

CableFAX DailyTM

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What the Industry Reads First

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Here We Go Again: WealthTV Wants FCC to Revisit Complaint

WealthTV is asking the FCC to reopen its program carriage complaint against several MSOs because it says it just realized Comcast was actually carrying the net without compensation for more than 2 years in Princeton and Somerset, NJ. An FCC ALJ who heard WealthTV's program carriage complaints last year against Comcast, Cox, Bright House and Time Warner Cable found that there was no credible evidence that the MSOs discriminated against Wealth. This time Wealth is arguing that a further hearing is needed to determine whether Comcast negotiated in good faith since it maintained during the proceeding that it did not and would not carry Wealth TV on its cable systems. It's all pretty confusing, but basically Patriot Media was carrying WealthTV through an NCTC agreement. Comcast bought Patriot in Aug '07. Wealth says that Patriot then left the NCTC, which it says nullified the contract. Comcast continued to carry the programming through Tues (Mar 2). Comcast said it had the right to carry the net for free due to a pre-existing agreement between Wealth and Patriot and that Wealth continued to authorize carriage. "If you have changed your mind regarding your desire to authorize those systems, please let us know. Because Comcast is subject to customer notification requirements, if you choose to de-authorize those systems, Comcast would request that you let us know at least 60 days in advance so that we may notify our subscribers in those systems of the removal of Wealth TV per your instructions," Comcast evp, content acquisitions Matt Bond wrote in a Feb 8 letter addressed to Wealth pres Charles Herring. Under the NCTC terms, Wealth said Patriot would have had to start paying distribution fees in Jan '09 and that it didn't know Comcast was carrying the net after Aug '07 because it stopped receiving download reports on the system from NCTC once the Patriot acquisition closed. "It is difficult to fathom how Comcast could negotiate in good faith with a channel without knowing whether it already carries that channel or what other channels it carries," Wealth told the FCC in a filing Wed. The response from Comcast: "Having been thoroughly rebuffed, and their claim rejected at every level... this filing is just another desperate attempt by Wealth TV to divert attention from the well-reasoned decision issued by the ALJ. The plain and simple facts of the matter are that the decisions made by the cable providers not to carry Wealth TV were completely justified and appropriate on business grounds and no violations of the program carriage rules occurred."

TiVo's Day: Final closing price for TiVo stock Thurs: \$16.53—up 61.9% on the news it had prevailed in its lawsuit

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DREAMWORKS
PLAYSTONE

PREMIERES MARCH 14 AT 9PM/8C
FOLLOWING SUNDAYS AT 9PM/8C

HBO

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against **DISH** and **EchoStar** in the US Court of Appeals for the Federal Circuit. At least for now. DISH said it will be seeking en banc review by the full Federal Circuit and will propose a new design-around to the district court for approval. "At this time, our DVR customers are not impacted," the companies said. In a 2-1 decision, the court upheld a contempt ruling that found a DVR design-around violated a court injunction in TiVo's patent infringement case. Noting that the decision is the latest in a series of losses in the nearly 5-year-old case, **Sanford Bernstein's Craig Moffett** suggested that it is likely the beginning of the end. "The ruling paves the way for the imminent complete disablement of as many as 8mln DISH Network DVRs," he wrote in a research note. "The implications for DISH Network are enormous, and go far, far beyond the retrospective licensing fees and damages that will now be payable to TiVo. What is at stake is nothing less than their ability to continue to offer DVRs." **Wells Fargo Securities** was less concerned, saying it believes the most logical next step is a licensing agreement that would equate to \$126mln-\$216mln in EBITDA. "We believe that *Charlie [Ergen]* will do what we believe to be the right thing and enter into an agreement. Once this occurs, the overhang of this litigation should be removed from the DISH stock," wrote the firm's *Marci Ryvicker*. TiVo said the ruling paves the way for it to receive about \$300mln in damages and contempt sanctions for the period through July 1, and that it will seek further damages and contempt sanctions for the period of continued infringement thereafter.

Broadband \$: During a **House Commerce** subcmte hearing Thurs, Republicans went after stimulus dollars being allocated to broadband projects in areas where broadband already exists. Rep *Joe Barton* (R-TX) said he knows of "at least 2 projects that appear to be overbuilds, and given the relaxing of the rules for the next round of funding from the **NTIA**, this problem will only get worse." **NCTA** pres/CEO *Kyle McStarrow* recently raised the same concern, pointing to an overbuild of **Eagle** in Hays, KS (*Cfax*, 3/4). On Thurs, reps from **AT&T**, **Cox**, **Eagle**, **Century-Link** and **KS Cable Telecom Assoc** sent a letter to KS Gov *Mark Parkinson* and the state's Sec of Commerce about **Rural Telephone/Nex-Tech's** grant/loan award. "This is a very large disincentive for our companies to continue deploying broadband investment," they wrote, asking that future state endorsement of broadband funding apps be limited to requests to deploy in unserved areas.

Still Going: **House Commerce** member *Eliot Engel* (D-NY) joined Thurs in asking the **FCC** to investigate the current retrans system and "provide a regulatory fix that will allow broadcasters to receive fair compensation for their product, while not charging cable and satellite providers outrageously high rates." He urged **Cablevision** and **ABC-Disney** to come to an agreement ASAP, without a lapse in broadcasting. His statement came 1 day after Sen Communications subcmte chmn *John Kerry* (D-MA) suggested the FCC tackle retrans reform (*Cfax*, 3/4)—an idea that immediately earned **ACA's** support (surprise!). Ranking House Commerce member *Joe Barton* (R-TX) does not agree. He is sticking by his familiar stance that these discussions are best handled by the companies, not govt. ABC-Disney applauded Barton for his

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market-based approach; Cablevision like's Kerry's plan. Clock's ticking.

Earnings: Crown Media appears poised for a successful '10, what with improving operations at **Hallmark Channel** and **Hallmark Movie**, a new partnership with Martha Stewart (**Cfax**, 1/27) and a tentative recapitalization plan (**Cfax**, 3/2). Pres/CEO **Bill Abbott**, noted a record yr for positive adjusted EBITDA in '09, record ratings for the nets during the 4Q holidays and welcomed ad improvement. In 4Q, Crown posted a 3% rise in overall rev along with 14% growth in sub fee rev and a 1% uptick in ad rev. Through Feb, the flagship net added approx 2mln homes this year to total approx 90mln, he said, and Movie added nearly 3mln to total approx 33mln, with expectations of 40mln by Dec. Hallmark Channel HD bowed Feb 1. CFO **Brian Stewart** foresees "significant growth in cash flow" this yr, and higher affil rev and advertising. -- Wow. **HSN** has roared from \$1.44/shr in Dec '08 to nearly \$27 now, adding 8.3% on Thurs alone, spurred by 4Q results that included rises of 12% in net sales to \$612mln—the highest quarterly sales volume in net history—and 18% in gross profit to \$205mln. Op income tallied \$65mln, compared to a loss if \$2.4bln in 4Q08. In recent months the net launched a **Shop By Remote** app allowing viewers to access live streaming HSN video and make purchases using their remotes. **Comcast** agreed in Dec to a nationwide rollout of the app.

CableFAX Daily Stockwatch

Company	03/04 Close	1-Day Ch	Company	03/04 Close	1-Day Ch
BROADCASTERS/DBS/MMDS			AMPHENOL:.....43.25(0.3)		
BRITISH SKY:.....	33.55	(0.24)	AOL:.....	25.40	0.88
DIRECTV:.....	34.74	0.48	APPLE:.....	210.71	1.38
DISH:.....	20.59	(1.12)	ARRIS GROUP:.....	11.35	0.24
DISNEY:.....	32.57	0.93	AVID TECH:.....	14.13	0.14
GE:.....	16.11	0.08	BIGBAND:.....	2.91	(0.07)
NEWS CORP:.....	16.31	0.18	BLNDER TONGUE:.....	1.05	0.02
MSOS			BROADCOM:.....	30.86	(0.12)
CABLEVISION:.....	24.07	0.02	CISCO:.....	24.95	0.11
COMCAST:.....	17.17	0.21	CLEARWIRE:.....	6.56	(0.11)
COMCAST SPCL:.....	16.39	0.33	COMMSCOPE:.....	26.76	(0.05)
GCI:.....	5.97	0.07	CONCURRENT:.....	4.62	(0.01)
KNOLOGY:.....	12.38	(0.1)	CONVERGYS:.....	12.59	(0.01)
LIBERTY CAPITAL:.....	32.55	(0.27)	CSG SYSTEMS:.....	20.40	0.02
LIBERTY GLOBAL:.....	27.75	0.07	ECHOSTAR:.....	19.84	0.04
LIBERTY INT:.....	12.98	0.07	GOOGLE:.....	554.59	9.27
MEDIACOM:.....	4.92	0.07	HARMONIC:.....	6.74	0.00
RCN:.....	12.26	0.11	INTEL:.....	20.53	0.01
SHAW COMM:.....	19.80	(0.08)	JDSU:.....	11.35	0.07
TIME WARNER CABLE:.....	47.34	(0.01)	LEVEL 3:.....	1.62	0.02
VIRGIN MEDIA:.....	16.70	0.15	MICROSOFT:.....	28.63	0.17
WASH POST:.....	437.18	0.66	MOTOROLA:.....	6.80	(0.07)
PROGRAMMING			OPENTV:.....	1.55	0.01
CBS:.....	14.22	0.34	PHILIPS:.....	30.53	(0.34)
CROWN:.....	1.77	0.10	RENTRAK:.....	18.74	0.29
DISCOVERY:.....	31.08	0.47	SEACHANGE:.....	7.45	0.02
GRUPO TELEVISIA:.....	19.30	(0.08)	SONY:.....	35.04	(0.46)
HSN:.....	26.78	2.05	SPRINT NEXTEL:.....	3.26	(0.03)
INTERACTIVE CORP:.....	23.21	0.27	THOMAS & BETTS:.....	37.59	(0.07)
LIBERTY:.....	37.14	0.09	TIVO:.....	16.53	6.32
LIBERTY STARZ:.....	52.75	0.99	TOLLGRADE:.....	6.60	(0.02)
LIONSGATE:.....	5.50	(0.02)	UNIVERSAL ELEC:.....	22.79	(0.02)
LODGENET:.....	6.58	0.37	VONAGE:.....	1.49	0.01
NEW FRONTIER:.....	1.85	(0.03)	YAHOO:.....	15.81	0.24
OUTDOOR:.....	6.15	0.19	TELCOS		
PLAYBOY:.....	3.37	0.05	AT&T:.....	24.96	0.07
RHI:.....	0.30	0.00	QWEST:.....	4.56	0.07
SCRIPPS INT:.....	39.43	0.06	VERIZON:.....	29.27	0.14
TIME WARNER:.....	29.90	0.29	MARKET INDICES		
VALUEVISION:.....	4.71	(0.02)	DOW:.....	10444.14	47.38
VIACOM:.....	31.69	0.19	NASDAQ:.....	2292.31	11.63
WWE:.....	17.52	(0.16)			
TECHNOLOGY					
3COM:.....	7.71	0.00			
ADC:.....	7.18	0.22			
ADDVANTAGE:.....	2.23	0.02			
ALCATEL LUCENT:.....	3.28	0.03			
AMDOCS:.....	29.38	0.14			

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PROGRAMMER'S PAGE with Chad Heiges and Seth Arenstein

Tempered Tube, Wondrous Web

Any way you skin it, slice it or pare it, **CNN's** struggling. Is the situation dire enough to warrant the renaming of net personalities, perhaps as Campbell (D)own or (U)nderson Cooper? You be the judge. Last year, the net averaged a 0.7/731K in prime, down from a 1.1/1.02mln in '08. I know, I know... the lack of presidential election coverage in '09 is duly noted. But in Jan, the net garnered a 0.7/692K (-30%), in Feb a 0.5/451K (-50%). By comparison, **Fox News** gained 19% in Jan before slipping 11% in Feb, while **MSNBC** fell 25% in Jan before flattening in Feb with help from the Olympics. The latter net, in fact, trumpeted its Feb move ahead of CNN in prime and said it won the head-to-head battle in the 8 and 9pm timeslots. Although **Time Warner** CEO *Jeff Bewkes* has recently employed candor regarding ratings challenges at some **Turner** nets, including CNN, the net repulsed bids to discuss any current initiatives enacted to help turn the ratings tide. A spokesperson countered that CNN's audience has grown over the last 5 years, and that '09 marked the net's highest-rated prime and total day audiences ever, save for '08. Fair enough. It's still shocking, however, to see CNN rank in the 30s among nets for Feb prime HH delivery. If there's a sterling silver lining to the net's linear troubles, it's **CNN.com's** heady traffic numbers. According to **comScore**, the site garnered in Jan approx 34% of all uniques tallied by the top 16 cable net-related portals, or 70.8mln. In 2nd was **Weather.com**, way back with 46.8mln. This data likely translates to hale online ad rev for the net and shows it's well positioned to capitalize on key trend lines. A recent **Pew Internet** study, for example, found the Web is now the 3rd most popular news platform behind local and national TV. Still, linear ad dollars provide the feast. *CH*

Highlights: "Reporter," Sun, 1:45pm, **HBO**. Feeling down? Can't take another day of the rat race? For perspective, watch this engrossing piece about columnist *Nick Kristof* of *The NY Times*. He heads to Congo seeking the single worst example of suffering. Such columns will energize readers to act, he feels. Why not write about the millions who've died? Kristof understands psychology. He knows we sympathize more with 1 suffering person than with 2 or more. -- "Running with Wolves," Sun, 8p, **Smithsonian**. An unusual but wonderful doc. A woman is moved to save Canadian wolves because they helped her beat cancer. Gorgeously shot. *SA*

Worth a Look: "True Crime with Aphrodite Jones," pilot, Thurs, 10pm, **Investigation Discovery**. Is *Henry Schleiff* remaking **CourtTV** in Silver Spring? So what? This series begins with a well-done retelling of the *Scott Peterson* case, complete with tapes of calls implicating him in the murder of his wife and unborn son. A sheriff tells us Scott seemed more interested in **The Golf Channel** than his trial. -- "First Love, Second Chance," pilot, Wed, 10pm, **TV Land**. *Larry Jones* know his audience, capitalizing on boomer originals like "HS Reunion" with this 6-ep series reuniting a couple of HS sweethearts weekly. The reveal is whether the couple decides to stay together. *SA*

Basic Cable Rankings

(2/01/09-2/28/09)

Mon-Sun Prime

1	USA	2.3	2198
2	DSNY	1.7	1719
2	FOXN	1.7	1659
2	TNT	1.7	1652
5	NAN	1.4	1411
6	TBSC	1.2	1237
6	A&E	1.2	1188
8	HIST	1.1	1109
8	ESPN	1.1	1055
10	TOON	1	1025
10	FAM	1	944
10	HGTV	1	937
13	FX	0.9	908
13	TRU	0.9	847
15	TLC	0.8	786
15	DISC	0.8	784
15	LIFE	0.8	775
15	AMC	0.8	769
15	SYFY	0.8	766
15	MSNB	0.8	705
15	NKJR	0.8	547
22	FOOD	0.7	733
22	CMDY	0.7	700
22	SPK	0.7	697
22	MTV	0.7	697
22	HALL	0.7	642
22	LMN	0.7	534
28	EN	0.6	571
28	BRAV	0.6	568
28	BET	0.6	562
28	ID	0.6	306
32	VH1	0.5	515
32	TVLD	0.5	510
32	CNBC	0.5	462
32	CNN	0.5	451
32	OXYG	0.5	396
32	NGC	0.5	322
38	HLN	0.4	434
38	APL	0.4	433
38	ESP2	0.4	388
38	TRAV	0.4	350
38	WGNA	0.4	285
38	SOAP	0.4	275
38	HI	0.4	217
45	CMT	0.3	297
45	TWC	0.3	252

*Nielsen data supplied by ABC/Disney

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