCTA** supported the FCC in the case. "By reducing the cost of attaching equipment and wires to utility poles, the changes adopted by the Commission in 2011 will help promote the deployment of broadband and telecommunications networks by cable operators and other providers," said NCTA's *Michael Powell*. **Stifel Nicolaus** analysts believe power companies would have a "dim" chance of succeeding on appeal, and thus said Tues' ruling likely cements the order. Telecom companies have the most to gain, with the FCC noting that ILEC pole-attachment rates were often 3 times as high as cable rates. But the order also helps cable by establishing that they won't have to pay more for attachment for services such as VoIP.

Comcast/NBCU: Higher capital expenditures and programming costs are likely this year at **Comcast NBCUniversal**, CFO *Michael Angelakis* said during **Morgan Stanley**'s investor conference Tues. Increased capital spending is related to growth initiatives like home security, broadband, X1 and business services. While trying to control programming cost, the company "made a conscious decision" to invest in expanded content rights, which comes with a price, he said. Expanding TVE rights is a big part of the plan, partly thanks to the growth of connected devices. "When you talk about connected devices, you are really looking at devices connected over WiFi," Angelakis said. WiFi deployment has been and will continue to be a key strategy going forward. The goal is to surround subs with options, whether it's programming or ways to access content, he said. The financial chief reiterated that cable margins should remain stable in '13. Meanwhile, Angelakis said he "feels quite good" about the Olympics. When Comcast first took over NBCU, one of the concerns was potential loss from televising the Games. The company changed how it monetizes the Olympics and managed to have better ratings and revenue results vs previously Olympics, the CFO said. Retrans revenue for **Comcast NBCU** is expected to rise to $200mln by '14, Angelakis said, noting **NBC** stations generated some $40mln in retrans fees in '12. It sounds like $500mln in retrans revenue is "achievable in the not-too-distant future," **Wells Fargo** analysts said in a research note. Specifically, NBCU renewed 25% of its MVPD base in '12 and it will likely take about 4-5 years to get through the remaining, which equates to significant upside, the analysts said.

On the Hill: Broadband stimulus spending is front and center Wed as the House Communications subcmte holds a hearing looking at the more than $7bln in broadband grants and loans overseen by NTIA and Dept of Ag's RUS. Challenges facing NTIA include that some projects are at risk of not being completed by a Sept 30 deadline and that effective oversight remains essential as awards are closed out, according to prepared testimony by *Ann Eilers*, principal assistant inspector general at the **Commerce Dept**. Eiler and other witnesses, including NTIA administrator *Larry Strickling* and RUS acting administrator *John Padalino*, are expected to testify. Broadband stimulus backers like Rep *Anna Eshoo* (D-CA) have defended the program, saying " the solution is not to attack the overall merits of the program." Instead, "rigorous oversight by NTIA, **RUS** and the Inspector General of these respective agencies is necessary," she said in a prepared statement.

At the Portals: The **FCC** should reject **AT&T**'s request to exempt IP voice networks from IP interconnection obligations that **Congress** included in the '96 Act, **ACA** said in the final round of comments on the telco's petition. AT&T also requested having the FCC set up an IP interconnection trial-run experiment with no regulations. The proposal would limit voice traffic exchange for IP-based services and threaten the reliability of voice services, ACA said. "The FCC should take this opportunity to clarify that the interconnection requirements apply regardless of the technology used to interconnect," ACA head *Matt Polka* said. **NCTA** suggested some regulation might be necessary. While the Commission generally should maintain a light regulatory approach for IP-based retail voice service, it should oversee interconnection "for the exchange of voice traffic to ensure there is no harmful disruption to competitive providers and their customers as a result of the incumbent LECs' technological transition," **NCTA** said. **Comcast** warned about "regulatory slippage into oversight of IP interconnection," saying requests for regulatory intervention are "premature and likely would prove harmful."

Earnings: **AMC Networks** and its former parent **Cablevision** might evenly split the $700mln **DISH** paid in connection with the **VOOM HD** settlement, AMC said during its 4Q earnings report Tues. The final amount to be allocated to AMC is yet to be determined and "may be significantly less than $350mln," AMC said. In the quarter, revenue increased about 8% YOY to $367mln, led by nearly 11% growth at national networks including **AMC, WE, IFC** and **Sundance Channel,** which more than offset a decline of $7mln at international markets and other business units. Ad sales were up 16% YOY to $157mln "due to strong demand for our original programming, primarily at AMC," the company said. Distribution revenue was up 6.8% to $182mln. The company noted the financial results were impacted by higher programming and marketing costs as well as the temporary loss of carriage on DISH.

Deals: **TDS Telecom** parent **Telephone and Data Systems** will acquire most of NM-based cable company **Baja Broadband** for $267.5mln, subject to working capital and other adjustments. The deal is expected to close in

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3Q. Baja generated annual rev of $82.4mln in '12 and has approx 74K video subs in CO, NM, TX and UT. Baja passed some 212K homes at the end of last year. **RBC Capital Markets** served as the exclusive M&A advisor to Baja in connection with this transaction. Baja is currently owned by private equity firm **M/C Partners**. -- **Sinclair Broadcasting** agreed to acquire 4 stations owned by **Cox Media** for $99mln and entered into an agreement to provide sales services to one other station. The 5 stations are located in 4 markets and cover 0.9% of the TV HHs. The deal needs **FCC** approval and antitrust clearance. The transaction's expected to be closed in 2Q.

Programming: **TBS** ordered a 4-week run of a new untitled late-night comedy series produced by **Conaco LLC**, the company behind "Conan." Plans call for the series starring comedian *Pete Holmes* to launch in the fall and air 4 nights a week. -- **FX** reached a drama series script development deal with "Sons of Anarchy" creator/showrunner *Kurt Sutter* and former "Hell on Wheels" showrunner *John Shiban* for "Lucas Stand."

Carriage: **Caribbean Cable Coop** picked up **Entertainment Studios' Justice Central.TV**, with the co-op now with deals for all 8 of ES' HD nets.

People: **Comcast** hired Ryan *Wallach* as sr deputy gen counsel and *Madura Wijewardena* as sr dir, public policy.

CableFAX Daily Stockwatch

Company	02/26 Close	1-Day Ch
BROADCASTERS/DBS/MMDS		
DIRECTV:	48.16	(0.25)
DISH:	35.14	0.29
DISNEY:	53.90	0.31
GE:	23.05	0.24
NEWS CORP:	28.69	0.24
MSOS		
CABLEVISION:	15.29	0.27
CHARTER:	86.74	3.44
COMCAST:	39.69	0.28
COMCAST SPCL:	37.89	0.15
GCI:	8.50	0.16
LIBERTY GLOBAL:	66.35	1.15
LIBERTY INT:	20.57	(0.41)
SHAW COMM:	23.57	0.22
TIME WARNER CABLE:	86.46	0.50
VIRGIN MEDIA:	45.34	0.54
WASH POST:	390.97	(3.91)
PROGRAMMING		
AMC NETWORKS:	56.00	(2.07)
CBS:	42.49	0.13
CROWN:	1.97	0.06
DISCOVERY:	70.96	1.06
GRUPO TELEVISA:	26.23	(0.28)
HSN:	50.23	0.26
INTERACTIVE CORP:	40.93	(0.24)
LIONSGATE:	20.60	(0.11)
OUTDOOR:	7.55	(0.13)
SCRIPPS INT:	61.15	(0.33)
TIME WARNER:	52.28	0.93
VALUEVISION:	2.63	(0.19)
VIACOM:	60.03	(0.07)
WWE:	8.39	(0.03)
TECHNOLOGY		
ADDVANTAGE:	2.12	(0.09)
ALCATEL LUCENT:	1.36	UNCH
AMDOCS:	36.01	0.39
AMPHENOL:	70.09	0.92
AOL:	37.50	0.56
APPLE:	448.97	6.17
ARRIS GROUP:	17.15	0.18
AVID TECH:	6.90	(0.08)
BLNDER TONGUE:	1.30	(0.05)
BROADCOM:	33.94	0.13
CISCO:	20.61	(0.05)
CLEARWIRE:	3.20	0.06
CONCURRENT:	7.01	(0.11)
CONVERGYS:	16.47	0.24

Company	002/26 Close	1-Day Ch
CSG SYSTEMS:	19.43	(0.22)
ECHOSTAR:	37.76	0.09
GOOGLE:	790.13	(0.64)
HARMONIC:	5.52	(0.02)
INTEL:	20.58	0.35
JDSU:	14.24	0.09
LEVEL 3:	20.34	0.22
MICROSOFT:	27.37	UNCH
RENTRAK:	21.19	0.14
SEACHANGE:	11.27	0.03
SONY:	14.04	0.25
SPRINT NEXTEL:	5.78	0.05
TIVO:	12.42	0.18
UNIVERSAL ELEC:	18.55	0.13
VONAGE:	2.61	0.01
YAHOO:	20.76	0.03
TELCOS		
AT&T:	35.49	0.30
VERIZON:	46.12	0.40
MARKET INDICES		
DOW:	13900.13	115.96
NASDAQ:	3129.65	13.40
S&P 500:	1496.94	9.09