

CableFAX Daily™

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What the Industry Reads First

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CALMing Trends: FCC Records Nearly 16K Loud Commercial Complaints

Those spikes we noted in 4Q complaints at the FCC were in fact related to the introduction of the Commercial Advertisement Loudness Mitigation Act, which requires MVPDs and broadcasters to make sure the volume for ads is at the same level as regular TV (*Cfax*, 5/14). Even though the law didn't go into effect until Dec 13, the FCC recorded 4777 loud commercial complaints in Dec. It looked like something was up when the FCC reported that cable and satellite services' informal complaints increased by more than 67% in 4Q to 2799 and broadcast complaints jumped 104% to 5544. However, the Commission's 4Q complaint report didn't break out how many of those were related to CALM. No one got figures on CALM complaints until bill authors *Anna Eshoo* (D-CA) and *Sheldon Whitehouse* (D-RI) asked the FCC last month to provide details. Now, they want the FCC to release quarterly progress reports. "While the initial data from the FCC does not conclusively indicate the effectiveness of the CALM Act yet, it does demonstrate that consumers remain highly committed to keeping the volume of TV commercials at a reasonable level," Eshoo said in a statement. The good news is that complaints are on the decline, dropping to 4405 in Jan and then shooting down to 2407 in Feb. In May, the number of complaints barely broke the 1K mark. "We have worked closely with our member companies throughout the lead up to and implementation of the CALM Act. The fact that complaints have declined each month is a positive trend and we'll continue to keep focused on compliance," NCTA said. NAB also said it's committed to ensuring that local stations comply with the law. Of the 15,850 complaints received from Dec 13-June 5, roughly two-thirds (10,700) were referred to the Enforcement Bureau to determine if action is warranted. The remaining 5150 complaints were incomplete, with consumers informed that their complaint lacked necessary info. The FCC is analyzing complaints by MVPD, station, commercial, geography, programmer and other factors. The FCC determined that it's not getting enough specific or consistent info for reliable analysis, and has identified ways to improve the complaint form. However, it said implementing the improved form has been delayed by the agency's reduced budget and belt-tightening due to sequestration. The FCC did not specify how many of the complaints were directed at cable vs broadcast programming, though in a response to lawmakers, it said that there have been 55 complaints regarding loud commercials in VOD programming. As far as waivers, the FCC has granted 170 waiver requests from MVPDs and broadcasters (168 are 1-year waivers and 2 are short-term waivers).

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Deals: **BCI Broadband** finished its previously announced **James Cable** acquisition, increasing its homes passed to 300K subs in LA, TN, GA, WY, OK and TX. It also picked up the support of a cable heavyweight. Cable industry pioneer *Alan Gerry* will join BCI's Advisory Board—his 1st direct involvement with a cable op since the sale of **Cablevision Industries Corp** (then the 8th largest MSO) to **Time Warner** in '96. Earlier this year, BCI acquired certain **Allegiance** assets. The James Cable systems, currently operating under the brand name **Mediastream**, were owned by **GoldenTree Asset Management**. **Waller Capital Partners** served as the exclusive financial advisor to GoldenTree and James Cable in the transaction.

Google Fiber: Get ready for a sports tier on **Google Fiber TV**. Starting in Aug, Google will move the **Longhorn Network**, the **Sportsman Channel**, and horseracing net **TVG** out of its standard channel lineup and into a new premium sports package, according to a Google Fiber email update. Also on the tier: **NFL Red Zone**, **MLB Strike Zone**, **Universal Sports**, **Gol TV**, **Outside TV** and **HRTV**. Google will announce pricing info in early Aug.

In the Courts: The **US Supreme Court** denied **Cablevision's** emergency stay request filed Mon and seeking suspension of the **National Labor Relations Board's** complaints against the company. The MSO argues that 2 different federal courts of appeals (the DC Circuit and the 3rd Circuit) have ruled that NLRB lacks a valid quorum and thus has no authority to act. That issue is still pending in the DC Circuit, with the Supreme Court just denying Cablevision's request to stop an NLRB hearing expected to start next week. **CWA**, which filed complaints with the NLRB, chided the MSO Tues. "Cablevision must be desperately looking for a new lawyer who can appeal to an even higher power. In the meantime, the Cablevision workers remain willing to negotiate a fair contract, which would cost the company less than all the lawyers they are hiring to bust the union," said *Bob Master*, CWA District 1 political and legislative dir. Cablevision's statement continued to link the Obama administration to "Big Labor": "The role of Congress is to ensure a balanced NLRB, however, the *Obama* Administration bypassed Congress in order to stack the NLRB in favor of Big Labor. Two different federal appeals courts have rejected that scheme and established that the NLRB has no authority to act. This ruling does not address the merits of the case, and we are confident that the D.C. Circuit Court's final ruling on our petition will put a stop to the NLRB's evasion of the law."

TVE: **Comcast** launched Home Pass, a new TVE feature that allows Xfinity TVE subs who access the Xfinity.com/TV Website from within their homes to automatically log in. The MSO trialed the feature during the London Olympics and March Madness '13 and a full rollout is underway. Comcast seeks to extend Home Pass to additional platforms.

Ratings: The **BET Awards** drew big numbers Sun, with 7.6mln total viewers and accounting for 51% of all social chatter across cable (nearly 10mln tweets on Twitter, more than 100K Instagram posts). With 4.7mln HHs, it's the #2 BET telecast of all time, behind only the BET Awards '09 Michael Jackson tribute.

Launch Pad: **One America**, founded by **Wealth TV**-owner **Herring Broadcasting**, has completed its new studios and built new production operations in San Diego and DC ahead of its July 4 launch, pres *Charles Herring* told **Cfax**. The sub count for the conservative news net will be low at launch but will slowly ramp to 12 to 15mln by year end, Herring said.

On the Hill: House Commerce's telecom subcmte chief counsel *Neil Fried*, who held the position since *Fred Upton* (R-MI) became chmn of the committee, is leaving. He will be replaced by *David Redl*, who has been counsel on the committee since '11. According to *Politico*, Fried is expected to join **MPAA** and lead the trade group's govt affairs operation. Meanwhile, *Ray Baum*, former OR PUC commish and currently sr adviser on the subcmte under chmn *Greg Walden* (R-OR), will be sr policy adviser and chief strategist on state initiatives, cybersecurity, telecom and technology. Upton also welcomed *Kelsey Guyselman*, a **NAB** vet, to the subcmte as counsel.

Competition: **DISH** is providing free access to live TV and up to 75 on-demand shows on **Southwest Airlines'** more than 400 WiFi-enabled aircraft. The live TV lineup for customers using Internet-ready devices features nets such as **Bravo**, **Golf Channel**, **Food**, **HGTV** and **Travel Channel**. DISH's "Boston Guys," stars of the company's Hopper commercials, surprised each of the passengers aboard a Southwest flight from Boston to Baltimore with a free iPad 2. New DISH customers signing up for the Hopper Whole Home DVR and a programming package can also get 12,500 points in Southwest's Rapid Rewards frequent flyer program and the option to receive an iPad 2.

Programming: **Hallmark Channel** late Tues announced that it's cancelling *Marie Osmond's* daytime talk show "Marie" after 1 season. The net cited its need to diversify its programming and a glut of daytime talk shows, particularly in syndication. "As the network examined and explored its work in daytime, we determined that the best direction for this daypart is

BUSINESS & FINANCE

to offer quintessential lifestyle service shows that inform and entertain our viewers with how to, tips and ideas for living their best lives," Hallmark said in a statement. "We also find these types of shows best serve today's demand for digital video." In other Hallmark news, the net said its original movie "Dead Letter" might become a primetime series. If greenlit, the series (produced by *Martha Williamson*, exec producer of "Touched By An Angel") would air on the channel next year. The movie premieres on Oct 12.

-- **Showtime** booked a new documentary project tentatively titled "Knock Knock, It's *Tig Notaro*," with the comedian traversing the country this Aug to put on comedy shows. -- **TNT** ordered a 4th season of "Falling Skies." The 1st of 10-eps will premiere next summer.

People: Consultant *Hal Rosenberg* joined **UP** as svp, affil sales, managing affil sales for UP (formerly **GMC**), **gMovies** and **Aspire**. -- **Arris** added former **Verizon** CFO *Doreen Toben* to its board. -- **Nick** upped *Megan Casey* and *Claudia Spinelli* to vp, current series, **Nick Animation**.

Business/Finance: **Discovery Comm** is reorganizing its global tax and treasury functions, with an eye toward increasing the company's treasury presence in main international markets. Treasurer *Gina Collis* will now report to evp *Todd Davis*. The company will add a London-based treasury leader to oversee EU activities.

CableFAX Daily Stockwatch

Company	07/02 Close	1-Day Ch	Company	07/02 Close	1-Day Ch
BROADCASTERS/DBS/MMDS					
DIRECTV:	62.15	(0.23)	ECHOSTAR:	38.86	(0.19)
DISH:	42.65	(0.27)	GOOGLE:	882.31	(5.57)
DISNEY:	63.26	(0.67)	HARMONIC:	6.47	(0.01)
GE:	22.90	(0.44)	INTEL:	23.72	(0.17)
NEWS CORP:	29.21	(0.19)	JDSU:	14.50	0.06
MSOS					
CABLEVISION:	19.02	0.58	LEVEL 3:	20.34	(0.55)
CHARTER:	125.14	2.92	MICROSOFT:	33.94	(0.42)
COMCAST:	40.75	0.09	RENTRAK:	20.14	(0.55)
COMCAST SPCL:	38.86	(0.09)	SEACHANGE:	11.73	0.02
GCI:	8.65	0.21	SONY:	21.81	0.34
LIBERTY GLOBAL:	75.65	1.24	SPRINT NEXTEL:	7.15	0.08
LIBERTY INT:	23.28	(0.05)	TIVO:	11.27	0.22
SHAW COMM:	23.65	(0.32)	UNIVERSAL ELEC:	28.91	0.03
TIME WARNER CABLE:	109.47	(1.48)	VONAGE:	2.78	0.03
WASH POST:	495.68	4.50	YAHOO:	24.99	(0.25)
PROGRAMMING					
AMC NETWORKS:	65.77	0.25	TELCOS		
CBS:	49.11	0.38	AT&T:	35.53	0.23
CROWN:	2.45	(0.02)	VERIZON:	50.63	0.27
DISCOVERY:	78.51	0.72	MARKET INDICES		
GRUPO TELEVISIA:	24.39	(0.29)	DOW:	14932.41	(42.55)
HSN:	54.00	(0.21)	NASDAQ:	3433.40	(1.09)
INTERACTIVE CORP:	47.13	(0.41)	S&P 500:	1614.08	(0.88)
LIONSGATE:	29.93	0.74			
SCRIPPS INT:	68.23	0.62			
STARZ:	21.53	(0.19)			
TIME WARNER:	59.52	1.22			
VALUEVISION:	5.01	(0.34)			
VIACOM:	68.12	(0.09)			
WWE:	10.32	(0.01)			
TECHNOLOGY					
ADVANTAGE:	2.27	UNCH			
ALCATEL LUCENT:	1.76	(0.03)			
AMDOCS:	36.81	(0.19)			
AMPHENOL:	78.47	(0.03)			
AOL:	36.63	(0.14)			
APPLE:	418.49	9.27			
ARRIS GROUP:	14.53	(0.02)			
AVID TECH:	5.77	(0.02)			
BLNDER TONGUE:	1.02	-0.00			
BROADCOM:	33.35	0.16			
CISCO:	24.32	(0.01)			
CLEARWIRE:	5.00	UNCH			
CONCURRENT:	7.58	(0.02)			
CONVERGYS:	17.91	(0.05)			
CSG SYSTEMS:	22.12	0.08			

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CableFAX Daily
WHAT THE INDUSTRY READS FIRST.



Think about that for a minute...

Cable's Independence Day

Commentary by Steve Effros

It's only fitting that in this pre-July 4th column I get to speculate on what I see as the possibility for cable television to finally get its "independence" from historical bias. Admittedly, I should probably hold off until December 15th (that's when the first ten amendments to the Constitution, "The Bill of Rights," formally went into effect back in 1791) but since the Supreme Court last week issued an opinion that I suspect clearly marks the path to our independence, I figured now was the time.



It hasn't happened yet, and it's likely to take several more years and maybe another court case or two, but one of the longest legal fights for our rights under the First Amendment seems to finally be at a turning point. I say this

because at the end of this year's Supreme Court term, they issued a major decision on the Voting Rights Act which signaled an entirely sensible new recognition that laws and regulations need to take into account the realities of today, not the historical precedents that may have rightly created those laws in the first place.

I don't agree with the result of what the Court did, since I think there is still plenty of reality left to the proposition that voting rights are being abridged in lots of places, and that many rules and regulations are being adopted specifically to try to restrict voting rights. The practical result was wrong, but what the Court said was correct. You have to look at the realities of today, and write laws based on that current investigation, not simply stick with the past. In the case of voting rights, the problem, as everyone knows, is that Congress is currently being held in intentional gridlock, so any new investigation will not pass political muster. The net effect is to gut the law.

That I disagree with. But saying that current realities are critical and must be taken into account to measure the constitutionality of impositions on our rights is, to me, totally logical and should be extended to cable's First Amendment Rights as well.

Here's what Chief Justice Roberts said in the majority opinion: "Congress must ensure that the legislation it passes to remedy that problem speaks to current conditions... The current... system [is] based on 40-year-old facts having no logical relationship to the present day."

OK, he's talking about the constitutionality of the Voting Rights Act. But need I point out that the "Must Carry" rules, a clear imposition on the First Amendment Rights of cable television operators, was first adopted by the FCC 41 years ago, and the same "logic" for their alleged "need" has been applied ever since?

In fact, there are a whole host of rules that are still applied to cable that have "...no logical relationship to the present day." The Supreme Court has now articulated a very clear standard when it comes to impinging on constitutional rights. There must be a "logical relationship to the present day." Many, if not most of the rules still imposed on cable, but not its competitors, can be traced back to a time well before the major impact of DBS, telco competition and the Internet. If those rules do not "remedy a problem" that "speaks to current conditions," they should be the subject of quick reconsideration and elimination. We don't need the Supreme Court or more court cases to do that. The FCC could start doing it right now. It should.

Steve

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