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Friday — April 8, 2011

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Volume 22 / No. 067

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Getting Legal: TWC, Viacom Turn to Courts in iPad Spat

Time Warner Cable has asked a federal court to rule that it's within its rights under its carriage agreement to deliver **Viacom** programming over devices in customers' homes, including iPads. Viacom is returning serve with a lawsuit against TWC and has put Cablevision's recent iPad streaming app in the crosshairs, telling us Thurs that "we will take the steps necessary to ensure that Cablevision respects our rights." In regards to TWC, Viacom said it has always negotiated its rights to distribute content based on specific tech and device—and it gives negotiations with TWC for Start Over and VOD as examples. "Instead of addressing these issues, Time Warner Cable simply launched the product without a license to distribute our programming through an iPad app," Viacom said in a statement. "They blatantly grabbed the rights that their competitors have negotiated in good faith to obtain. Time Warner Cable removed our programming from this service only when they were threatened with a lawsuit and, now, it is asking the Court to declare their brazen acts lawful. Regrettably, all of this has compelled us to file a suit of our own—as Time Warner Cable refuses to even discuss the business issues." TWC's request for declaratory judgment was filed in the US District Court for the Southern District of NY. Viacom's suit was filed in the same court. It wasn't clear if TWC would file similar requests regarding **Fox** and **Discovery**, whose programming has been removed from the iPad app after legal threats (it could be using Viacom to set precedent). TWC launched its app Mar 15. It currently features 43 channels. The MSO has said repeatedly it has the rights to deliver the channels on different devices within the home. "We have steadfastly maintained that we have the rights to allow our customers to view this programming in their homes, over our cable systems, without artificial limits on the screens they can use to do so, and we are asking the court to confirm our view. With over 360K downloads of our TWCableTV app, it is clear that our customers welcome the convenience and flexibility our new app provides," said *Marc Lawrence-Apfelbaum*, evp and gen counsel of Time Warner Cable. TWC's filing said that the Viacom agreement in no way limits the types of video display devices programming can be viewed on inside a customers' home. It also noted that the same "pipe" to deliver programming to set-tops is also used to deliver programming to he iPad. In its lawsuit, Viacom says that is agreements with TWC do not grant the MSO the right to distribute programming to its broadband subs. In addition to the breach of contract claim, Viacom's suit addresses concerns over security and the lack of **Nielsen** ratings on the iPad app. Viacom said it was initially

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told the app would launch at the end of Mar, but on Mar 14 it received a call that the launch date had been accelerated to the following day. **Cablevision** launched its own iPad app on Apr 2. “Cablevision has seized distribution rights that Viacom has not granted,” Viacom said in a statement. “Viacom grants rights to distribute our content based on specific technologies and devices.” **YES** also has said CVC does not have the rights for its content. Cablevision rejects the programmers’ stance, saying agreements allow it to deliver cable service regardless of how many or what kinds of TVs they have in the home. “Programmers are paid based on how many homes we securely connect to their content, not how many televisions display it, so they have never questioned whether a customer has a single TV or a dozen 50-inch flat panels in the home— it’s all cable television,” the MSO said. “Optimum App for iPad simply turns the iPad into another television in the home, and one it is worth noting our customers are finding particularly enjoyable and easy to use.”

Cable FCC Wins: The **FCC** voted 3-2 down party lines to adopt an order requiring facilities-based providers to offer data roaming agreements to other such providers on commercially reasonable terms. The Commission’s 2 Republicans strongly opposed the order, saying the FCC does not have the authority, and the order violates a statutory prohibition against application of common carrier regulation. FCC chmn *Julius Genachowski* said that was wrong, adding that the only comments opposed to the order were from the major wireless carriers—**Verizon** and **AT&T**. It’s a big win for cable. “Adopting enforceable data roaming rights will enable new entrants to compete on a nationwide basis and give consumers more choice and flexibility in wireless services,” said **NCTA** evp *James Assey*. Cable also scored a victory on pole attachments, with the Commission adopting reforms that include lowering the uniform rate pole owners can charge to the same as the cable rate (which is lower). The order means cable ops won’t have to pay more for services such as VoIP. “Providing certainty and reforming parts of the pole attachment regime is critical to further investment in all forms of broadband infrastructure, particularly in rural communities,” **Comcast** evp *David Cohen* wrote on the company’s blog Thurs. Both orders carry a substantial litigation risk, **Stifel Nicolaus** told clients. Verizon may challenge the data roaming order, and utilities and pole owners are expected to challenge the pole attachment order. “We believe the FCC decision to assert regulatory oversight of the ILEC pole rates will be a key dispute. If the ILECs are denied the anticipated benefits of FCC-driven rate cuts, they could face an even greater pole-attachment disparity with CLEC and cable competitors,” the firm said, noting power companies may ask more states to assert jurisdiction over pole attachments (20 currently do so).

Technology: **ESPN, ESPN2, ESPNU** and **ESPN3.com** are now available to **Time Warner Cable, Bright House** and **FiOS TV** subs through the new **WatchESPN** app for iPads, iPhones and the iPod touch. Slated to roll out on other smartphones and tablets in the near future, the app is able to black out games where required. Meanwhile, TWC’s iPad still can’t, meaning it doesn’t offer ESPN. -- **Comcast** increased by 50% the number of movies and TV shows available through its **Xfinity TV** iPad app, to more than 4,500 hours of content. -- **Motorola Mobility’s** new **SocialTV Companion Service** is designed to help service providers generate incremental rev by leveraging social networking, loyalty programs, advertising and product merchandising via companion devices such as tablets, smartphones and laptops. When viewing content on TV, consumers will be able to share comments and interact in real-time with friends, plus access content, apps or merchandise related to the program they’re watching.

Branding: Still intent on launching a dedicated cable net in the next 12-18 months, **World Wrestling Ent** formally rebranded itself **WWE**, a move highlighted through a national consumer and B2B ad campaign entitled “Bigger. Badder. Better.” Other components include an active pursuit to acquire ent content companies, outsourcing of WWE’s core competencies of TV/film/live event prod and licensing, and the formation of a new talent dev department headed by *Paul “Triple H” Levesque* which will put a greater emphasis on worldwide recruitment, training and character dev.

At the Portals: **Comcast** and **NBCU** asked the FCC for enhanced confidential treatment for the current Limited Liability Company Agreement of **Hulu**, citing its commercial sensitivity and the competitive harm disclosure would cause. The doc will be filed in conjunction with reporting obligations the companies are under. Saying it would harm not only NBCU but also Hulu and non-NBCU owners, the companies said it contains info about the inner workings of Hulu’s mgmt.

On the Hill: The **House** plans to vote Fri on a resolution to repeal the **FCC’s** Net Neutrality order. But that could change...

Carriage: **DirecTV** and **YES** remain in negotiations for a new distribution deal after the net had extended the deadline for talks to Thurs from late last week. Yet while DirecTV said YES has agreed to another extension, this

BUSINESS & FINANCE

one through Fri, the net declined to comment.

OTT: Google's intent on competing with cable TV, according to the *WSJ*, through plans to spend as much as \$100mln to launch approx 20 **YouTube** channels, each featuring multiple hours/week of original content in categories ranging from entertainment to sports.

Business/Finance: A NY bankruptcy court approved **DISH's** \$320mln bid to acquire **Blockbuster**. **Citadel Securities** said "the rationale for the deal remains unclear... we think only one option has legs—selling Blockbuster's service to DISH subscribers." -- **Nexstar** entered into a definitive agreement to acquire assets of **CBS** affils **WFRV** and **WJMN** serving the Green Bay and Marquette, MI, markets, respectively, from **Liberty Media** for \$20mln. The deal would expand Nexstar's coverage to 36 markets in 16 states, reaching approx 13.5mln HHs. -- **ValueVision Media** (shopNBC) redeemed as planned all of its outstanding 12% Series B Redeemable Preferred Stock for \$40.9mln and paid all accrued Series B Preferred dividends amounting to \$6.4 million. The preferred stock was held by **GE Capital Equity Investments**. -- **MTVN Ent Group** unveiled **345 Games**, a new video gaming arm of **Comedy Central** and **Spike** meant to dev products based on the group's franchises and brands.

CableFAX Daily Stockwatch

Company	04/07 Close	1-Day Ch	Company	04/07 Close	1-Day Ch
BROADCASTERS/DBS/MMDS					
DIRECTV:	46.50	(0.1)	BLNDER TONGUE:	2.20	(0.09)
DISH:	23.95	(0.37)	BROADCOM:	40.04	0.09
DISNEY:	42.04	(0.23)	CISCO:	17.91	(0.16)
GE:	20.35	(0.2)	CLEARWIRE:	5.85	(0.09)
NEWS CORP:	18.45	(0.2)	CONCURRENT:	6.13	(0.05)
MSOS					
CABLEVISION:	33.76	0.03	CONVERGYS:	14.34	(0.13)
CHARTER:	55.41	(0.08)	CSG SYSTEMS:	20.55	0.18
COMCAST:	24.64	(0.19)	ECHOSTAR:	36.81	(0.07)
COMCAST SPCL:	23.23	(0.11)	GOOGLE:	580.00	5.82
GCI:	11.21	(0.25)	HARMONIC:	9.81	(0.02)
KNOLGY:	14.00	UNCH	INTEL:	20.03	0.08
LIBERTY CAPITAL:	75.34	(1.01)	JDSU:	18.99	(0.59)
LIBERTY GLOBAL:	42.97	0.27	LEVEL 3:	1.44	(0.03)
LIBERTY INT:	16.73	0.07	MICROSOFT:	26.20	0.05
SHAW COMM:	21.45	UNCH	RENTRAK:	26.70	(0.29)
TIME WARNER CABLE:	72.52	0.05	SEACHANGE:	10.88	0.10
VIRGIN MEDIA:	27.85	0.15	SONY:	30.33	(0.23)
WASH POST:	448.46	1.34	SPRINT NEXTEL:	4.62	(0.02)
PROGRAMMING					
CBS:	24.58	0.07	THOMAS & BETTS:	59.06	(1.37)
CROWN:	2.36	UNCH	TIVO:	8.80	(0.24)
DISCOVERY:	40.26	(0.07)	TOLLGRADE:	10.05	(0.04)
GRUPO TELEVISA:	22.97	(1.09)	UNIVERSAL ELEC:	28.57	(0.72)
HSN:	33.67	0.54	VONAGE:	4.57	0.01
INTERACTIVE CORP:	30.96	(0.39)	YAHOO:	17.00	(0.05)
LIBERTY:	43.34	(0.33)	TELCOS		
LIBERTY STARZ:	77.50	(0.53)	AT&T:	30.54	0.07
LIONSGATE:	6.72	0.21	VERIZON:	37.76	(0.09)
LODGENET:	3.52	(0.04)	MARKET INDICES		
NEW FRONTIER:	1.84	0.04	DOW:	12409.49	(17.26)
OUTDOOR:	7.38	UNCH	NASDAQ:	2796.14	(3.68)
SCRIPPS INT:	50.49	(0.53)	S&P 500:	1333.51	(2.03)
TIME WARNER:	35.65	(0.59)			
VALUEVISION:	5.86	(0.17)			
VIACOM:	53.87	(0.05)			
WWE:	12.79	0.14			
TECHNOLOGY					
ADVANTAGE:	3.10	0.04			
ALCATEL LUCENT:	5.72	(0.08)			
AMDOCS:	28.97	(0.14)			
AMPHENOL:	52.55	(0.02)			
AOL:	20.44	(0.09)			
APPLE:	338.08	0.04			
ARRIS GROUP:	12.79	0.14			
AVID TECH:	22.06	0.18			
BIGBAND:	2.49	(0.05)			

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WHAT THE INDUSTRY READS FIRST.

PROGRAMMER'S PAGE with Chad Heiges and Seth Arenstein

Turner's 1st Shining Moment

Although Mon night's title game produced several new members of the **Intl Union of Bricklayers and Allied Craftworkers**, Turner pres, sales, distribution and sports **David Levy** views the company's initial **March Madness** collaboration with **CBS** as an unequivocal success. "In every metric we overdelivered our expectations," he said, noting the all-star performances of ad sales, viewership, online and corporate sponsorships. "I think we laid a great foundation for the next 13 years." As Levy said the tourney's fresh model highlighted by live coverage of all games allowed basketball fans to win big, he underscored how **March Madness On Demand** may have delivered the most thunderous dunk of all. "This event is tailor made for the growth of technology," said Levy. The goal of MMOD was to not only offer live streaming games, he said, but also to provide tourney fans with a comprehensive "23-day experience." Fans ate it up. MMOD earned a 63% YOY increase in total visits and garnered 13.7mln total hours of streaming video across online and iPad and iPhone apps. And importantly, linear viewership among arguably the 2 most voracious tech-using demos, 18-34s (+21%) and men 18-34 (+25%), wasn't cannibalized by MMOD. Levy said **truTV** also emerged a big winner after airing 13 games. "truTV sort of became a household brand overnight," said Levy, citing "almost immeasurable" positive effects, save perhaps the expansion of the tourney's studio and broadcast teams to include Turner talent. While Levy believes the "talent integration was tremendous," he did allow that Turner and CBS "will go back and tweak" the set ups where possibly necessary—perhaps regarding the large studio group that mirrored the trending endemic to many sports including pro football. To me, I'm not so sure bigger is better. But if bigger means *Charles Barkley's* involved, count me in. CH

Highlights: "From The Edge with Peter Lik," Thurs, 8p, **Weather**. Following master photographer *Lik* is a treat for the eyes. This week he's in Montana to capture winter scenes. -- "Human Planet," premiere, Sun, 8p, **Discovery**. Speaking of gorgeous, this 6-part nature collaboration with **BBC** is beautiful in the tradition of "Blue Planet" and "Life." SA

Worth a Look: "The Dance Scene," premiere, Sun, 10:30p, **E!** This series following music vid dancer/choreographer *Laurieann Gibson* and her assistants is packed with stereotypical characters, predictable situations and contrived drama: The bitchy boss, the ingénue, relationship issues and tight-bodied dancers. Somehow it all works. SA

Notable: **Comedy Central's** "Comedy Awards" (Sun, 9p) is so big, it will be simulcast on **Spike, CMT, Logo, TV Land** and **VH1**. Can you say synergy? -- The First Lady of Digital (at the moment), *Stefani Joanne Angelina Germanotta, aka Lady Gaga*, receives the Always Next, Forever Now award at the "NewNowNext Awards" (Mon, 10p, **Logo**). Due to schedule conflicts and trouble finding a large egg on a Monday night, her Ladyship will accept the award during a taped ceremony. -- **Golf Channel's** been on a ratings roll and its 50+ hours of live coverage from **The Masters** this weekend should continue the streak. SA

Basic Cable Rankings (3/28/11-4/03/11) Mon-Sun Prime			
1	USA	2.3	2326
2	DSNY	1.8	1809
3	HIST	1.7	1647
4	FOXN	1.5	1489
5	ESPN	1.4	1396
6	NAN	1.3	1262
7	TNT	1.2	1227
8	TBSC	1	988
8	A&E	1	979
8	FAM	1	950
8	HGTV	1	948
12	ADSM	0.9	935
12	MTV	0.9	923
12	FX	0.9	901
12	AMC	0.9	900
12	SYFY	0.9	846
17	FOOD	0.8	827
17	LIFE	0.8	792
17	TRU	0.8	760
17	NKJR	0.8	599
21	DISC	0.7	751
21	CMDY	0.7	678
21	TLC	0.7	650
21	MSNB	0.7	644
21	BET	0.7	609
26	SPK	0.6	637
26	ESP2	0.6	612
26	TVLD	0.6	602
26	BRAV	0.6	581
26	CNN	0.6	559
26	ID	0.6	418
32	EN	0.5	481
32	HALL	0.5	466
32	LMN	0.5	430
35	APL	0.4	419
35	TRAV	0.4	405
35	OXYG	0.4	327
35	NGC	0.4	288
39	VH1	0.3	310
39	GSN	0.3	252
39	SOAP	0.3	232
39	DXD	0.3	227
39	WGNA	0.3	204
39	OWN	0.3	202
39	NKTN	0.3	191
39	SCI	0.3	181

*Nielsen data supplied by ABC/Disney

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