

CableFAX Daily™

Tuesday — June 26, 2012

What the Industry Reads First

Volume 23 / No. 122

Oct Sunset: Volume Discounts, Exclusivity Highlight Program Access Comments

Cable is hoping 2012 will be the year that the **FCC** finally lets program access exclusivity rules sunset. Currently set to expire in Oct, the rules prevent exclusive contracts involving satellite-delivered, cable affiliated programming. "Congress did not intend the prohibition to last forever or for as long as there was some hypothetical risk of anticompetitive conduct," **NCTA** said in comments arguing that the multichannel universe has changed and the standard for allowing the rules to expire has been met. What's more, NCTA believes the 1st Amendment bars any further extension of the exclusivity ban. Not surprisingly, Verizon argued that then exclusivity ban should be extended, saying cable ops remain affiliated with some of the most popular national programming networks today and roughly half of RSNs. At a minimum, the FCC should extend the prohibition on exclusive contracts for non-replicable programming, especially regional sports programming, the telco said. But the exclusivity ban wasn't the only issue tackled in comments. Some operators, including **Cox**, urged the FCC to examine volume discounting. While smaller ops have harped on volume discounts for years, Cox is the 3rd largest cable operator #5 MVPD. The problem, it said, is that there is a virtual Grand Canyon between it and the 2nd largest MSO, **Time Warner Cable**. TWC had 12mln basic customers as of Dec '11, while Cox had 4.7mln, according to **SNL Kagan** estimates. "While volume discounts can be legitimate and non-discriminatory when they are based on the economies of scale realized through mass distribution, they are not appropriate when they are based on non-economic factors and when they function primarily to shift costs from larger to smaller MVPDs," Cox said. It wants the FCC to use the proceeding to clarify that programmers must provide their programming to all MVPDs at rates that reflect the true costs of creation, sale and delivery of programming, as well as exploring options it may have for prohibiting non-economic volume discounts provided by non-vertically integrated cable programming providers. Programmers feel differently. While **Discovery** and **MSG** think the FCC should allow the exclusivity ban to sunset, they're opposed to regulating volume discounts or so-called "uniform price increases." Such discounts are not discriminatory, Discovery argued, but instead reflect the value that a particular distribution agreement offers a programmer. "The most likely result of a rule limiting volume discounts would be a de facto appointment of the largest MVPDs as price negotiators for the entire industry," the programmer said. Largest MVPD **Comcast** is in agreement, declaring that volume discounts are expressly permitted by the Communications Act. For the record, Comcast is in favor of sunset of the exclusivity ban, but its networks will be subject to program access arbitration conditions through '18 regardless of what happens with the ban because of an FCC condition for the NBCU deal. Time Warner Cable didn't touch on volume discounts in its comments, focusing only on ending (not relaxing) the exclusivity ban. **Cablevision** and Comcast challenged the FCC's decision to extend the program access rules in '07 through '12. The US Court of Appeals ruled in the Commission's favor in '10, with a 3-judge panel finding the FCC was reasonable and that the prohibition continued to be necessary. But the court did indicate it might be time for the ban to sunset in '12.

Spectrum Dealings: T-Mobile, once a vocal opponent of the Verizon/cable spectrum deal, befriended VZ as the two



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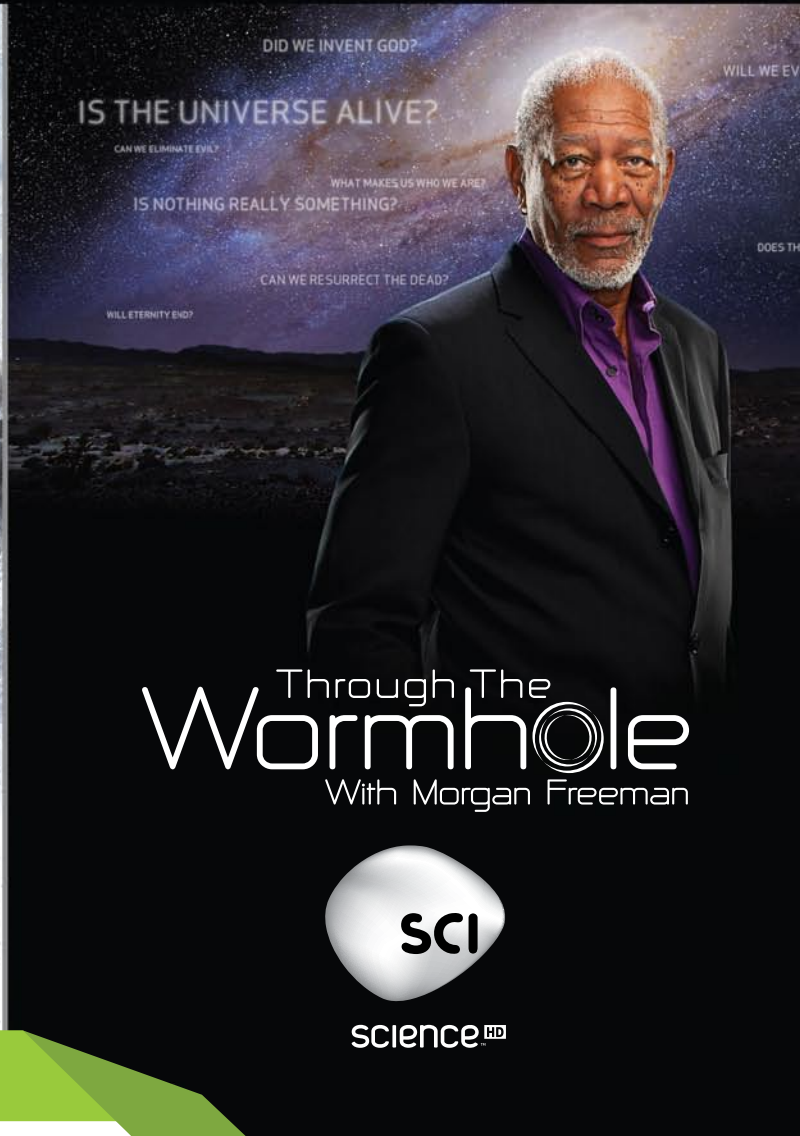
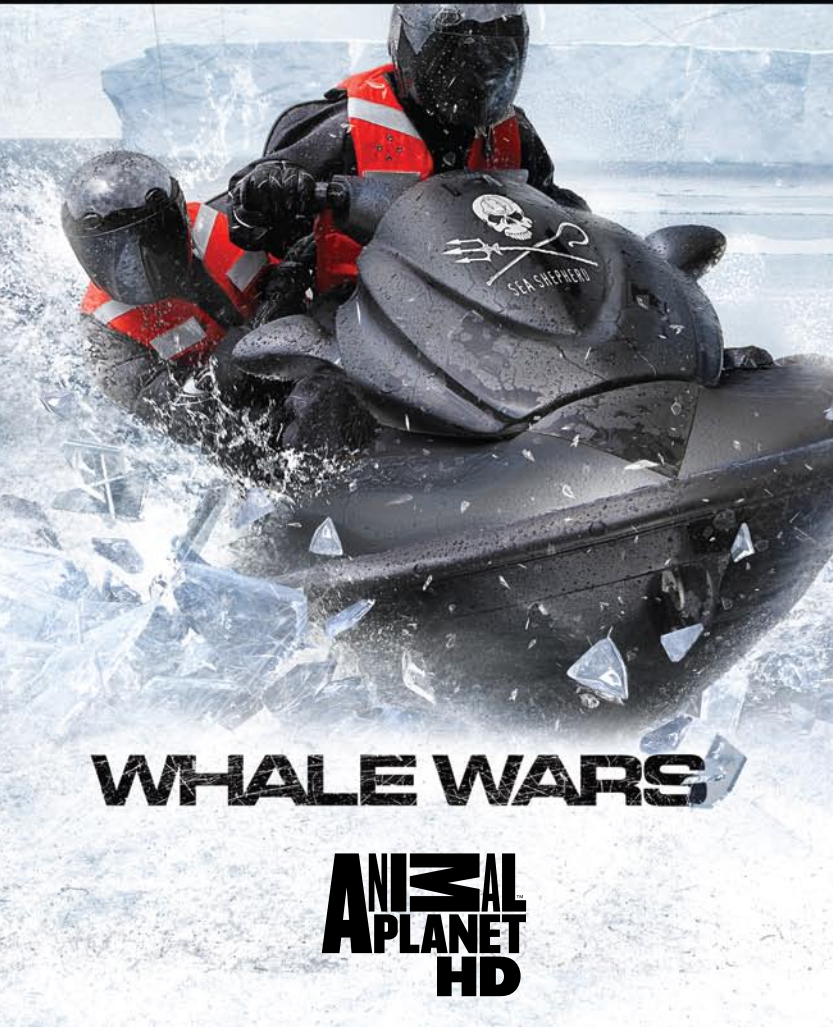
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agreed to swap some AWS spectrum, including parts of the AWS licenses VZ seeks to get from the cable ops. T-Mobile, meanwhile, filed a letter at the **FCC** formally requesting withdrawal of its petition to deny the VZ/cable transaction. The FCC will issue a public notice for comments very soon and the applicant will be reviewed on its own merits, the agency said. Sen Judiciary Antitrust subcmte chmn *Herb Kohl*, who had voiced competition concerns about the VZ/cable deal, was traveling Mon, but his office is analyzing the announcement. The swap, contingent on the FCC's OK of the VZ/cable spectrum deal, is expected to be approved separately later this summer, Verizon said. If everything sails through, T-Mobile would walk away with spectrum covering 60mIn POPs in major cities like DC, Seattle, Philadelphia, Detroit and Memphis while Verizon would gain spectrum covering 22mIn POPs and some hard cash. Both carriers will use the spectrum for LTE. It's unclear if T-Mobile would drop its opposition. The carrier recently told the FCC that the cable spectrum deal "poses grave competitive concerns." The swap "deserves careful scrutiny," **Free Press** policy advisor *Joel Kelsey* said. VZ has made "a compelling case for why it requires more spectrum" for LTE and the swap further ensures VZ "will be able to do just that," a spokesman said. The swap likely clears the path for a rapid approval of the VZ/cable transaction (decision expected in Aug) and Cox deals by removing a major regulatory obstacle in T-Mobile, several analysts said. "There's little left to stand in the way of the approval..." *Jonathan Chaplin* at **Credit Suisse** said. But other conditions like roaming could be attached, they said. If VZ gets its cable spectrum deal through by selling some AWS holdings off to T-Mobile, it may be that the FCC would like to ensure more plural ownership of spectrum going forward, **Bernstein Research's** *Craig Moffett* said.

In the Courts: The Supreme Court Mon agreed to hear **Comcast's** appeal of a Third Circuit decision upholding the certification of a class action suit. The class action in Philly claims the MSO overcharged the customers for service and alleges Comcast bought out competing cable providers to obtain a monopoly in the area. The Supreme Court granted Comcast's petition for an appeal, but said it's limited to the following question: "Whether a district court may certify a class action without resolving whether the plaintiff class has introduced admissible evidence, including expert testimony, to show that the case is susceptible to awarding damages on a class-wide basis."

Advertising: **BET Nets, Africa Channel, Nielsen, TV One, CAB, HuffPost BlackVoices** and others have formed the **Black Media & Marketing Consortium** to raise awareness about the economic opportunity black consumers present. African American buying power could hit \$1.2 trillion dollars by 2015, up from \$913bln in '08, the consortium said. The group is launching a #INTHEBLACK campaign to urge increased investments in the African American consumer marketplace while helping companies reach the black audience more effectively. More info at www.arenyouintheblack.org.

At the Portals: The **FCC** Enforcement Bureau found that **Grande Comm** willfully and repeatedly violated the Commission's equal employment opportunity rules by failing to comply with its recruitment and self-assessment requirements. Grande is apparently liable for a \$10K forfeiture, though it can appeal. The Bureau conducted an EEO audit for '10-'11 and found Grande failed to recruit widely for 34 (28%) of vacancies, relying solely on the use of Internet Websites.

Work Life: Always some interesting factoids in **CTHRA's** Employee Benefits Survey. The latest found that survey respondents spend about \$10K on medical cost per eligible employee, but MSOs' avg net medical cost is 19% of the avg employee salary (total payroll divided by number of employees). For programmers, it is 9%. Other tidbits: 10 companies (6 programmers and 4 MSOs) offer employees incentives to participate in Health Risk Assessments (HRAs), biometric screening, and behavior modification programs. Incentives include cash, gift cards, lower premiums, and, in one case,



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Daytime Emmys: ABC and syndicated content took home the most Daytime Emmy awards Sat night with 5 apiece. **Food's** 2 statues were the most of any cable net (for "Bobby Flay's Barbecue Addiction" and for host *Sandra Lee*), while **The Hub** and **Nick** each received 1 for "Family Game Night" host *Todd Newton* and "Penguins of Madagascar," respectively. The awards had 2mln total viewers and more than 650K 25-54s for **HLN** across 5 telecasts over the weekend. The premiere bcst had 912K total viewers.

Google TV: Google is getting into living rooms globally. Partnering with **Sony**, Google will launch a new set-top box called NSZ-GS7 in the US next month for \$199. Using Google's Chrome browser for Web searches, the device lets users purchase apps from the Google Play Store and search content available from broadcasters and the Internet for VOD. For the 1st time, the US won't be the only country getting the new Google TV product. The UK is receiving the device in July, followed by Canada, Germany, France, Australia, Mexico, Brazil and the Netherlands. Additionally, Sony and Google will launch NSZ-GP9, a Blu-ray disc player with Google TV for \$299 this fall in the US, Canada, Australia, France, Germany, the UK and the Netherlands.

People: **USA Network** named production exec *Scott Friedman* vp, production, alternative programming.

CableFAX Daily Stockwatch

Company	06/25 Close	1-Day Ch	Company	06/25 Close	1-Day Ch
BROADCASTERS/DBS/MMDS					
DIRECTV:	46.81	(0.67)	CONCURRENT:	3.80	(0.08)
DISH:	26.99	(1.38)	CONVERGYS:	14.24	(0.16)
DISNEY:	46.70	(0.77)	CSG SYSTEMS:	16.87	(0.16)
GE:	19.52	(0.29)	ECHOSTAR:	26.39	(1.07)
NEWS CORP:	20.28	(0.29)	GOOGLE:	560.70	(10.78)
MSOS					
CABLEVISION:	12.10	(0.31)	HARMONIC:	4.05	(0.13)
CHARTER:	66.61	(1.3)	INTEL:	26.05	(0.89)
COMCAST:	30.32	(0.51)	JDSU:	9.98	(0.41)
COMCAST SPCL:	29.94	(0.53)	LEVEL 3:	21.06	(0.23)
GCI:	8.00	0.10	MICROSOFT:	29.86	(0.83)
KNOLOGY:	19.71	0.01	RENTRAK:	19.38	0.33
LIBERTY GLOBAL:	47.96	(0.31)	SEACHANGE:	7.91	(0.17)
LIBERTY INT:	16.79	(0.04)	SONY:	13.96	(0.35)
SHAW COMM:	18.85	(0.01)	SPRINT NEXTEL:	3.09	(0.2)
TIME WARNER CABLE:	76.96	(0.9)	TIVO:	8.03	(0.17)
VIRGIN MEDIA:	23.55	0.14	UNIVERSAL ELEC:	11.50	(0.27)
WASH POST:	362.90	(6.33)	VONAGE:	1.88	UNCH
PROGRAMMING					
AMC NETWORKS:	36.67	(0.97)	YAHOO:	15.44	(0.17)
CBS:	31.09	(0.36)	TELCOS		
CROWN:	1.66	(0.04)	AT&T:	34.95	(0.22)
DISCOVERY:	52.44	(0.56)	VERIZON:	43.65	(0.3)
GRUPO TELEVISIA:	20.03	(0.49)	MARKET INDICES		
HSN:	38.59	(0.74)	DOW:	12502.66	138.12
INTERACTIVE CORP:	44.39	(1.11)	NASDAQ:	2836.16	(56.26)
LIONSGATE:	14.86	(0.04)	S&P 500:	1313.72	(21.3)
LODGENET:	1.41	(0.1)			
NEW FRONTIER:	1.65	(0.07)			
OUTDOOR:	7.08	0.08			
SCRIPPS INT:	55.31	(0.85)			
TIME WARNER:	36.62	(0.87)			
VALUEVISION:	2.12	0.10			
VIACOM:	51.57	(0.76)			
WWE:	7.65	0.10			
TECHNOLOGY					
ADVANTAGE:	2.15	0.09			
ALCATEL LUCENT:	1.54	(0.12)			
AMDOCS:	29.32	(0.33)			
AMPHENOL:	53.52	(1.59)			
AOL:	27.15	(0.01)			
APPLE:	570.76	(11.34)			
ARRIS GROUP:	13.35	(0.19)			
AVID TECH:	7.17	(0.23)			
BROADCOM:	32.30	(2.08)			
CISCO:	16.93	(0.2)			
CLEARWIRE:	1.16	(0.04)			

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EYE ON ADVERTISING

General Mills, Smithsonian Channel Blaze New Ad Trails

Some savvy advertisers are now in the business of short-film production. Witness **General Mills'** new campaign for its Nature Valley brand, an extension of its Preserve the Parks initiative that sent an enthusiastic outdoorsman and camera crew to hike 300-plus miles of trails in three iconic parks: Yellowstone, the Great Smoky Mountains and the Grand Canyon. And **Smithsonian Channel** is now integrating the vignettes on-air, online and via VOD. Nature Valley associate director Scott Baldwin and Smithsonian SVP, finance, operations and business development Chris Shelkin tell Cathy Applefeld Olson why this integrated partnership is second Nature.



This seems like an ad departure for Nature Valley.

SB: For us, while there still is a role for pitching our products in compelling ways to raise awareness, there's also a deepening understanding that you've got to create reasons for people to care about your brand. If you really want loyalty, you have to represent a value and lifestyle people want to be associated with. Nature Valley is all about getting out to enjoy nature, so it made sense to launch Preserve the Parks. And we thought we could encourage people to get out themselves through this really compelling content. Instead of pouring all that money into ad buys, I'd much rather work with media partners that will help us spread the message. When you've got something unique, it's easy to find partners like Smithsonian to come up with ideas to do just that, because we were coming with value right off the bat.

Does General Mills have a division dedicated to creating this kind of short-form video content?

SB: To some degree, each brand figures it out. To a large extent, it's individual brand teams and agency partners working with consumers and figuring out what's interesting to you. For this project, we had four different agencies [Nature Valley's primary agency is McCann Erickson] and Back-

packer magazine all involved. We also had a lot of PR and press. *The New York Times* had written about the initiative, *Fast Company* did a long lede in the fall, and we debuted at SXSW. So there was a lot of earned media for us.

On the network side, how did you determine where to integrate the Nature Valley vignettes?

CS: We have a lot of documentaries—"America's Yellowstone," "The Secret Life of the Rainforest," the "Aerial America" series—and the Nature Valley vignettes really fit right in. Frankly, instead of having four or six 30-second ads on a pod, having these two-to-three minute vignettes is a little more seamless, not to mention more enjoyable and interesting.

Why does cable fit for this campaign?

SB: The beauty of cable, especially when going after loyalty, is these are still big numbers and audience vs broadcast networks, but the added benefit is it's more targeted. It's great because it lets you have a much more specific message, and it lets you do things that are a little unusual.

Is Smithsonian integrating across many platforms?

CS: We are cautious about going too far down a path with these sorts of things. If you go on our Website, you see Nature Valley on the home page. That was a way to really give it some extra umph; it's not buried six clicks in. On VOD, we have the vignettes running. Giving them an ad upfront before every nature show is pretty significant. It all adds to the integration and the value we can provide to GM beyond the traditional spots.

What would go too far down the advertising path?

CS: We've had a lot of discussion internally about how much advertising we would put on social media platforms. We'd be less inclined to put traditional advertising in the social media space as opposed to a Preserve the Parks type initiative, which is certainly more family-friendly and isn't going to turn off viewers. In the case of Nature Valley and GM, we've done it in a certain way doesn't cross line.

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