

CableFAX Daily™

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What the Industry Reads First

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iPad Scrum: Time Warner Cable, Viacom Continue Litigation

Through Sun, **Time Warner Cable's** iPad app has been downloaded more than 500K times, according to court documents filed this week, additional proof the iPad continues to gain adherents among TV viewers. Yet proof has yet to be presented in the MSO's ongoing litigation with **Viacom** over delivery of cable programming through the app, with both sides still arguing over jurisdiction. TWC responded to Viacom's recent arguments (**Cfax**, 6/2) this week and in doing so alleged its choice of court is sound because the programmer lacks any legal claims under either the Copyright Act or Lanham Act. The MSO believes it's contractually permitted to offer subs in-home access to Viacom nets via the iPad because the content delivery occurs over the cable system and not the public Internet, and wonders why Viacom content was cleared nearly 6 years ago to be part of TWC's now defunct Broadband TV service that delivered TV content to PCs. "In-home iPad viewing is nothing more than a version of Broadband TV," argues the MSO, pointing out that Viacom made no effort to curtail "the same grant of rights at issue here" during numerous services agreement alterations made during Broadband TV's lifecycle that ended in '07. Moreover, TWC said it is authorized by Viacom to develop and offer an app allowing subs to view cable programming via smart TVs, and that "there is no fundamental difference between the way TWC will distribute video programming over its cable system to iPads, Smart TVs, or other viewing screens." Viacom's desired restriction of its ability to offer programming via the iPad also produces a competitive disadvantage, argues the MSO, noting how DISH is allowed to feature Viacom content through a service involving delivery to iPads and also to myriad Web-connected devices both inside and outside the home. "Upon information and belief," said TWC, Viacom has neither provided DISH with any special license to do so nor taken any preventative action.

Spectrum Vote: On a 21-4 vote, **Sen Commerce** approved spectrum legislation that includes incentive auctions for broadcasters to voluntarily give up spectrum. With promises to continue to work on the bill, Sen Commerce chmn *Jay Rockefeller* (D-WV) said he would have conversations with leadership immediately about timing for a vote by the full Senate. Citing the need for public safety spectrum, he urged the House to move forward on the bill so that it could be signed into law by Sept, the 10th anniv of the 9/11 terrorist attacks. **NAB**, which has said it

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Source: Nielsen Company using StarTrak; Jan - May 2011 vs. Same Period 2010; Time Period Live+SD CVG AA%; Mon-Sun 6a-6a, Prime: Mon-Sun 7p-12a; Program PGA Tour; Subject to Qualifications



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wants to make sure the auctions are truly voluntary, thanked Rockefeller and ranking member *Kay Bailey Hutchison* for their work in shepherding through the bill. "As the process moves forward, NAB will work with policy makers to help ensure that broadcasters are able to deliver on the promise of free and local digital television made to tens of millions of viewers." **NCTA** and **ACA** were especially happy the legislation includes a framework for reclaiming broadcast spectrum through auctions that will cover costs incurred by cable operators due to channel sharing or repacking and that it will not expand or extend current carriage obligations. Broadcasters who keep their spectrum, but are repacked would also be compensated. NCTA chief *Michael Powell* said the approach "encourages greater spectrum efficiency, meets the broadband needs of public safety personnel, and preserves Commission flexibility with respect to auction design."

In the States: Suddenlink's initially riding **Turner** content in rolling out Suddenlink2GO, an authenticated online service offering its subs access to tens of thousands of TV eps/clips and more than 1,300 movies from any computer in the US with a HSD connection. Shows from **TBS**, **TNT** and **truTV** including "Conan" and "Southland" are in many cases available within 24 hours of original air date. **Hulu** content is also available. -- **Comcast** is expanding its Xfinity Home Security beyond Houston, launching it in parts of Philly, Portland, Jacksonville, Sarasota/Naples, Chattanooga and Nashville. Additional market launches are planned before year-end. In addition to traditional security features like police and fire alarms, the service lets customers turn lights on or off, adjust thermostats and watch live streaming video from wireless cameras while away from home. The package starts at \$39.95/mo.

At the Portals: With **FCC** chmn *Julius Genachowski* agreeing to remove the Fairness Doctrine, Republicans want more info from the FCC on the process and timeline for striking the doctrine and related rules from the Code of Federal Regulations. In a letter to the chmn, **House Commerce** chmn *Fred Upton* (R-MI) and **House Communications** subcmte chmn *Greg Walden* (R-OR) also wanted to know if he has the support of the FCC's other commissioners. Genachowski has said several times that he has no interest in reinstating the Fairness Doctrine, but Republicans have been uneasy about it still being on the books. The letter also pressed the agency to submit plans regarding the president's regulatory review directive. As an independent agency, the FCC does not have to do so, but the chmn has agreed to abide by President Obama's order.

Carriage: **Comcast** launched **Outdoor Channel HD** in the MI region as part of its Digital Preferred HD tier.

Technology: **Cablevision's** Optimum Business expanded its voice offering to serve small businesses of up to 100 employees with a converged voice/data network. -- **DirecTV's** **Roots Sports** tapped **NeuLion's** digital platform to power the Websites housed at rootsports.com covering **FSN NW**, **FSN Rocky Mountain** and **FSN Pittsburgh**. -- **ESPN** will use **Motorola Mobility's** video distribution solution to transition all ESPN and ESPN2 programming to an MPEG-4 HD format, freeing up bandwidth to allow for the future delivery of 1080p60 HD and 3DTV programming to service providers.

Advertising/Marketing: **Ford's** integration with the "BET Awards '11" (June 26) includes a sweepstakes offering a '12 Ford Focus Titanium that heavily incorporates **Twitter** and will commence during the broadcast when the winner is chosen and announced.

Ratings: **WE's** "Braxton Family Values" had its best ever telecast Tues night, notching 685K total viewers (+17% over series' season-to-date avg) and 450K women 18-49 (+29%). -- **TLC's** summer debut week (May 30-June 5) featured 10 series/specials that averaged 1mln+ total viewers, earning the net the #3 prime spot in ad-supported cable among women 25-54 and women 18-49. -- Aided by its coverage of the E3 confab, **G4** posted on Mon its highest-rated day ever among men 18-49 and males 12-17 most-watched day ever among men 18-49. -- **Versus** averaged 2.76mln viewers and earned a 1.6 rating for its coverage of game 3 of the Stanley Cup Finals, up 6% over the last such Mon night game in '08. The Boston market blazed with a 23.37 rating, the market's highest local rating ever for an NHL game on the net.

Programming: **TNT** acquired the exclusive off-network cable rights to **ABC** crime drama "Castle" from **Disney-ABC Domestic TV**. Seasons 1 and 2 will begin airing in summer '12 on TNT. -- The "Conan Concert Series Presented by Kia Motors" on **TBS** will feature late-night performances by *Ke\$ha* (June 27), *Edward Sharpe & the Magnetic Zeros*

BUSINESS & FINANCE

(July 18), *K.T. Tunstall* (July 25) and *Pitbull* (Aug 1). -- As **Nickelodeon's** newest live-action comedy series, "Bucket & Skinner's Epic Adventures" (July 1) spotlights 2 pals living in a fantasy CA beach town.

Editor's Note: Time's running out! You can still submit **CableFAX Program Awards** nominations until the late deadline of June 13. More info: <http://www.cablefax.com/cfp/awards/Program2011/>.

On the Circuit: The Cable Show will welcome Dr. *Jill Biden* during the June 16 general session to speak about "Joining Forces," the White House initiative on America's commitment to supporting military families. The event will stream live at live.thecablesow.com.

People: **News Corp** sr evp/group general counsel *Lawrence Jacobs* is leaving the company to pursue new opportunities.

Business/Finance: Wall St's in a funk right now, but consider this if you're in the market for a cable MSO stock: In 6 of the past 10 years, cable stocks outperformed the S&P during The Cable Show by approx 100bps, according to **Wells Fargo Securities' Marci Ryvicker**, and the group notched out-performance of approx 174bps in 7 of the last 10 years during the post-show week. Ryvicker believes **Comcast** is the way to play the trend this year, "as they tend to be most visible and have been most innovative as of late."

CableFAX Daily Stockwatch

Company	06/08 Close	1-Day Ch	Company	06/08 Close	1-Day Ch
BROADCASTERS/DBS/MMDS					
DIRECTV:	47.52	(0.1)	BLNDER TONGUE:	1.62	(0.01)
DISH:	28.70	0.05	BROADCOM:	33.90	(0.37)
DISNEY:	39.23	(0.12)	CISCO:	15.30	(0.21)
GE:	18.51	0.03	CLEARWIRE:	4.05	(0.06)
NEWS CORP:	17.26	(0.14)	CONCURRENT:	5.73	(0.04)
MSOS					
CABLEVISION:	35.26	(0.39)	CONVERGYS:	12.45	0.05
CHARTER:	57.94	0.07	CSG SYSTEMS:	18.39	(0.06)
COMCAST:	24.12	0.10	ECHOSTAR:	32.33	0.12
COMCAST SPCL:	22.77	0.11	GOOGLE:	519.17	0.14
GCI:	11.52	(0.05)	HARMONIC:	6.95	(0.17)
KNOLOGY:	14.32	(0.46)	INTEL:	21.82	(0.24)
LIBERTY CAPITAL:	83.07	(2.54)	JDSU:	17.40	(1.01)
LIBERTY GLOBAL:	43.05	(0.34)	LEVEL 3:	2.15	(0.01)
LIBERTY INT:	17.30	(0.24)	MICROSOFT:	23.94	(0.12)
SHAW COMM:	21.19	(0.03)	RENTRAK:	22.20	2.80
TIME WARNER CABLE:	74.90	(0.71)	SEACHANGE:	10.01	(0.03)
VIRGIN MEDIA:	31.78	(0.19)	SONY:	25.25	(0.02)
WASH POST:	420.30	(3.68)	SPRINT NEXTEL:	5.34	(0.15)
PROGRAMMING					
CBS:	26.39	(0.06)	THOMAS & BETTS:	50.42	(0.68)
CROWN:	1.83	(0.03)	TIVO:	10.06	(0.19)
DISCOVERY:	40.65	(0.73)	UNIVERSAL ELEC:	24.88	0.04
GRUPO TELEVISA:	22.50	(0.02)	VONAGE:	4.28	(0.17)
HSN:	32.26	(1.07)	YAHOO:	15.10	(0.34)
INTERACTIVE CORP:	35.62	0.16	TELCOS		
LIBERTY:	40.82	(0.06)	AT&T:	30.34	0.03
LIBERTY STARZ:	77.63	(0.35)	VERIZON:	35.90	0.52
LIONSGATE:	6.13	0.16	MARKET INDICES		
LODGENET:	3.24	(0.14)	DOW:	12048.94	(21.87)
NEW FRONTIER:	1.39	(0.06)	NASDAQ:	2675.38	(26.18)
OUTDOOR:	5.93	(0.04)	S&P 500:	1279.56	(5.38)
SCRIPPS INT:	45.71	(0.35)			
TIME WARNER:	34.84	0.02			
VALUEVISION:	6.75	(0.26)			
VIACOM:	56.58	(0.53)			
WWE:	9.70	(0.31)			
TECHNOLOGY					
ADVANTAGE:	2.50	(0.01)			
ALCATEL LUCENT:	5.26	(0.28)			
AMDOCS:	29.23	0.04			
AMPHENOL:	50.95	(1.05)			
AOL:	19.24	(0.61)			
APPLE:	332.24	0.20			
ARRIS GROUP:	10.64	(0.02)			
AVID TECH:	16.54	0.02			
BIGBAND:	2.07	(0.02)			



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Defining Moment

Commentary by Steve Effros

What's "cable television"? After all this time, that may sound like a strange question, but it seems to come up a lot. Right now it's a question both in the legal sense, at the FCC, and in the marketing/public perception sense as we all flock to Chicago next week for the annual Cable Show.

Let's take the legal stuff first. For a long time there was no real question about what "cable television" was. It was the new name for what had been called "community antenna television" or CATV. "Cable" was a more generic term, and one that became the standard after it was clear that the systems (and this is important, as you will see in a minute)... the physical systems—the infrastructure that was being built in cities and towns all over the country to allow folks to see more television—delivered more than just "broadcast" or "over the air" television. They also delivered television programs created specifically for "cable" delivery.

The "cable" system, therefore, became a specially designed infrastructure that maximized the efficiency of delivering aggregated video content to the home. That's what "cable television" still is, and that's what "cable companies" still do. The Feds decided to call "cable" a part of a new group of businesses that delivered multi-channel video service, and created the initialism "MVPD" for multichannel video program delivery service. This included other facilities-based services such as satellite ("DBS" or direct broadcast satellite) as well.

Now, however, there are folks who want to aggregate streaming video over the Internet and call that "cable" or "MVPD" service. There's only one major problem with that: they don't have and haven't built an infrastructure to provide that service! There was a variant, when the telephone industry started to think about delivering video,



called an "Open Video System" (OVS), but that was done primarily to recognize that the telcos had already built an infrastructure in communities, but regulating video aggregation services was different from regulating telephone service, so they had to find a way to distinguish the two. Hence a new name. The telcos have given up on "common carrier-type" OVS systems and are now building what almost everyone now considers "cable systems." We know it when we see it.

But there's also another definitional challenge, and that's what the services are that we, in the cable business, actually deliver. Our infrastructure has proved to be the best around. It's also used for broadband delivery and telephone, too. But those are not "cable television" services. When we deliver "cable," we are delivering an editorially selected and marketed package of video programs for viewing. It really doesn't matter how they are viewed (old CRT, Flat Screen, Projector, iPad...) we don't care. The service is the delivery of the programming.

The key to appreciating that is to look at the many years of development of different technologies displayed at the Cable Show. It really doesn't matter if it's 20 channel or 500 channel, 64Qam or 256Qam, Coax or Fiber, FTTP, FTTH or FTTH, IP or whatever. Those are just various technical advancements and options that have developed for different efficiencies and service improvements. Are we now about to see a "new and improved" cable television at the Show? Well of course. Hopefully that's true every year. We should learn from the computer industry and acknowledge that we are always moving forward, always improving our offering. So this year it will be "Cable 4.0" (or pick any other number you like). Next year it will be even better! That defines "cable television."

Steve

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