

CableFAX Daily™

Thursday — July 11, 2013

What the Industry Reads First

Volume 24 / No. 133


McDowell's Take: FCC Will Lose Net Neutrality Case


As the Sept 9 oral argument date for the net neutrality case at DC Circuit Court of Appeals nears, former Republican FCC commish *Robert McDowell* predicts that the FCC will at best lose 2-1. **Verizon** is suing the agency over its '10 Open Internet Order, which includes rules requiring network transparency, no blocking and no unreasonable discrimination. Speaking on a **Hudson Institute** panel, McDowell noted that Judge *David Tatel*, one of the 3 judges who will hear Verizon's challenge, wrote in **Comcast's** case against the FCC the opinion that curbed the agency's earlier attempt to establish net neutrality principles. The DC Circuit ruled in that case that the FCC had not demonstrated sufficient statutory authority to regulate network management practices. Fellow Republican and **FTC** commish *Maureen Ohlhausen* agreed: "Keep an eye on Judge Tatel, who she said "will be an important factor" in the case. The 2 other judges are *President Clinton* appointee *Judith Rogers* and *President Reagan* appointee *Laurence Silberman*. McDowell, now a Hudson fellow, said the real question before the court is "where is the fence around the FCC's authority." The Open Internet Order doesn't limit the FCC's jurisdiction, something the court pointed out in the Comcast case, he said: "It's a dangerous place for us to be." In the Comcast case, Judge Tatel warned that an FCC win "would virtually free the Commission from its congressional tether." Such lack of boundaries creates uncertainty that can discourage investment, argued **Verizon** svp, public policy *Craig Silliman*. McDowell said an unrestricted FCC could extend its authority to areas over which it currently has limited or no jurisdiction "as long as the FCC can make the argument that the issue ties to Internet and broadband adoption." He cited areas such as privacy and cybersecurity. Meanwhile, McDowell cited recent reports that **ESPN** has held discussions with major carriers like Verizon to subsidize mobile broadband. Under such an arrangement, ESPN would pay the carrier to exempt consumption of its mobile content from any monthly data caps. "Let the market experiment," McDowell said.

MMTC: Comcast's broadband cost per megabit is 87% lower than in '02, evp *David Cohen* said during his keynote at the **Minority Media and Telecom Council's** Access to Capital conference Wed. Meanwhile, it's time to "retire the myth that US is lagging" in broadband in industrial nations, he said. "About 85 percent of U.S. house-

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holds already have access to cable networks capable of speeds of 100 megs per second or more compared to about 20 percent just four years ago,” he said. In addition, achieving digital equality is possible, but it requires public-private partnerships, connecting “the broadband industry, Silicon Valley, non-profit organizations, schools, the faith-based community and government.” Cohen said Comcast’s effort to improve access also includes measures to ensure diversity and inclusion.

TVE: More than 100 **NCTC** companies are participating in the group’s TVE initiative, WatchTVEverywhere. The authentication platform now includes more than 50 major programming services. NCTC claimed the milestone makes WatchTVEverywhere the most widely deployed initiative by volume of distributors. Ops ranging from those with fewer than 500 subs to those with up to 200K subs are participating. Few NCTC members have in-house resources to deploy an authentication platform, NCTC pres/CEO *Rich Fickle* said in a statement. “The WTVE platform enables NCTC to deliver a viable solution to its members at a fraction of the expense yet ensuring integrity in managing content rights between operators and content providers,” he said.

Boxee: Wed marks the end of **Boxee**’s cloud-based DVR service following **Samsung**’s acquisition of the streaming company. “We realize many of you loved the service, and we’re sorry it won’t be available moving forward,” according to a statement on Boxee’s Website.

In the Courts: **Hearst** is the latest broadcaster suing **Aereo**. About 2 months after Aereo launched its service in Boston, Hearst filed a lawsuit against the streaming service in the US District Court for the District of Massachusetts. The broadcaster alleged the company violated copyright rules by retransmitting Hearst affil **WCVB** signals without permission. “If Aereo is permitted to profit from the unauthorized retransmission of copyrighted television programming, WCVB will be deprived of existing and potential revenue streams from advertising and authorized retransmissions,” according to court documents. A group of broadcasters including **CBS** and **ABC** sued Aereo last year in NY. Aereo wasn’t immediately available for comment.

Carriage: **AT&T U-Verse** has added commercial-free toddler net **BabyTV** to its U-family TV package.

Rumor Mill: **DirecTV** is among the 3 pay-TV distributors reportedly still in the running for a potential acquisition of **Hulu**, 5 days after Hulu closed the bidding process, **Bloomberg** reported. **Chernin Group**, backed by **AT&T**, is also reportedly still in the bidding while **Time Warner Cable** might be seeking a minority stake in the online streaming service.

Verizon/Cox: **Verizon Wireless** and **Cox** extended their cable and mobile service combo to Cox’s Gulf Coast region, including South Louisiana and the Florida Panhandle. The duo are offering new and current subs who sign for the bundles Visa prepaid debit card up to \$100.

TVE: **Cablevision** added **Starz Play** and **Encore Play** to its Optimum TV to Go service.

T-Commerce: **A&E Networks** extended its partnership with E-commerce firm **Delivery Agent** through ’15. Under the terms, Delivery Agent will manage multiplatform commerce selling more than 7K products across **A&E**, **History** and **Lifetime**.

Campus Venture: **HBO** and *Mark Cuban* are among investors betting on **Tivli**, which offers IP-based TV services to university students on their devices anywhere on campus. The startup landed \$6mIn in funding led by **New Enterprise Associations**, with participation from **Felicis Ventures**, **Rho Ventures**, **HBO**, Cuban’s **Radical Investments** and **WME**. The money will fund Tivli’s expansion and other “operational and strategic initiatives,” the company said. Tivli was incubated by **Harvard Student Agencies**, the **Technology and Entrepreneurship Center** at Harvard, **Summer at Highland**, **Fresh Pond Partners**, and the **Harvard Innovation Lab** (i-lab). Tivli also offers a built-in guide and DVR, and it’s rolling out integration with TVE and on-demand products like HBO Go, as well as interactive content and social media integration.

Technology: Among the IT issues to be discussed at the **SCTE Cable-Tec Expo** in Oct are: strategies for ingesting and interpreting the massive volumes of data flowing through cable network systems; the challenges and opportunities of cloud-based storage and playback; and best practices for IPv6 deployment. The conference will

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focus on areas like IP networking, quality assurance and advanced services and the physical layer.

M&A: Sprint now owns 100% of **Clearwire** after completing its acquisition of the 4G service provider. As a result of the deal, Clearwire stock will no longer be listed for trading on the **NASDAQ**.

People: Fox upped *Barbara De Santis* to svp, broadcast standards for **Fox Broadcasting** and **Mundo-Fox**. It also promoted *Trae Williams* to svp, broadcast standards and practices. -- **Ovation** tapped *Kristina Levsky* as vp, public relations and corporate communications. She will head the net's newly-created PR department.

Editor's Notes: This Fri is the absolute final nomination deadline for **Most Influential Minorities** and **Most Powerful Women**. Enter here: <http://www.cablefax.com/cablefaxmag/2013nominations.html>. -- Our upcoming **July 23 Webinar** will tackle social media measurement. More info: http://www.cablefax.com/cfp/webinars/2013_July23/ -- And **CableFAX's TV Innovation Summit** is Sept 24 in NYC. We're also finalizing speakers, so let us know if you'd like to be considered (email Exec Editor *Michael Grebb* at mgrebb@accessintel.com). Check out our preliminary agenda at <http://www.cablefax.com/cfp/awards/tvinnovationsummit-2013temp/>

CableFAX Daily Stockwatch

Company	07/10 Close	1-Day Ch	Company	07/10 Close	1-Day Ch			
BROADCASTERS/DBS/MMDS								
DIRECTV:	62.23	(0.18)	GOOGLE:	905.99	0.75			
DISH:	41.66	(0.08)	HARMONIC:	6.73	0.05			
DISNEY:	64.91	(0.03)	INTEL:	23.25	0.12			
GE:	23.54	(0.08)	JDSU:	14.44	0.09			
NEWS CORP:	30.02	(0.07)	LEVEL 3:	21.78	(0.04)			
MSOS								
CABLEVISION:	18.85	0.15	MICROSOFT:	34.70	0.35			
CHARTER:	125.35	(0.32)	RENTRAK:	20.90	0.45			
COMCAST:	42.91	0.24	SEACHANGE:	11.72	0.22			
COMCAST SPCL:	41.17	0.38	SONY:	21.77	(0.01)			
GCI:	9.35	0.04	SPRINT NEXTEL:	7.18	0.12			
LIBERTY GLOBAL:	77.42	(0.47)	TIVO:	11.62	0.19			
LIBERTY INT:	24.02	0.49	UNIVERSAL ELEC:	31.09	0.15			
SHAW COMM:	24.20	0.01	VONAGE:	2.91	(0.02)			
TIME WARNER CABLE:	113.85	(0.21)	YAHOO:	26.56	(0.12)			
WASH POST:	500.38	2.78	TELCOS					
PROGRAMMING								
AMC NETWORKS:	68.04	(0.3)	AT&T:	35.39	(0.21)			
CBS:	51.17	(0.12)	VERIZON:	50.54	(0.42)			
CROWN:	2.45	0.01	MARKET INDICES					
DISCOVERY:	82.86	0.95	DOW:	15291.66	8.68			
GRUPO TELEVISA:	24.63	(0.9)	NASDAQ:	3479.38	16.50			
HSN:	57.71	0.28	S&P 500:	1652.62	0.30			
INTERACTIVE CORP:	49.87	0.96	TECHNOLOGY					
LIONSGATE:	31.50	0.08	ADDVANTAGE:	2.30	0.04			
SCRIPPS INT:	71.00	0.18	ALCATEL LUCENT:	1.84	0.02			
STARZ:	22.76	0.16	AMDOCS:	37.81	0.09			
TIME WARNER:	61.01	(0.27)	AMPHENOL:	82.73	0.98			
VALUEVISION:	5.30	0.15	AOL:	37.32	(0.25)			
VIACOM:	70.63	0.92	APPLE:	420.73	(1.62)			
WWE:	10.65	0.02	ARRIS GROUP:	15.24	0.31			
TECHNOLOGY								
ADDVANTAGE:	2.30	0.04	AVID TECH:	5.92	(0.13)			
ALCATEL LUCENT:	1.84	0.02	BLNDER TONGUE:	0.98	(0.02)			
AMDOCS:	37.81	0.09	BROADCOM:	34.07	0.37			
AMPHENOL:	82.73	0.98	CISCO:	25.41	0.26			
AOL:	37.32	(0.25)	CONCURRENT:	7.87	(0.02)			
APPLE:	420.73	(1.62)	CONVERGYS:	18.76	(0.02)			
ARRIS GROUP:	15.24	0.31	CSG SYSTEMS:	23.55	(0.37)			
AVID TECH:	5.92	(0.13)	ECHOSTAR:	40.02	0.08			
BLNDER TONGUE:	0.98	(0.02)						
BROADCOM:	34.07	0.37						
CISCO:	25.41	0.26						
CONCURRENT:	7.87	(0.02)						
CONVERGYS:	18.76	(0.02)						
CSG SYSTEMS:	23.55	(0.37)						
ECHOSTAR:	40.02	0.08						

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Think about that for a minute...

Shmoo Tomatoes

Commentary by Steve Effros

OK, how many of you are old enough to remember Al Capp's famous utopian character, the Shmoo? I'm sure, since they were only featured in the Li'l Abner comic strip for about 6 months in 1948, many of you may not have any idea what I'm talking about or the ruckus it caused because of Capp's not-terribly-subtle social commentary. But I'll bet you've heard the word "shmoo," primarily because in many grocery stores



today you can buy strange little bowling-pin shaped tomatoes that are still called "shmoo tomatoes."

I got to thinking about those shmoo tomatoes the other day as I was reading various studies talking about folks watching television, or using their iPad, or tablet, or smartphone or computer and all the effort that was going into trying to figure out "which way" consumers (particularly the "next" generation, whatever that's going to be called) would be watching programming. I got this funny thought about the grocery industry or the farming industry starting to debate whether folks were going to start, or stop eating tomatoes because they were migrating to shmoo tomatoes or cherry tomatoes or heritage tomatoes.

But of course, they don't do that. They recognize that folks are still eating tomatoes, it's just that they eat different types of tomatoes at different times, and they are consumed in different ways.

So why is it that when someone starts watching a program on a screen that's not attached to a wire in the wall, some folks feel compelled to say that they are no longer watching "television" but are, instead, doing something else? There are headlines galore about a "reduction" in "television viewing," but at the same time—farther down in the article—you find out that

the folks who have "stopped" watching "television" are, instead, still watching the exact same video program on a screen, be it part of a "tablet" or a "computer" or a "smartphone!" Why isn't that watching "television?"

From the point of view of the program producer, the program is being watched. It's a video program that is reproduced on a screen. The fact that the screen is not attached to the wall with a wire or two doesn't seem to me to make much difference. Please note that all the latest studies indicate that at least 80 percent of the "viewing" of those programs that is not on a traditional "television" is still being done in the home. So really, the only difference is the cord.

Now before some of you clog my email in-box, yes, I know, this is an economic game. I just think we should call it what it is. So long as the programmer can somehow categorize these types of viewing as "different" they can try to contractually segregate them and charge for two "different" uses of their intellectual property. Sweet, but silly.

It's time we called this for what it is; a gambit to extract extra money for the sale of the same product to the same user. The consumer press is complicit in this, along with all the "researchers" and the like since they all still try to create a false distinction regarding "viewing" based on the type of screen being used. Sorry folks, it's all "viewing" and whether you call it "television" or "tablet," viewing makes no difference. Yes, we can distinguish a shmoo tomato from a roma or a cherry, but they're still all tomatoes. Watch it any way you want. It's still television.

Steve

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(Steve Effros was President of CATA for 23 years and is now an advisor and consultant to the cable industry)

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