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High Seas: All Hands on Deck for Retrans Water Fight

The retrans floodgates opened Wed with both sides dousing one another with so much rhetoric that we had to don life-jackets to keep up. The biggest retrans waves in July usually stem from **NCTC** and **ACA's Independent Show**, but this year there is an industry-wide tsunami headed for shore. For starters, **Time Warner Cable, AT&T, ACA, DISH, Discovery Channel** and others announced the formation of the **American TV Alliance** to urge federal lawmakers to tackle retrans consent reform (www.americantelevisionalliance.org). Several of the members previously asked the **FCC** to consider requiring broadcasters to keep their signals on during retrans talks and to require arbitration. The Commission is considering their petition, but the tea leaves in DC haven't looked too promising for the distributors. That might help explain why this coalition seems a little more focused on Congress. Time Warner Cable, which faces a contract expiration at the end of Aug with **Disney** and **ESPN** for O&Os and cable nets, has led the charge on retrans reform. On Wed, it dusted off its RollOverorGetTough.com site that was used during protracted negotiations with **Fox** for O&Os and cable nets late last year. At this point, there is no mention of any specific programmer, with it offering a general dissertation on rising programming costs. It breaks out every dollar brought in as 40% going to programming, 54% to operate its business and 6% to net income. TWC also launched newspaper ads rebutting **Verizon FiOS** full-page ads that started appearing in some markets last week, warning TWC subs that they could lose Disney/ESPN programming *(**Cfax**, 7/13)*. "Don't Let FiOS Scare You Into Switching," the TWC missives begin. The ads say TWC is negotiating with Disney and expects to reach a new agreement at a reasonable price. They also warn that signing up for FiOS doesn't protect subs from channel blackouts. Now for the broadcasters... Disney kept a low profile Wed, but **NAB** had plenty to say. It sent out an email titled "The Retrans Record" with the words "Vol. 1 Issue 1." The faux newspaper featured links to recent stories with NAB re-writing the headlines and summing up its position. "**Cablevision** Was Against Retrans Fees Before It Was For 'Em" was the label on an article outlining how **Rainbow**, ATA Coalition member Cablevision's programming arm, is threatening to pull channels with **AT&T U-Verse**. "The NAB is apparently confused. Retransmission fees are a scheme by the big broadcast members of NAB to extract billions from American consumers," a Cablevision spokesperson responded. "Rainbow's matter relates to a private dispute over cable carriage fees which, as everyone knows, cable networks have always received from distribu-

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tors. It seems the NAB does not even comprehend the scheme of its own big broadcast members." Known for colorful quotes, NAB communications evp *Dennis Wharton* kept the water churning. "The notion that Time Warner and its Big Pay TV allies are part of a group designed 'to protect consumers' is about as credible as **BP** executives joining **Greenpeace**," he said. "Pay TV built its business on the backs of broadcast programming, and it is not unreasonable for local TV stations to expect fair compensation for the most-watched shows on television."

Madder Men? No sign of a deal between **AT&T U-Verse** and **AMC, WE** and **IFC** at our deadline Wed. The telco's more than 2mln subs will lose the nets at midnight if an agreement is not brokered. The he-said, she-said statements continued, with both sides launching attack websites (www.att.com/fighting4you and www.iwantmytvchannels.com). "We are making every effort to reach a fair agreement and continue providing these channels to our customers," AT&T said, adding that it has made numerous proposals. "It's unfortunate that **Rainbow Media**, owned by **Cablevision**, is clearly not negotiating in good faith, is trying to charge significantly more than the average of what our TV competitors pay for these channels, and is acting in a way that harms competition and limits consumer choice." Rainbow sees things differently, saying its execs have been at U-Verse offices for several weeks, doing everything possible to reach a deal. "We have agreements with every other television provider in the country and have never had our networks dropped in more than 25 years," Rainbow said.

Advertising: **Magna Global**'s latest forecast predicts US ad revenues will grow 2.1% on a normalized basis this year, compared to 1.6% previously. That figure excludes political and Olympic advertising, which bump total spending up to 3.4%. For national cable (including the Olympics and excluding online rev), Magna expects 7.5% growth this year to $19.4bln. That gives cable 54.9% of the national TV market and is up from last year's 2.5% decline. For local cable (excluding political), Magna sees 15% growth to $3.6bln. That's up significantly from last year's 9.9% decline. Broadcast takes the overwhelming share of the local market (nearly 81%) with $14.9bln predicted—an 8.3% increase over last year.

Terrestrial Trauma: **AT&T** officially made good on its threat to supplement its pending program access complaint at the **FCC** if **Cablevision** and **MSG** didn't give it access to MSG HD and MSG+ HD. Wed's filing came after recent FCC rule changes that allow MVPDs seeking terrestrial programming to file complaints. While AT&T argues that CVC's withholding is clearly unfair, Cablevision gen counsel said that the rules do not mean that MSG's decision to withhold the programming automatically constitutes a violation. "There is simply no evidence that AT&T's ability to provide satellite cable programming in Connecticut has been hindered even a little, let alone 'significantly,' by the absence of MSG HD and MSG+ HD from its U-Verse TV channel lineup," CVC wrote, noting that U-Verse has access to all games through the SD feeds. AT&T said that SD is an inadequate substitute for HD. The next step will be for CVC and MSG to file a rebuttal at the FCC, which will have to decide the matter. Meanwhile, Cablevision is challenging the terrestrial rules in federal court.

At the Portals: The cable industry is committed to the **FCC's** same fundamental goal of promoting investment and competition in the video device marketplace, but cautions against the NOI's presumption of a single standardized solution. That's the word in an **NCTA** filing on the FCC's efforts to create a navigation device that would handle TV and online. "The Commission can play a more constructive role by working with stakeholders to develop voluntary market-driven solutions that generally let consumers, rather than government-imposed technology mandates, drive innovation," NCTA said. The group's worries over the NOI include that it suggests "unworkable (and unlawful) elements of disaggregation and disintermediation of the cable business" as well as ignoring how MVPDs negotiate rights from content owners.

Carriage: Not sure if it'll make up for the potential loss of 3 **Rainbow** channels, but **AT&T U-verse** subs will get a free preview of all **Starz** and **Encore** channels, including VOD services, Thurs through Sun.

Online: **The Washington Post** joined with **Bloomberg** for co-branded portal **Washingtonpost.com/business**, which will meld the Post's politics and policy news with Bloomberg's global business news and data. -- **Blastr.com**'s the new name of **Syfy**'s online destination for ent news about sci-fi, fantasy and horror. After achieving 50% annual traffic growth, the site's set to re-launch Thurs with expanded content such as video and guest bloggers. -- **Google** launched **FiberforCommunities.com** to highlight and provide info about its planned buildout of ultra high-speed broadband networks in certain locales and to approx 50K homes initially.

Ratings: The **Media Rating Council** voted to grant accreditation to all 25 of **Nielsen's** Local People Meter markets (10 accreditations were renewals, 15 were new). -- **SNY** averaged a 3.3 HH rating for the 1st half of the MLB

BUSINESS & FINANCE

season, a record for the RSN and 3% higher than last year's avg. -- **USA** said its original "Covert Affairs" debuted Tues night to 2.1mln 18-49s, making it the top new scripted series premiere on cable this year in the demo. The ep delivered 4.9mln total viewers, 2.3mln 25-54s and 858K 18-34s.

Programming: **HBO** picked up new drama series "Luck," starring *Dustin Hoffman*. It centers on horse racing and starts shooting this fall. -- **Nat Geo Wild**'s new series "Wild Nights with *Mireya Mayor*" explores animal life (like Burmese pythons) thriving in "concrete jungles" such as New Orleans and Miami (debuts Aug 9). -- "America's Got Talent" judge *Piers Morgan* is reportedly the front-runner to fill *Larry King*'s talk show slot on **CNN**. -- **Outdoor Channel**'s '11 slate includes fishing shows "Buccaneers and Bones," on which *Tom Brokaw* and *Michael Keaton* will appear, and "Fishing University," hosted by *Charlie Ingram*.

People: **Epix** appointed *Maureen Taran* vp, original programming live events. -- **Akamai** tapped *Chuck Neerdaels* as vp, engineering, cloud platforms. -- **WOW** CFO *Steven Cochran* adds pres to his title. He was previously COO and CFO.

Business/Finance: **Motorola** shares closed up nearly 3.5% after a report in the *WSJ* said **Nokia Siemens** may be looking to buy its telecom equipment div for $1.1bln-$1.3bln.

CableFAX Daily Stockwatch

Company	07/14 Close	1-Day Ch
BROADCASTERS/DBS/MMDS		
DIRECTV:	35.86	(0.66)
DISH:	19.25	(0.42)
DISNEY:	34.24	(0.21)
GE:	15.20	(0.01)
NEWS CORP:	14.83	0.07
MSOS		
CABLEVISION:	25.81	(0.49)
COMCAST:	18.98	(0.04)
COMCAST SPCL:	18.02	0.02
GCI:	8.26	0.02
KNOLOGY:	11.71	0.06
LIBERTY CAPITAL:	46.19	1.04
LIBERTY GLOBAL:	27.96	(0.47)
LIBERTY INT:	11.34	(0.08)
MEDIACOM:	7.00	(0.08)
RCN:	14.87	(0.03)
SHAW COMM:	19.39	(0.14)
TIME WARNER CABLE:	56.19	(0.56)
VIRGIN MEDIA:	18.04	(0.18)
WASH POST:	437.38	4.09
PROGRAMMING		
CBS:	14.32	(0.28)
CROWN:	1.75	(0.07)
DISCOVERY:	36.63	0.03
GRUPO TELEVISA:	18.90	0.12
HSN:	28.38	0.66
INTERACTIVE CORP:	23.09	0.31
LIBERTY:	36.18	0.11
LIBERTY STARZ:	53.97	0.09
LIONSGATE:	6.61	0.08
LODGENET:	3.92	0.08
NEW FRONTIER:	1.72	(0.03)
OUTDOOR:	5.43	0.09
PLAYBOY:	5.51	0.14
SCRIPPS INT:	41.90	(0.23)
TIME WARNER:	30.44	(0.48)
VALUEVISION:	1.87	(0.04)
VIACOM:	37.78	(0.51)
WWE:	16.28	(0.14)
TECHNOLOGY		
ADC:	12.51	(0.01)
ADDVANTAGE:	2.67	(0.09)
ALCATEL LUCENT:	2.80	0.02
AMDOCS:	29.06	0.19
AMPHENOL:	42.34	0.36
AOL:	21.07	0.12
APPLE:	252.73	0.93
ARRIS GROUP:	11.57	0.21
AVID TECH:	13.01	0.01
BIGBAND:	3.19	(0.01)
BROADCOM:	37.17	0.04
CISCO:	23.74	0.65
CLEARWIRE:	6.91	(0.09)
COMMSCOPE:	25.99	0.47
CONCURRENT:	4.97	0.19
CONVERGYS:	10.69	0.01
CSG SYSTEMS:	19.46	0.21
ECHOSTAR:	20.33	0.24
GOOGLE:	491.34	2.14
HARMONIC:	6.04	0.09
INTEL:	21.36	0.35
JDSU:	10.61	(0.07)
LEVEL 3:	1.14	0.02
MICROSOFT:	25.44	0.31
MOTOROLA:	7.46	0.25
RENTRAK:	26.04	(0.16)
SEACHANGE:	8.94	(0.08)
SONY:	29.08	(0.15)
SPRINT NEXTEL:	4.61	0.03
THOMAS & BETTS:	36.93	0.23
TIVO:	8.35	0.06
TOLLGRADE:	6.34	(0.04)
UNIVERSAL ELEC:	18.21	(0.05)
VONAGE:	2.45	0.00
YAHOO:	15.37	(0.15)
TELCOS		
AT&T:	24.96	0.01
QWEST:	5.54	0.03
VERIZON:	26.84	(0.05)
MARKET INDICES		
DOW:	10366.72	3.70
NASDAQ:	2249.84	7.81

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Very Well Said

The quote highlighted in newspapers around the country from the Court of Appeals decision Tuesday striking down the FCC's "indecency rules" says it all:

"The past thirty years has seen an explosion of media sources, and broadcast has become only one voice in the chorus."

Very well said, and it gets to the crux of the difficulties the FCC now finds itself in not only with regard to attempting to impose or manage regulations regarding broadcasters, but its overall problem in trying to harmonize a "media chorus" it has no real reason to "conduct" in the first place.

Steve Effros

A little simplified history; the Communications Act, and before it the Radio Act were originally thought necessary, regarding broadcasting, to deal with spectrum management. If everyone tried to operate radio stations on the same frequency no one could be heard. So set up a national regulatory body to dole out the "channels," in the case of television, and then things would work. Oh, and since there is now distribution of a free license to use the public's spectrum, put some other conditions on the licensees, like making the broadcaster operate "…in the public interest," then oversee compliance.

And that's where it all started. Where we are today, as the Court has pointed out, is vastly different. But the Commission (admittedly because in many cases Congress has written more and more rules over the years, and rarely gotten rid of any of the old ones) now oversees a portion of what the Court described as a chorus, and their regulations create dissonance with all the other singers! It's time for Congress to write a new score, one that allows for a whole lot more improvisation and much less government metronomics.

Ok, I just made up that word, but the point is the government is still operating like a metronome, clicking back and forth, back and forth as though everything was still the same as it used to be. It's not.

Why should the broadcasters be treated, with regard to editorial content, any differently from all the other sources of content? Why should "Saving Private Ryan" be able to be shown on all outlets other than broadcast at a sensible hour like 9pm, but not on broadcast until after ten? Why should the government be involved in any of this? On–Off switches work just fine, and with all the options for video programming today, which a vast majority of all viewers have taken advantage of, why not just get out of the regulatory business completely and let consumers decide if they want to consume or not?

These questions go much farther. What sense is there to a "must carry" rule if that "singer" is only one optional member of a chorus? Again, consumers could decide. And why protect the broadcasters with warped notions regarding competition, like the "retransmission consent" rules when most other "dominant" programmers are blocked by anti-trust ("access") concepts from creating geographic cartels?

And then, of course, there are all the new proposed rules for Internet delivery. Why? If, as the Court notes, the world has changed and there are lots of available "voices" out there, what is the rationale for the government to try to regulate all of them? Is it that we still have "scarcity" and there is a need to technically coordinate the delivery of those voices? That, as the Court made so clear, is a very hard argument to make any more. It's time to consider reducing the government's role in telecommunications, not protecting an old regime.

Steve

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