

# CableFAX Daily™

Monday — August 31, 2009

What the Industry Reads First

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## Ownership Limits: Cap Off Doesn't Mean Comcast M&A is On

With a federal appeals court throwing out the FCC's 30% ownership cap, questions immediately popped up over whether Comcast would soon get bigger. The largest US MSO has actually seen its percent of the multichannel universe drop from about 26% earlier this year to 24.8% today thanks to subscriber losses. Comcast has always said its challenge of the FCC rule was a matter of policy, and not a reflection of any planned M&A activity. But the cap, which was approved during *Kevin Martin's* tenure as FCC chmn, has prevented Comcast from considering deals in the past. Earlier this year, *Cfax* broke the news that Comcast said it had to decline seriously pursuing the possibility of a stake in *Charter* because the FCC rule would have resulted in attribution of all of Charter's subs, pushing it over the 30% cap (*Cfax*, 4/27). While the ruling is a clear win for cable, **Wells Fargo Securities** analyst *Marci Ryvicker* warned clients that it could add fuel to the M&A speculation surrounding how Comcast plans to use its significant amount of cash on hand. While she writes that the firm does not believe Comcast is gearing up to make a large acquisition, "we do understand that this M&A fear may be an overhang on the stock." **Sanford Bernstein's** *Craig Moffett* called the ruling "largely a moral victory for Comcast, with little or no practical implication as it relates to potential M&A." That's because even with the elimination of the cap, any major M&A activities will still be reviewed on a case-by-case basis by the FCC, without certainty of approval, Moffett told clients. The US Court of Appeals for DC vacated the subscriber limit, saying the cap is arbitrary and capricious. In '07, **NCTA's** *Kyle McSillarow*, noting that the court had previously thrown out the 30% cap, told *Cfax* that he thought the court's reaction would be, "What about 'no' didn't you understand?" He was pretty close, with the court's opinion explaining that it had previously instructed the FCC to consider the impact of competitors. "It is apparent that the Commission either cannot or will not fully incorporate the competitive impact of DBS and fiber optic companies into its open field model," wrote Justice *Douglas Ginsburg* in an opinion that called the FCC's "dereliction" in this case "particularly egregious." It's not clear what the FCC will do next. "As part of the Cable Act, Congress required the Commission to adopt horizontal ownership limits to enhance effective competition in the cable television marketplace," current FCC chmn *Julius Genachowski* said. "The FCC staff is currently reviewing the Court's decision with respect to the limit previously

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adopted, and the Commission will take this decision fully into account in future action to implement the law.” While the ruling could be appealed to the full DC Circuit or to the Supreme Court, such action is considered unlikely. “We believe regulators are likely to eventually create a new cap or other rules that give cable companies more headroom,” **Stifel Nicolaus** analysts said. Meanwhile, groups such as **Free Press** decried the ruling and asked the FCC to revisit the cap.

**Sports Squabbles:** **NCTC** has stepped onto the **Tennis-Cablevision** court to “clarify” what it calls recent “factual misstatements” made by The Tennis Channel. “We are unaware of any previous launch request where The Tennis Channel delayed authorization for 30 days,” NCTC said Fri. *Sports Business Daily* reported earlier in the week that Tennis CEO *Ken Solomon* cited NCTC rules about a 30-day notification period before gaining access to a program network. Tennis is claiming that Cablevision is trying to use the cable operator buying co-op as a “PR ploy.” “Cablevision, one of the nation’s largest cable companies, is trying to use NCTC, a representative of the nation’s smallest cable companies, to enable it to provide Tennis Channel only to a narrow band of its customers willing to pay a steep, premium subscriber fee,” Tennis said in a statement. NCTC said it responded in writing to the Tennis Channel on Thurs, documenting that Cablevision is an NCTC member. “Cablevision is also a participating member under our agreement with The Tennis Channel, and as such is entitled to carry the network,” NCTC said. Tennis said it has submitted a new proposal to CVC to provide Tennis to its customers broadly at no additional cost to them. Cablevision continues to maintain that it already has a contract to carry the net. As of Fri afternoon, the MSO was showing multi-colored bars, not the US Open, on the HD and SD channels it opened up for Tennis. CVC announced Fri that upon launch of the channel, it would offer new Sports Pak customers the 1st month of service free. CVC’s sports tier retails for \$5.95/month and includes **MLB Net, NHL Net, Versus** and **Outdoor Channel**. Meanwhile, **DirectTV** is still gearing up to drop Versus at 6am ET Tues if the 2 don’t reach a deal before the contract expires.

**In the Courts:** Former **MSG** and **MSG Net** pres *Bob Gutkowski* filed suit Fri against **Yankees** Chair *George Steinbrenner* over the creation of **YES Net**, claiming it was his idea, reports the *NY Times*. He is seeking at least \$23mln in damages. The paper said Yanks pres *Randy Levine*, on behalf of Steinbrenner, said that he would have no comment until he read the lawsuit.

**In the States:** For the '09-'10 broadcast season, **Nielsen** estimates that the total number of TV HHs in the US will be 114.9mln. That represents the smallest increase (+400K homes from last year) in the last 10 years. -- **Mediacom** will boost HSD download speeds in the Des Moines, IA, area to up to 12 Mbps from 8 Mbps and double upload speeds to up to 1Mbps from 512 kbps, reports local TV station **KCCI**. Customers who also have the Internet and Video-Internet-Phone package will see speeds jump from 10 Mbps to 15 Mbps and an upload speed of 1 Mbps. -- **CableLabs** has qualified a Multi-stream CableCARD from set-top maker **Evolution** and content security solutions provider **Conax**. The newly qualified M-Card is designed to meet OpenCable CableCARD Interface 2.0 Specifications and will be marketed specifically as the Evolution M-Card powered by Conax Content Security.

**Ratings:** “Royal Pains” goes down in history as **USA’s** most-watched 1st season of an original series ever, beating prior record-holder “The 4400.” The show averaged 7mln total viewers, 3.3mln 25-55s and 2.9mln 18-49s. Thurs’ season finale notched a 4.4 HH rating. -- “Tiny & Toya” attracted 1.9mln total viewers Tues, making it the #1 original series in **BET** history.

**Programming:** **Showtime** has ordered a pilot for a half-hour series about a woman with cancer called “The C Word” (working title). *Laura Linney* will star and produce the “provocative” potential series about the ups and downs a suburban mom must face while also finding the light side in a dark situation. -- **TNT** ordered up a 3rd season of “Leverage,” slated to air next summer. Season 2 has averaged 4.1mln viewers to date. -- **Fine Living** is teaming with **Hearst Magazines’** *House Beautiful, Town&Country* and *Veranda* for a multi-tiered marketing program anchored by an hour-long special, “Cinema Style: Designer Visions” (Jan 25, 8pm). The initiative will include online, on-air, print and live event components to help drive sampling to both the net and mags. -- **Style** picked up “Giuliana & Bill” for a 2nd season, with production beginning next month. -- **YES** will debut its 90-min *George Steinbrenner* “Yankeeography” Wed, 11pm, immediately following the net’s Yanks-O’s post-game show. -- *Richard Roeper* guest hosts movie trailer show “The Big Tease” on **ReelzChannel**, Sept 1 at 4:30 and Sept 11 at 10pm.

**CableFAX Week in Review**

Company	Ticker	8/28 Close	1-Week % Chg	YTD %Chg
<b>BROADCASTERS/DBS/MMDS</b>				
BRITISH SKY:	BSY	35.61	(1.4%)	28.40%
DIRECTV:	DTV	24.94	0.60%	8.90%
DISH:	DISH	16.86	(1.9%)	52.00%
DISNEY:	DIS	26.84	0.20%	19.80%
GE:	GE	14.08	(0.9%)	(6.1%)
NEWS CORP:	NWS	12.93	(0.3%)	36.20%
<b>MSOS</b>				
CABLEVISION:	CVC	22.61	4.70%	36.60%
COMCAST:	CMCSA	15.71	4.20%	(5%)
COMCAST SPCL:	CMCSK	14.86	3.10%	(5.9%)
GCI:	GNCMA	6.65	(1.8%)	(17.8%)
KNOLOGY:	KNOL	7.56	(5.3%)	46.50%
LIBERTY CAPITAL:	LCAPA	19.52	6.20%	314.40%
LIBERTY ENT:	LMDIA	28.05	0.40%	60.50%
LIBERTY GLOBAL:	LBTYA	22.50	1.90%	41.30%
LIBERTY INT:	LINTA	9.66	(0.6%)	209.60%
MEDIACOM:	MCCC	5.18	(6.3%)	20.50%
RCN:	RCNI	9.41		
SHAW COMM:	SJR	16.91	(1.9%)	1.10%
TIME WARNER CABLE:	TWC	37.36		
VIRGIN MEDIA:	VMED	11.93	7.10%	143.10%
WASH POST:	WPO	454.07	(0.6%)	18.60%

Company	Ticker	8/28 Close	1-Week % Chg	YTD %Chg
<b>PROGRAMMING</b>				
CBS:	CBS	10.78	0.40%	34.10%
CROWN:	CRWN	1.87	(5.1%)	(34.4%)
DISCOVERY:	DISCA	25.87	1.00%	82.70%
EW SCRIPPS:	SSP	7.25	1.50%	228.60%
GRUPO TELEVISIA:	TV	17.83	(1.3%)	28.00%
HSN:	HSNI	10.74	(10.8%)	47.70%
INTERACTIVE CORP:	IACI	18.66	(4.3%)	18.60%
LIBERTY:	L	34.13	3.00%	21.50%
LODGENET:	LNET	7.13	(4.6%)	918.60%
NEW FRONTIER:	NOOF	2.21	(3.5%)	30.00%
OUTDOOR:	OUTD	6.81	(8.3%)	(9.1%)
PLAYBOY:	PLA	2.77	(1.8%)	28.20%
RHI:	RHIE	2.57	1.20%	(68.3%)
SCRIPPS INT:	SNI	32.70	(2.6%)	50.10%
TIME WARNER:	TWX	28.33	0.20%	29.20%
VALUEVISION:	VVTV	3.23	9.10%	878.80%
VIACOM:	VIA	26.48	1.70%	31.60%
WWE:	WWE	14.32	(0.2%)	45.50%

Company	Ticker	8/28 Close	1-Week % Chg	YTD %Chg
<b>TECHNOLOGY</b>				
3COM:	COMS	4.39	4.50%	92.50%
ADC:	ADCT	8.98	(7.2%)	64.70%
ADVANTAGE:	AEY	1.96	5.90%	10.10%
ALCATEL LUCENT:	ALU	3.76	8.00%	74.90%
AMDOCS:	DOX	24.30	(0.9%)	32.90%
AMPHENOL:	APH	35.32	5.90%	47.60%
APPLE:	AAPL	170.05	0.50%	99.20%
ARRIS GROUP:	ARRS	13.39	(1.3%)	68.40%
AVID TECH:	AVID	13.29	3.30%	21.80%
BIGBAND:	BBND	3.97	(1.5%)	(28.1%)
BLNDR TONGUE:	BDR	1.25	(2.3%)	23.80%
BROADCOM:	BRCM	28.78	2.70%	69.60%
CISCO:	CSCO	22.00	(0.9%)	35.00%

Company	Ticker	8/28 Close	1-Week % Chg	YTD %Chg
CLEARWIRE:	CLWR	7.81	9.20%	96.70%
COMMSCOPE:	CTV	27.79	0.30%	78.80%
CONCURRENT:	CCUR	4.50	(11.8%)	32.40%
CONVERGYS:	CVG	11.21	3.40%	74.90%
CSG SYSTEMS:	CSGS	15.52	(3.4%)	(11.2%)
ECHOSTAR:	SATS	19.27	(1.6%)	29.60%
GOOGLE:	GOOG	464.75	(0.1%)	51.10%
HARMONIC:	HLIT	6.72	1.10%	19.80%
INTEL:	INTC	20.25	7.20%	51.70%
JDSU:	JDSU	6.95	6.10%	89.10%
LEVEL 3:	LVL1	1.23		75.70%
MICROSOFT:	MSFT	24.68	1.10%	29.60%
MOTOROLA:	MOT	7.21	(4.9%)	63.90%
OPENTV:	OPTV	1.33	0.80%	8.10%
PHILIPS:	PHG	22.99	(1.6%)	24.90%
RENTRAK:	RENT	16.48	0.50%	39.80%
SEACHANGE:	SEAC	9.00	(1.7%)	24.80%
SONY:	SNE	27.30	2.60%	24.80%
SPRINT NEXTEL:	S	3.77	(3.3%)	106.00%
THOMAS & BETTS:	TNB	28.56	3.10%	18.90%
TIVO:	TIVO	10.00	(3.5%)	39.70%
TOLLGRADE:	TLGD	5.54	(6.1%)	15.90%
UNIVERSAL ELEC:	UEIC	19.34	(2.3%)	19.20%
VONAGE:	VG	1.37	197.80%	107.60%
YAHOO:	YHOO	14.85	0.40%	21.70%

Company	Ticker	8/28 Close	1-Week % Chg	YTD %Chg
<b>TELCOS</b>				
AT&T:	T	26.21	0.80%	(0.9%)
QWEST:	Q	3.76	(0.8%)	12.10%
VERIZON:	VZ	31.02	(1.1%)	(1.7%)

Index	Value	% Chg	YTD %Chg	
<b>MARKET INDICES</b>				
DOW:	INDU	9544.20	0.40%	8.70%
NASDAQ:	COMPX	2028.77	0.40%	28.60%

**WINNERS & LOSERS**

**THIS WEEK'S STOCK PRICE WINNERS**

COMPANY	CLOSE	1-WK CH
1. VONAGE:	1.37	197.80%
2. CLEARWIRE:	7.81	9.20%
3. VALUEVISION:	3.23	9.10%
4. ALCATEL LUCENT:	3.76	8.00%
5. INTEL:	20.25	7.20%

**THIS WEEK'S STOCK PRICE LOSERS**

COMPANY	CLOSE	1-WK CH
1. CONCURRENT:	4.50	(11.8%)
2. HSN:	10.74	(10.8%)
3. OUTDOOR:	6.81	(8.3%)
4. ADC:	8.98	(7.2%)
5. MEDIACOM:	5.18	(6.3%)

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# MaxFAX...

## The Last Of the Dog Days

Tomorrow is September? Well, Tuesday will be.

The days are getting shorter. Saw my first yellow aspen leaf last week. Birds are stopping by on their way



Paul S. Maxwell

South. Pre-season football is supplying great laugh lines. Congress will soon be back in session where health care reform noise will dominate for awhile.

So it is another

transitional time...

In our businesses, too.

We've got an activist Federal Confusion Commission again—not to mention a very activist Federal government... so here are a few things to keep in mind with an eye on Washington as you head through budget season:

1) More noise about net neutrality... the key is to get the definition right from an economic point of view. Cable keeps adding bandwidth, speed and features. So do other technologies.

2) Broadband stimulus controversies as winners (and losers and the ignored) are announced and then, right away, challenged.

3) In an odd reprise of the Kevin Martian alien era, what's on the screen when kids are watching will rise back to the top of the issues list. Partly because the cable distribution business couldn't dictate content to the programming business, cable felt the former Chairman's wrath. This time around, if both of cable's intertwined businesses don't pay attention to prevailing political and moral winds and cooperate to take away easily accessible filth (hey, if both *Michael Willner* and I cringe, it is filth) in some manner beyond today's little used parental controls, well, watch out. The time to clean up and manage content—produced, over-the-transom and even advertisements—and the time of day the content is distributed with a less jaundiced eye and more thoughtful intellect is now. The **FCC** was to send a report to the Senate Commerce Committee and Senator *Jay Rockefeller* today (Aug 31) and then begin an inquiry. So this could get a lot of press, make a lot of noise and wind up in another bad law.

### Random Notes:

• **4%:** Of the Forbes' Top 100 of "The World's Most Powerful Women" --- # 41 – *Oprah Winfrey*; #59 – *Amy Pascal*, Sony Pix; #61 – *Judy McGrath*, MTV Nets; #98 – *Anne Sweeney*, Disney Nets. By way of comparison, women chief executives of whole countries ranked #s 1-11-44-47-66-67-68-74 & 78. A couple of queens

ranked #42 and 75.

• **Better News from Scotland:** Go to <http://tinyurl.com/n5qtrt>. Instead of the Lockerbie monster, here's a (maybe) look at the Loch Ness monster courtesy of **Google Earth**.

• **Dylan?** On your GPS? Tangled up in blue? Blood on the tracks? Answers only when the wind's blowing? On desolation row? No direction home? All roads point to a Nashville skyline?

• **Apps:** The **DirectTV** app on the **iPhone** works nicely... next up is **XM SkyDock**, which turns an iPhone into a full-fledged **XM Sirius** satellite radio that plugs into your auto lighter socket. Cool. Half of iPhone users download an app a month—at least. Any TV everywhere idea is going to have to make an iPhone app a high priority.

• **2nd Quarter Subscriber Stats:** Are now available. We're still trying to figure out to what extent the digital transition (remember? February thru June? Seems a long time ago, doesn't it?) helped boost cable and satellite subs... one clue: **DISH** gained for a change. (FYI: Major study of tiers is about to get underway).

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