

CableFAX Daily™

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What the Industry Reads First

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Law School 101: Understanding SCOTUS' Antitrust Ruling

Late last month, the **US Supreme Court** threw out an antitrust lawsuit against the 3 largest telcos, killing a class action lawsuit that accused **AT&T**, **Verizon** and **Qwest** of engaging in anticompetitive behavior to hinder competition. The case sets up some questions about how the SCOTUS ruling could impact the cable industry. Justice *David Souter*, writing for the majority, said that the idea that a conspiracy is *conceivable* is not enough for a suit to go forward—plaintiffs have to show that a conspiracy is actually *plausible*. It's impossible to say simply whether this is good or bad for the industry since it would vary by the details of the case, how a court applies the ruling, etc... but it does set up some intriguing scenarios, particularly when it comes to retrans. If a cable op were to bring an antitrust case against multiple broadcasters alleging that they conspired to force the operator to pay a higher market rate for retrans rights, the complaint would need to do more than just allege that all the broadcasters were demanding higher fees than the market would justify, says *Burt Braverman*, partner for **Davis Wright Tremaine**. That could be difficult to do in some instances because that proof would perhaps not come out until the discovery portion of the case. For example, Braverman had a case several years ago in which a cable operator sued **Northwest Bell** and pre-breakup **AT&T** for conspiring to keep cable operators from attaching their coax to utility poles. While initially no written or documentary evidence, "when we conducted discovery, we did find some rather damning evidence and won that case at trial," he said. As for that theoretical retrans case, showing that broadcasters' conduct is out of the ordinary or not necessarily consistent with their economic interest might be sufficient to keep the suit from being thrown out, Braverman suggests. Along the same lines, cable could also benefit from the ruling when it's a defendant. The bottom line is that the SCOTUS ruling should help decrease frivolous lawsuits. "Given the cautious manner in which lower courts generally apply Supreme Court decisions, it does seem a safe assumption that most meritorious cases will still be able to get through the pleading gate and proceed to discovery," Braverman says.

VoIP Doings: The US Court of Appeals on Fri rejected a challenge by **Vonage** and upheld an **FCC** requirement that VoIP providers must contribute to the Universal Service Fund. Cable VoIP providers haven't objected to the rule and began paying into the fund even before it was implemented in '06. The court also upheld that 64.9% of total VoIP service revenue is subject to USF contributions, and even hinted that the percentage may be too low. Vonage had argued that it was too high, and some cable ops agree. On Thurs, **ACA** told the FCC the 64.9% safe harbor is so high it impedes or prevents its members from deploying VoIP to small/rural areas. ACA also argued that interconnected VoIP providers should receive access to USF funding (USF can't be used to fund VoIP because it's not classified as a telecom service).

Misleading Thaw: Perhaps stuck beneath a Zamboni, ratings for the initial 2 NHL Stanley Cup finals games on **Versus** averaged a 0.7, down 22% from last season, while HH delivery fell 20% to 485K. Furthermore, the ratings number is roughly equal to the avg delivered by **ESPN** through the '04 season's conference finals. Maybe a rogue ice resurfer



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isn't to blame, but Versus pres *Gavin Harvey* can't explain the contests' poor linear showing and remains flummoxed by the results—especially considering the net's positive hockey trend. "It's just the way it goes," said Harvey. "The NHL has been a game-changer for us, and we remain as jubilant as ever." What's not to like about a regular season that delivered 22% Y-over-Y ratings growth? Or the identical ratings climb produced by conference finals action, comprised this season of 9 games? Although overall postseason ratings were flat, total HH impressions skated upward across the board. "We like to look at totality, and we see nothing but tremendous growth," said Harvey. "We're taking the long view." That vista spans 4 more years on Versus and likely will become increasingly inhabited by digital plays. League cmsr *Gary Bettman* played up the NHL's digital strides prior to the opening of Cup play—specifically partnerships with **MySpace** and **YouTube**—and Harvey said hockey offerings at Versus.com have driven record traffic to the site through Apr and May. Interestingly, the NHL's branded YouTube channel counts more subs and views than the NBA's. Much like the misleading nature of an iceberg, Harvey said there's more to the NHL story than melting playoff ice.

Digital Roar: Comcast continues to help **Lions Gate** grow its digital business, and soon **Blockbuster** and **Best Buy** will too. Lions Gate CEO *Jon Feltheimer* mentioned having pacts with the latter 2 companies for digital delivery of its content during a Fri earnings call, even though the pair has yet to announce plans for content download services. The news is intuitive and certainly not surprising, however, as players such as Wal-Mart and **Microsoft** have already joined Comcast and other cable ops in the VOD content game. While reporting 50% Y-over-Y growth in VOD rev for Lions Gate, Feltheimer also called **FEARnet**, its on demand horror venture with Comcast and **Sony**, "an unqualified success." The current focus is on expanding the offering to other cable ops, he said, and deals with a couple major carriers are imminent. LG pres *Steve Beeks* confirmed earlier Comcast remarks that the pair plans to expand by 1 market their day-and-date VOD test, which, based on current data, will likely "prove to be a substantial accretive source of revenue."

Dow Pow Wow: It took nearly a month, but **Dow Jones'** ruling *Bancroft* family finally responded formally to *Rupert Murdoch's* unsolicited \$5bln bid to acquire the publisher of *The Wall Street Journal*. "The mission of Dow Jones may be better accomplished in combination or collaboration with another organization, which may include News Corp," said the family in a Thurs release. The Bancrofts, who control the shareholder vote of Dow Jones, said they are now willing to meet with Murdoch, although they will also consider other offers.

Programming: USA plundered **Disney's** treasure chest, scooping up the cable TV rights to box-office hit "Pirates of the Caribbean: At World's End." The deal gives USA the network window premiere beginning in Sept '09. -- The **Military Channel** goes behind the blood, sweat and camouflage of the **US Army's** Best Ranger Competition in "Best Ranger '07" (Jun 17, 10pm ET). -- **Sci Fi's** 4th season of "Battlestar Galactica" will be its last; the show's producers said it was a creative decision to end the acclaimed series. The 22-ep final season kicks off early next year.

On the Circuit: **ACC** (formerly **CTPAA**) will hold its annual Forum conference in DC for the 8th consecutive year (Mar 30-Apr 2). Forum co-chairs are **Turner's** *Misty Skedgell* and **Bright House's** *Reinaldo Llano*.

People: **Outdoor Channel Holdings** named to its board ex-**Cox** exec *Ajit Dalvi*, ex-**NCTC** chmn *David Kinley* and **NCTC** founding pres *Michael Pandzik*. -- **Comcast** appointed *Allen Gomez* dir, public affairs and exec dir, **Comcast Foundation**. -- **Imagine Comm** tapped **BigBand's** *Mark Davis* as vp, engineering for network systems and support.

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A&E

CableFAX Week in Review

Company	Ticker	6/01 Close	1-Week % Chg	YTD %Chg
BROADCASTERS/DBS/MMDS				
BRITISH SKY:	BSY	52.39	2.30%	29.70%
DIRECTV:	DTV	23.63	1.90%	(5.3%)
DISNEY:	DIS	35.24	(2.2%)	5.50%
ECHOSTAR:	DISH	46.65	(2%)	22.70%
GE:	GE	37.45	(0.3%)	4.40%
HEARST-ARGYLE:	HTV	26.54	1.80%	5.50%
ION MEDIA:	ION	1.45	1.40%	190.00%
NEWS CORP:	NWS	24.22	1.70%	9.30%
TRIBUNE:	TRB	32.16	0.10%	5.70%

Company	Ticker	6/01 Close	1-Week % Chg	YTD %Chg
MSOS				
CABLEVISION:	CVC	36.35	1.80%	27.60%
CHARTER:	CHTR	3.91	(1.3%)	27.80%
COMCAST:	CMCSA	27.35	0.40%	(3.1%)
COMCAST SPCL:	CMCSK	27.18	0.60%	(2.7%)
GCI:	GNCMA	13.34	0.80%	(15.2%)
KNOLOGY:	KNOL	18.61	2.60%	74.90%
LIBERTY CAPITAL:	LCAPA	113.74	(2.6%)	16.10%
LIBERTY GLOBAL:	LBTYA	38.99	3.00%	33.80%
LIBERTY INTERACTIVE:	LINTA	24.42	4.90%	13.20%
MEDIACOM:	MCCC	9.48	2.50%	17.90%
NTL:	NTLI	28.22		(54.5%)
ROGERS COMM:	RG	41.63	3.30%	40.20%
SHAW COMM:	SJR	43.23	6.60%	39.20%
TIME WARNER CABLE:	TWC	38.68	0.30%	1.00%
WASH POST:	WPO	771.74	1.00%	5.20%

Company	Ticker	6/01 Close	1-Week % Chg	YTD %Chg
PROGRAMMING				
CBS:	CBS	33.48	(0.5%)	8.80%
CROWN:	CRWN	7.75	7.20%	113.50%
DISCOVERY:	DISCA	23.56	2.90%	61.00%
EW SCRIPPS:	SSP	46.51	3.90%	(6.4%)
GRUPO TELEVISIA:	TV	28.87	0.40%	6.90%
INTERACTIVE CORP:	IACI	34.80	1.00%	(6.4%)
LODGENET:	LNET	35.46	(0.5%)	41.70%
NEW FRONTIER:	NOOF	9.03	2.50%	12.70%
OUTDOOR:	OUTD	10.20	2.10%	(20.5%)
PLAYBOY:	PLA	10.99	4.60%	(4.1%)
TIME WARNER:	TWX	21.31	(0.9%)	(1.9%)
UNIVISION:	UVN	36.23		2.30%
VALUEVISION:	VVTV	11.39	2.20%	(13.3%)
VIACOM:	VIA	43.89	0.90%	1.80%
WWE:	WWE	17.69	(0.7%)	15.90%

Company	Ticker	6/01 Close	1-Week % Chg	YTD %Chg
TECHNOLOGY				
3COM:	COMS	4.69	1.10%	14.10%
ADC:	ADCT	16.78	(4%)	2.40%
ADDVANTAGE:	AEY	4.95	6.90%	77.40%
ALCATEL LUCENT:	ALU	13.68	(0.9%)	5.10%
AMDOCS:	DOX	39.03	3.20%	0.70%
AMPHENOL:	APH	36.32	4.50%	17.30%
APPLE:	AAPL	118.40	4.20%	31.10%
ARRIS GROUP:	ARRS	16.33	7.30%	30.50%
AVID TECH:	AVID	33.71	3.80%	(9.5%)
BLNDER TONGUE:	BDR	1.65	1.20%	(2.9%)
BROADCOM:	BRCM	30.62	0.30%	(5.2%)
C-COR:	CCBL	14.75	4.10%	32.40%

Company	Ticker	6/01 Close	1-Week % Chg	YTD %Chg
CISCO:	CSCO	26.86	5.30%	(1.7%)
COMMSCOPE:	CTV	53.70	4.20%	76.20%
CONCURRENT:	CCUR	1.90	22.60%	5.00%
CONVERGYS:	CVG	25.96	0.00%	9.20%
CSG SYSTEMS:	CSGS	28.22	3.60%	5.60%
GEMSTAR TVG:	GMST	4.68	5.90%	16.70%
GOOGLE:	GOOG	500.40	3.50%	8.70%
HARMONIC:	HLIT	8.92	(0.2%)	22.70%
JDSU:	JDSU	13.10	2.50%	(21.2%)
LEVEL 3:	LVLTL	5.91	2.60%	5.50%
MICROSOFT:	MSFT	30.59	0.40%	3.40%
MOTOROLA:	MOT	18.36	(0.2%)	(9.5%)
NDS:	NNDS	51.90	3.00%	7.60%
NORTEL:	NT	26.38	2.30%	(1.3%)
OPENTV:	OPTV	2.30	4.10%	(0.9%)
PHILIPS:	PHG	42.10	3.00%	16.20%
RENTRAK:	RENT	15.98	(1.1%)	3.10%
SEACHANGE:	SEAC	9.04	1.00%	(11.5%)
SONY:	SNE	57.09	0.60%	33.80%
SPRINT NEXTEL:	S	22.87	3.50%	21.40%
THOMAS & BETTS:	TNB	58.90	3.10%	24.60%
TIVO:	TIVO	6.16	1.80%	20.30%
TOLLGRADE:	TLGD	10.97	0.30%	3.80%
UNIVERSAL ELEC:	UEIC	33.37	2.70%	58.80%
VONAGE:	VG	3.06	(4.7%)	(55.9%)
VYVO:	VYVO	5.96	0.20%	31.60%
WEBB SYS:	WEBB	0.05		25.00%
WORLDGATE:	WGAT	0.49		(63.4%)
YAHOO:	YHOO	28.78	0.70%	12.70%

Company	Ticker	6/01 Close	1-Week % Chg	YTD %Chg
TELCOS				
AT&T:	T	40.53	(0.6%)	18.40%
QWEST:	Q	10.32	3.40%	23.30%
VERIZON:	VZ	43.01	1.20%	21.00%

Index	Value	1-Week % Chg	YTD %Chg
MARKET INDICES			
DOW:	13668.11	1.20%	9.70%
NASDAQ:	2613.92	2.20%	8.20%

WINNERS & LOSERS

THIS WEEK'S STOCK PRICE WINNERS

COMPANY	CLOSE	1-WK CH
1. CONCURRENT:	1.90	22.60%
2. ARRIS GROUP:	16.33	7.30%
3. CROWN:	7.75	7.20%
4. ADDVANTAGE:	4.95	6.90%
5. SHAW COMM:	43.23	6.60%

THIS WEEK'S STOCK PRICE LOSERS

COMPANY	CLOSE	1-WK CH
1. VONAGE:	3.06	(4.7%)
2. ADC:	16.78	(4%)
3. LIBERTY CAPITAL:	113.74	(2.6%)
4. DISNEY:	35.24	(2.2%)
5. ECHOSTAR:	46.65	(2%)

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Is where I am right now... high in the jungles along the Napo River in the upper Amazon basin in Ecuador. It's a triple canopy jungle...

And on the way here we spent a quick night in Quito... only 9,300 feet

above sea level (300 feet lower than my home). Big city for as high as it is. Beautiful mountains... some snow capped, even here at the equator. The Inca conquered Quito not long before



Paul S. Maxwell

the Spaniards landed, and the last of the major Inca emperors split his empire into a northern and southern duchy (so to speak) each led by a son... the legitimate one in the north at Cuzco; the illegitimate (but favorite) in the south here at Quito. That split was a great help to the few hundred Conquistadors who, in turn, conquered the Inca playing off the empire's split.

Not much trace of the Inca left here in Ecuador. Pretty cool colonial architecture and a very modern city appended to the old town.

Flew from Quito early in the morning to Coca... where we boarded dug-out canoes and paddled upstream to the Napo River Lodge on the edge

of the Yasuni National Park. From here (thatch huts, mosquito netting, no phones, no TVs, no radios, no newspapers, no web and not even any cable TV at all!), wooden-planked trails snake through the jungles in a half dozen directions, taking us to more birds than I've ever seen... And there's a lake by the lodge with billions, it seems, glow-worms at night. Wonder where they are during the day? Humid, slow. Nice temporary drop out.

Sweetly delivered lectures by the Quichua Indian guides... along with some tension with native Anagu peoples.

Next week, back to Quito and then to the Galapagos.

Random Notes:

- **Stock Classes:** Interesting bit in *Forbes* (06/04) about, "Family-controlled companies used to be a genteel way to do business. But the bruising takeover battles at **Dow Jones** and **Cablevision** may signal an end to that." Or maybe not. While the logic has been that a public-trust type business (that is, newspapers as defined by newspaper owners) needs to be insulated from the greed inherent in capitalism, that argument just doesn't quite resound the way it once did. *James Dolan* and the Knicks might deserve that definition, but does *The Wall Street Journal*? *The Washington Post*? *The New York Times*?

- **Murdoch:** Will the Bancrofts con-

cede? Concede that, unlike their family, **News Corp** just might make significant investments in the *Journal*? Especially globally? Would be better for the paper... and better for us readers. But that's just my opinion...

- **Trees!** Usually, instead of climbing up in the jungle (though I did spend 2 years sweating in Southeast Asia's jungles and humidity), I'm skiing through them. And, speaking of skiing, my friend *Steve Bellamy* has cut an interesting deal with the great Olympic gold medalist *Jonny Moseley* that makes him an investor, an on-air personality and involved in most everything except taking out the trash (Steve's specialty). **The Ski Channel**, a nascent year-round VOD "channel" geared to getting folks to go to the mountains (like mine) to spend money will launch in 1Q '08.

- **Ad Sales:** What is interesting this year is that the 2008 political contests are already in full swing. And what is even more interesting is the impact early advertising is having. Early advertising by 2 of the so-called 2nd tier candidates is already having a positive impact on their poll results. So... ya'll get out there and sell those ads!

Paul Maxwell

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