

# CableFAX Daily™

Monday — April 27, 2009

What the Industry Reads First

Volume 20 / No. 078

## Failed Charter: Comcast Says Rule Kept it From Pursuing Stake in Cable Op

**Comcast** says it had to turn down acquiring minority ownership in another cable operator due to the **FCC's** horizontal ownership cap, which limits a cable operator's ownership of multichannel subs nationwide to no more than 30%. The name of the operator, which would have received immediate capital in the deal, is not given in court filings, but the most likely candidate based on the description appears to be **Charter**. Comcast currently is at about 26%, so this would be a relatively large operator to push it over the limit. "Several months" after the rule was published in the federal registry in Feb '08, Comcast was approached by another cable operator seeking an investment of capital, program management services and other valuable consideration, according to a declaration from Comcast svp, corporate dev *Robert Pick*, who is responsible for all merger and acquisition activities involving the company. Comcast would have acquired minority ownership interest. "This proposed transaction would have provided immediate capital, economies of scale, and other benefits for the cable operator, and positioned Comcast to gain short and long term value from the investment," Pick said in the statement. However, Comcast determined that under FCC rules the proposed investment would have resulted in the attribution of all of the cable op's subs, thus pushing it over the 30% cap. Under the rules, an entity is required to attribute 100% ownership of a cable op's subs if it acquires at least 5% of the voting stock or 1% of a limited partnership interest. Had the horizontal cap not been in place, "Comcast would have seriously pursued further negotiations and due diligence with respect to the transaction, and the cable operator, its subscribers, and Comcast would have had the opportunity to obtain the many potential benefits presented by the acquisition," Pick's declaration said. "In addition, it was not feasible for Comcast and the cable operator to proceed with the transaction and then challenge the horizontal ownership cap when the FCC would act to block the acquisition." Charter began bankruptcy proceedings late last month, seeking to reduce its hefty debt load to a manageable level. Comcast is seeking to overturn and vacate the FCC's horizontal ownership rule, with oral arguments held Fri (see "Cable Cap" below).

**Cable Cap:** Handicapping a court case is dangerous and near impossible, so we will refrain from attempting to pick a winner in Fri's oral arguments over the **FCC's** 30% cable ownership cap. But we will note that some of the judges' comments

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Kim Myles  
*Myles of Style*

Source: Nielsen Media Research, Standard  
Prime Time 8p-11p Mon-Sun, Based on  
Nielsen Calendar Q1, 1999-2009,  
HH AA (000)

 Scripps Networks

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Fri signaled some reluctance to endorse the Commission's attempt to justify a rule preventing cable ops from serving more than 30% of multichannel homes nationwide. Should the *Washington Post* be prevented from having more than 30% of home subscriptions in a market or **Barnes & Noble** be limited to 30% of the national market, Judge *Brett Kavanaugh* asked FCC attorney *James Carr*. Carr argued that the cable ownership cap is different because it's designed to protect programmers. The FCC's 30% cap assumes that 19mln subs is the number needed for minimum viable scale for a programming net, but attorney *Miguel Estrada*, who argued for **Comcast**, told the 3-judge panel that success at 19mln subs doesn't mean a net actually *needs* 19mln subs. He also argued that a FCC study found that a net only requires 10.18mln subs from Day 1 to have a survival probability of 70% over the first 5 years (thus carriage on either **DirectTV** or **DISH** would provide the same probability of survival). But Carr said consumers are unlikely to leave their cable operator for a competitor over 1 channel that isn't carried on their system. Kavanaugh immediately responded, "Hasn't that happened with **NFL Sunday Ticket**?" Judge *Raymond Randolph*, however, did question whether subs would leave over 1 channel rather than because of "terrible" service and noted that the FCC offered some logic behind the cap this time around. Comcast wants the rule not only reversed, but vacated. In a research note Fri, **Stifel Nicolaus** predicted that the court would do both (the firm notes that telecom cases at the DC Circuit are rarely overturned). A decision is expected in June or July.

**Legal (and Financial) Woes:** The proceedings surrounding **Charter's** seemingly well-received bankruptcy plan are becoming quite thorny. According to reports, the **US Trustee**, a part of the **DOJ** that oversees bankruptcies, has filed in US Bankruptcy Court in NY an objection to the MSO's reorg plans, which it says doesn't adequately explain why Charter would release from liability and lawsuits former officers, directors, financial advisers and other parties. The US Trustee also intends to investigate claims made against *Paul Allen* alleging a conflict of interest in Allen's dealings with debtors and his retention of equity under the reorg plan. And if that's not enough, **Wells Fargo** filed its own objection this week, saying the MSO's plan is too risky and could necessitate a repricing of remaining debt at significantly higher interest rates. This after a **JP Morgan** lawsuit that alleges Charter has violated its loan agreements and cannot legally reinstate its debt. Charter has filed a motion to dismiss JP Morgan's complaint, and a hearing is set for May 5.

**Netflix:** Netflix continues to soar with an eye on increasing its online and TV distribution. "Given our momentum to date, we are continuing to push up our streaming spending," said Netflix chmn/pres/CEO *Reed Hastings* in an earnings call, noting 920K net sub additions in 1Q, the company's largest in history. Now with 10.3mln subs, Netflix counts content partnerships with **Starz**, **Disney Channel**, **Nickelodeon** and **Comedy Central**, plus a distribution pact with **TiVo**.

**Musing Martin:** He couldn't resist. Former **FCC** commish *Kevin Martin* named the cable industry when *The Washington Post's Steve Perlstein* recently asked him to name a special interest that, during his tenure, "was really piggy and really out of line and needed to be taken down a notch." During the interview, available at [Washingtonpost.com/wp\\_dyn/content/video/2009/04/22/VI2009042202291.html](http://Washingtonpost.com/wp_dyn/content/video/2009/04/22/VI2009042202291.html), Martin said he felt constrained and failed to achieve any legislation to reduce cable pricing because, in effect, cable and other special interests have too much clout in Washington. Also, Martin noted media ownership as a particular issue that he found difficult to get addressed by the full commission. "For other commissioners, I think particularly, it's easier to not decide because then no one is mad, then it is to decide a hard issue," said Martin.

**Editor's Note:** MSOs and independent cable ops are encouraged to enter our Top Operators awards program. It's easy, and there are no fees involved. Deadline is May 15; info at [www.cablefax.com](http://www.cablefax.com) (click on "awards").

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### CableFAX Week in Review

Company	Ticker	4/24 Close	1-Week % Chg	YTD %Chg
<b>BROADCASTERS/DBS/MMDS</b>				
BRITISH SKY:	BSY	26.07	(2%)	(5.2%)
DIRECTV:	DTV	24.98	0.20%	9.00%
DISH:	DISH	13.88	(2.3%)	25.20%
DISNEY:	DIS	20.26	(0.6%)	(9.2%)
GE:	GE	12.11	(2.3%)	(19.5%)
HEARST-ARGYLE:	HTV	4.55	(4.6%)	(23.8%)
NEWS CORP:	NWS	8.92	(4.8%)	(5.6%)

Company	Ticker	4/24 Close	1-Week % Chg	YTD %Chg
<b>MSOS</b>				
CABLEVISION:	CVC	16.36	(6.6%)	(1.7%)
COMCAST:	CMCSA	13.89	(4.1%)	(17.3%)
COMCAST SPCL:	CMCSK	12.99	(4.1%)	(19.2%)
GCI:	GNCMA	7.47	0.80%	(7.7%)
KNOLGY:	KNOL	6.12	9.30%	18.60%
LIBERTY CAPITAL:	LCAPA	11.10	0.90%	135.70%
LIBERTY ENT:	LMDIA	24.21	5.40%	38.50%
LIBERTY GLOBAL:	LBTYA	16.10	(10.6%)	1.10%
LIBERTY INT:	LINTA	5.07	(8.5%)	62.50%
MEDIACOM:	MCCC	4.83	(4.9%)	12.30%
SHAW COMM:	SJR	15.11	(1%)	(12.3%)
TIME WARNER CABLE:	TWC	27.27		
VIRGIN MEDIA:	VMED	7.23	(2.2%)	47.30%
WASH POST:	WPO	422.00	(1.4%)	9.20%

Company	Ticker	4/24 Close	1-Week % Chg	YTD %Chg
<b>PROGRAMMING</b>				
CBS:	CBS	6.22	(7.2%)	(22.8%)
CROWN:	CRWN	2.90	16.00%	1.80%
DISCOVERY:	DISCA	18.22	(0.2%)	28.60%
EW SCRIPPS:	SSP	1.71	(11.6%)	(22.4%)
GRUPO TELEVISIA:	TV	16.26	(1.7%)	8.80%
HSN:	HSNI	6.94	10.00%	(4.5%)
INTERACTIVE CORP:	IACI	16.38	(1.8%)	4.10%
LIBERTY:	L	25.02	(0.6%)	(11.2%)
LODGENET:	LNET	3.50	105.90%	400.00%
NEW FRONTIER:	NOOF	1.92	5.50%	12.90%
OUTDOOR:	OUTD	6.97	(4%)	(6.9%)
PLAYBOY:	PLA	2.45	18.40%	13.40%
RHI:	RHIE	2.68	(8.2%)	(67%)
SCRIPPS INT:	SNI	26.33	(3.4%)	20.00%
TIME WARNER:	TWX	22.33	(3.8%)	0.70%
VALUEVISION:	VVTV	0.74		124.20%
VIACOM:	VIA	20.74	(0.4%)	3.10%
WWE:	WWE	10.94	(0.5%)	8.50%

Company	Ticker	4/24 Close	1-Week % Chg	YTD %Chg
<b>TECHNOLOGY</b>				
3COM:	COMS	3.99	5.60%	75.00%
ADC:	ADCT	6.22	4.70%	14.10%
ADVANTAGE:	AEY	1.70	4.30%	(4.5%)
ALCATEL LUCENT:	ALU	2.42	(0.4%)	12.60%
AMDOCS:	DOX	21.21	9.00%	16.00%
AMPHENOL:	APH	33.33	9.30%	39.20%
APPLE:	AAPL	123.90	0.40%	45.20%
ARRIS GROUP:	ARRS	9.41	(1.5%)	18.40%
AVID TECH:	AVID	10.58	(3.8%)	(3%)
BIGBAND:	BBND	5.70	(7.6%)	3.30%
BLNDER TONGUE:	BDR	1.00	17.60%	(1%)
BROADCOM:	BRCM	24.22	5.60%	42.70%

Company	Ticker	4/24 Close	1-Week % Chg	YTD %Chg
CISCO:	CSCO	18.42	2.40%	13.00%
CLEARWIRE:	CLWR	5.75	3.00%	44.80%
COMMSCOPE:	CTV	20.60	6.40%	32.60%
CONCURRENT:	CCUR	4.14	(2.4%)	20.60%
CONVERGYS:	CVG	9.76	0.30%	52.30%
CSG SYSTEMS:	CSGS	14.45	(3.3%)	(17.3%)
ECHOSTAR:	SATS	15.59	(5.3%)	4.80%
GOOGLE:	GOOG	389.49	(0.7%)	26.60%
HARMONIC:	HLIT	7.08	6.10%	26.20%
INTEL:	INTC	15.62	0.10%	15.90%
JDSU:	JDSU	5.17	8.30%	41.30%
LEVEL 3:	LVL	1.09	(12.1%)	55.70%
MICROSOFT:	MSFT	20.91	8.90%	8.90%
MOTOROLA:	MOT	5.81	4.50%	32.30%
NDS:	NNDS	62.93		9.70%
OPENTV:	OPTV	1.57	(0.6%)	27.60%
PHILIPS:	PHG	17.95	16.00%	(0.4%)
RENTAK:	RENT	9.90	(1.1%)	(16%)
SEACHANGE:	SEAC	6.19	(8.4%)	(14.1%)
SONY:	SNE	26.61	0.90%	21.70%
SPRINT NEXTEL:	S	4.18	1.70%	128.40%
THOMAS & BETTS:	TNB	28.01	(6.3%)	16.60%
TIVO:	TIVO	7.63	1.70%	6.60%
TOLLGRADE:	TLGD	5.81	(1.7%)	21.50%
UNIVERSAL ELEC:	UEIC	18.60	(2%)	14.70%
VONAGE:	VG	0.38		(42.4%)
YAHOO:	YHOO	14.73	2.40%	20.70%

Company	Ticker	4/24 Close	1-Week % Chg	YTD %Chg
<b>TELCOS</b>				
AT&T:	T	25.16	(3.1%)	(10.3%)
QWEST:	Q	3.51	(0.8%)	0.80%
VERIZON:	VZ	31.00	(2.5%)	(7.2%)

Index	Value	% Chg	YTD %Chg
<b>MARKET INDICES</b>			
DOW:	INDU	8076.29	(0.7%) (8%)
NASDAQ:	COMPX	1694.29	1.30% 7.40%

### WINNERS & LOSERS

#### THIS WEEK'S STOCK PRICE WINNERS

COMPANY	CLOSE	1-WK CH
1. LODGENET:	3.50	105.90%
2. PLAYBOY:	2.45	18.40%
3. BLNDER TONGUE:	1.00	17.60%
4. CROWN:	2.90	16.00%
5. PHILIPS:	17.95	16.00%

#### THIS WEEK'S STOCK PRICE LOSERS

COMPANY	CLOSE	1-WK CH
1. LEVEL 3:	1.09	(12.1%)
2. EW SCRIPPS:	1.71	(11.6%)
3. LIBERTY GLOBAL:	16.10	(10.6%)
4. LIBERTY INT:	5.07	(8.5%)
5. SEACHANGE:	6.19	(8.4%)

**CableFAX Daily** will publish a special supplemental Mid-Day Report, June 11, profiling the winners of the Sales Executive of the Year Awards and the Sweet 16—with special mention of the 2009 Hall of Fame Inductees. For event information and list of Honorees go to: [www.CableFAX.com/SEOY](http://www.CableFAX.com/SEOY).

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# MaxFAX...

## Independence Time...

Back to DC this week.

The **American Cable Association** holds its annual meeting in the nation's capital as an excuse to descend on the Capitol and lobby, lobby, lobby. Good thing, too.



Paul S. Maxwell

On Tuesday morning, I'm moderating a panel that includes the ACA's **Matt Polka**, the **NCTA's Kyle McSillarow**, the **NCTC's Jeff Abbas**, the **Arizona-New Mexico (AZ-NM CTA) Association's**

**Susan Bitter-Smith** (who also serves as a board member with me of the Cable TV Pioneers) and **Public Knowledge's Gigi Sohn**.

Since we're in Washington and the President is finishing his first 100 days in office, we're going to talk about change.

Lots of change. Broadband stimulus. Video census.

Things both very large and very small systems need to be informed about, consider and find ways to cope... they want all the data in the world for free!

A new Federal Confusion Commission. (The real question: will I have to stop calling it that now that the alien isn't in charge anymore?)

A new **Rural Utility Service**. A new **National Telecommunications Information Agency**. A new Congress.

We've got a nice array of views to bring to the discussion.

From a more practical side, there's a panel on "Broadband Stimulus: Show Me the Money" with the RUS' **Mary Camanola**, NTIA's **Thomas C. Power**, ACA's legal guy **Chris Cinnamon** and **Aurora Net's Ed Kopakowski**.

There also panels with former ACA leaders like **Steve Friedman** of **Wave**, **Jim Bruder** of **Harron**, **Patrick Knorr** of **The World Company**, **Jim Gleason** of **New Wave**, **Ben Hooks** of **Buford** and **Steve Weed** of **Wave** (too). The Washington political insiders panel features **Laura Abshire**, legislative director for Rep. **Mike Ross** (D-AR); **Ryan Lee Triplette**, minority chief intellectual property counsel for Senate Committee on the Judiciary; **Neil Fried**, minority senior counsel for the House E&C Subcommittee on Communications, Technology and the Internet; **Tim Powderly**, majority counsel for House E&C Committee; and **James Reid**, Senate Commerce Committee.

And, did I mention the lobster bake Monday night?

## Random Notes:

• **Want To Cringe?** Go to <http://1800cabletvtheband.com/> and click one of the "listen" bits to hear "1-800-CABLETV – The Band" "perform" two songs... "Bundle Up" and

"Save Save Save." Hard to believe. Sounds a little like a bad copy of the one-hit-wonder studio band called the Ohio Players (yummy? Not really).

• **Daniels Fund:** Nice to remember Bill every year when the Fund awards scholarships... some 250 or so "diamonds in the rough" will get needed help to go to college. Two kids—**Anthony Love** and **Larnell Anderson**—got surprised last week when they thought they were going to opening of a YouthBiz center in Denver... instead, they got scholarships. Both kids—doing well as high school seniors—came from broken homes and now live in youth centers working hard to build quality lives. Bill is still mentoring folks.

• **CEA's Hall of Fame:** Will induct **Apple's Steve Jobs** in October... finally? Along with Jobs, the **CEA** will also induct Washington mega-lawyer **Dick Wiley** for his help in pioneering HDTV and **Dr Joseph Flaherty** (who demonstrated HDTV to the **MCAA** in 1981—not the HDTV we've got today, though). But NOT **John Sie!** Methinks they overlooked an important piece of HDTV's history. Maybe next year. (Anyone think the **Cable TV Hall of Fame** should induct Dick Wiley?)

Paul Maxwell

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**Location:** Grand Hyatt New York, NY



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# VISION AWARDS

# WINNERS

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- BEST PERFORMANCE – COMEDY** Larramie Doc Shaw – "Tyler Perry's House of Payne" | **TBS**
- BEST PERFORMANCE – DRAMA** Benito Martinez – "The Shield" | **FX Networks**
- CHILDREN'S** Ni Hao, Kai-Lan | **Nickelodeon**
- COMEDY** Ugly Betty | **ABC Studios**
- COMEDY** Chris Rock: Kill the Messenger | **HBO**
- DIGITAL MEDIA – LONG FORM** Time Warner Cable's Futbol Mania | **Time Warner Cable**
- DIGITAL MEDIA – SHORT FORM** "Yes We Can," Essence Election '08 | **Telepictures Productions & Time Inc.'s Essence Communications**
- DOCUMENTARY** CNN Presents: Black in America | **CNN**
- DRAMA** Grey's Anatomy | **ABC Studios**
- FOREIGN LANGUAGE** Time Warner Cable's Futbol Mania | **Time Warner Cable**
- LIFESTYLE** Down Home With The Neelys – "Pass It On" | **ScrIPps Networks/Food Network**
- NEWS/INFORMATIONAL** Black in America: Suicide Survivor | **CNN**
- NEWS/INFORMATIONAL** In Conversation: The Michelle Obama Interview | **TV One**
- ORIGINAL MOVIE OR SPECIAL** The Africa Channel Presents: A Night of Tribute | **The Africa Channel**
- REALITY** The mun2 Hook Up: Frankie J | **mun2**
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