

CableFAX Daily™

Thursday — September 4, 2008

What the Industry Reads First

Volume 19 / No. 171

TiVo vs DISH: Patent Squabble Still Lingers as DirecTV Inks New Deal

Is it Round 25 yet? **TiVo** and **DISH** face off in a TX Court Thurs over whether the DBS player can continue to use its current DVR service. The contempt hearing centers on whether DISH should have disabled all DVR functionality, not just TiVo-infringing functionality (DISH was found in '06 to be infringing on a TiVo patent). Both sides are optimistic they'll prevail. Even if the judge rejects TiVo's argument, "DISH is not out of the woods," **Stifel Nicolaus** said in a note to clients Wed. "We would expect TiVo to then pursue the more traditional course of arguing that [DISH's] design-around also infringes TiVo's patent claims and should also be enjoined. TiVo bears the burden of proof, but we understand that judges in patent cases are often skeptical of work-around claims." The worst case scenario for DISH is that the court sides with TiVo, a DE court rejects DISH's pending request to have its workaround declared non-infringing and the US Supreme Court denies DISH's pending request to review the patent verdict. That could force DISH to stop providing its DVR service as early as Oct, according to Stifel. TiVo shares were boosted Wed by a deal to develop a new HD DVR for **DirecTV**. DirecTV has been without a deal to deploy new TiVo product for the past few years. "That's now cured," TiVo CEO *Tom Rogers* said at an investment conference Wed. "Both DirecTV and ourselves are excited that a marriage that once worked extremely well together now has a second shot at coming out with a leading edge product." The new device, set to premiere in the 2nd half of '09, will support broadband and both companies' services and features. DirecTV will continue to develop its own DVR products. The deal extends TiVo and DirecTV's pact to Feb 2015, with DirecTV paying a "substantially higher monthly fee" for HHs using the new HD DVR than the fee for previously deployed DVRs with TiVo service, according to an **SEC** filing. Rogers was upbeat about TiVo's chances of striking more deals with cable, a la **Comcast** and **Cox**. "We've looked at the generic DVR world, talked to operators—who were none to happy with what their DVRs were like and the customer feedback they were getting—and we figured out a way to create a software upgrade to those boxes," he said.

Bandwidth: **Comcast** and FL Atty Genl *Bill McCollum* reached a \$150K settlement resolving concerns over the MSO's disclosure of bandwidth use policies. The investigation was over Comcast's "Acceptable Use Policy," which prohibited the excessive use of bandwidth or downloading. Customers using excessive amounts faced losing their service if they didn't curb bandwidth use, but Comcast allegedly didn't inform customers of a specific bandwidth limit. Under the settlement announced Fri, Comcast agreed not to enforce the excessive use policy without prior clear disclosure of the bandwidth limit. The MSO will reimburse the state \$50K for its investigation and will contribute \$100K to fund future investigations for Floridians. Comcast recently announced it would cap HSD users' monthly bandwidth at 250GB starting Oct 1.

Advertising: **NebuAd** has lost clients such as **WOW!** since its online ad tracking technology caught Congress' eye. Now, the ad firm has lost CEO *Bob Dykes*, who left for electronic payment firm **Verifone**. The scrutiny of NebuAd and concerns over online privacy resulted in some cable operators, including **Charter** and **Knology**, canceling trials with the company.

#1


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Source: Beta Research Cable Subscriber Study - Interest in Emerging/Mid-Sized/VOD Networks (among subscribers with high interest in services), August 2008

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Liberation: Liberty Media is developing a plan to split-off as a separate entity **Liberty Ent**, which houses a 50% stake in **DirecTV**; all of **Starz Ent**, **Fun Technologies** and **Liberty Sports Holdings**; 50% of **GSN**; and 37% of **WildBlue**. Holders of Liberty Ent shares, which began trading in Mar as a pair of equities (LMDIA and LMDIB) meant to collectively track these properties, will be able to redeem them for shares of the subsidiary, which will keep the Liberty Ent moniker. Current plans call for the new Liberty Ent to take on approx \$2bln in debt related to the Apr acquisition of DirecTV shares. Once the transition's completed, **Collins Stewart** analyst *Tom Eagan* foresees a push by Liberty Ent to merge with DirecTV into a single common stock. "It would attract more investment capital... while reducing the arbitrage that currently translates to short-selling DTV," said Eagan of the potential equity marriage. Liberty Ent shares rose 1.5% Wed; DirecTV's fell 0.3%.

Competition: Verizon and Yahoo! inked an agreement for an integrated, co-branded Web portal that will serve as a preferred starting point for new VZ broadband subs. Customers who opt for the portal will receive Yahoo! Search and co-branded email, IM and toolbar apps. Yahoo! will provide search and display advertising, and share revenues.

Carriage: Cox has launched **GoITV** in Spanish on its Hispanic tier in OK City and Tulsa.

More U Content: ESPN svp, college sports programming *Burke Magnus*' busy summer continued Wed with a broad rights deal with the **Western Athletic Conference**, a multiplatform extension through '17 following the sports giant's recent deal with the **SEC** (Cfax, 8/26). Included are conference telecasts for football and men's basketball, plus women's basketball, volleyball and softball. "Access to WAC content... will only help to further develop [ESPNU's] growth," said Magnus of the net. The football and men's b-ball components include annual game minimums for the net.

Fanning Futbol: Fox Sports en Espanol and the NFL and are pushing the American version of football to traditionally soccer-enthused Latinos through TV and online. As Nielsen recently reported a 4.3% increase in US Hispanic TV HHs, the net has launched its 1st weekly pro football show, "Fox Impacto NFL," with analysis, reviews and previews of league action. The NFL, meanwhile, has bowed **NFLatino.com**, a Spanish-language site with game highlights, live news and stats. The site is powered by **Univision** and will be featured in net programs "Contacto Deportivo" and "Republica Deportiva."

Ratings: Among cable nets, **CNN** was the winner for Democratic National Convention coverage for most demos. In fact, the **Turner** net led broadcast and cable for Thurs, when *Sen Barack Obama* (D-IL) made his acceptance speech. CNN averaged a 4.9 in HH ratings during the Thurs finale vs a 2.6 for **Fox News** and a 2.3 for **MSNBC**, according to a **MAGNA** analysis of Nielsen data. CNN also led the night among 18-49s, 25-54s and 35+, with **NBC** tying among 18-34s and men 25-54. Add live+7 data and CNN's Thurs, 10-11pm coverage block earned a 6.0/5.8mln, good for a 7th-place tie on the list of top summer cable shows during prime. 4 of the net's other DNC-related coverage stints also hit the summer telecast top 75. Meanwhile, **TV One's** Thurs coverage at 10pm ranked 2nd in ad-supported cable among African American HHs, behind only CNN. -- **USA** (2.2/2.11mln) took home the summer (5/26-8/31) prime ratings title, paced by original programming. **Disney** (1.9/1.81mln) tied for 2nd with **TNT** (1.9/1.78mln), followed by **Fox News** (1.4/1.33mln) and a 4-way tie for 5th among **TBS** (1.3/1.30mln), **Nick at Nite** (1.3/1.29mln), **ESPN** (1.3/1.28mln) and **Lifetime** (1.3/1.23mln).

Fire Chatter: A report from a division of CA's state utilities commission alleges that a lashing wire from **Cox** contacted a **San Diego Gas & Electric** 12-kilovolt conductor during Santa Ana winds and started one of 3 wildfires that raged in CA last Oct. Cox said the report's conclusions are supported by the evidence. Read the *San Diego Union Tribune's* story:

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Hosts Chris Harrison and Madison Michele

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BUSINESS & FINANCE

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People: In addition to evp/GM *Laura Michalchysyn*, **Sundance Channel's** new management team includes svp, digital media and business strategy *Christopher Barry*; svp, original programming and development *Lynne Kirby*; *Sarah Barnett*, who was promoted to svp, marketing and creative; svp, acquisitions *Christian Vesper*; and *Kim Gableman*, who was promoted to svp, sales and branded ent. *Sarah Eaton* continues in her role as svp, public relations. -- **Lifetime Nets** named Emmy-winning producer *JoAnn Alfano* evp, entertainment. Entertainment pres *Susanne Daniels* announced plans to resign in June to spend more time with her family. She will remain as a consultant. -- **Fuse** named *Valerie Green* as svp, marketing. Prior to joining Fuse, she served as head of marketing for **Cablevision's** digital commerce and marketing div. -- *Carol Hinnant* was upped to svp, biz dev for **Rentrak's** AML division.

Business/Finance: **WildBlue** has completed a \$50mln equity financing round led by **Liberty Media**, **Intel-sat**, the **NRTC** and private equity firm **Kleiner, Perkins, Caufield and Byers**. The proceeds will fund Wild-Blue's recently launched customer equipment leasing program.

CableFAX 100: Fri is the deadline to submit those **CableFAX 100** nominations. Visit www.cable360.net/cablefaxmag/2008cablefax100.html

CableFAX Daily Stockwatch

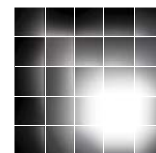
Company	09/03 Close	1-Day Ch	Company	09/03 Close	1-Day Ch
BROADCASTERS/DBS/MMDS					
BRITISH SKY:	34.02	(0.43)	AMPHENOL:	45.54	(1.22)
DIRECTV:	27.54	(0.08)	APPLE:	166.96	0.77
DISNEY:	32.51	0.07	ARRIS GROUP:	9.44	(0.03)
EHOSTAR:	28.33	0.00	AVID TECH:	23.90	0.46
GE:	28.57	0.04	BIGBAND:	3.44	(0.02)
HEARST-ARGYLE:	20.35	0.36	BLNDER TONGUE:	1.14	0.04
ION MEDIA:	1.50	0.00	BROADCOM:	22.67	(1.10)
NEWS CORP:	14.58	0.18	C-COR:	N/A	N/A
MSOS					
CABLEVISION:	31.54	(0.35)	CISCO:	23.31	(0.44)
CHARTER:	1.05	0.02	COMMSCOPE:	46.04	(1.15)
COMCAST:	21.55	0.39	CONCURRENT:	6.99	(0.01)
COMCAST SPCL:	21.41	0.41	CONVERGYS:	16.03	0.31
GCI:	10.56	0.22	CSG SYSTEMS:	19.69	(0.01)
KNOLOGY:	10.11	0.25	ECHOSTAR HOLDING:	31.49	0.37
LIBERTY CAPITAL:	16.00	0.07	GOOGLE:	464.41	(0.84)
LIBERTY ENTERTAINMENT:	27.53	0.41	HARMONIC:	8.43	0.04
LIBERTY GLOBAL:	34.84	(0.38)	JDSU:	10.13	(0.07)
LIBERTY INTERACTIVE:	13.95	0.32	LEVEL 3:	3.41	0.00
MEDIACOM:	8.07	0.22	MICROSOFT:	26.90	(0.20)
SHAW COMM:	22.18	(0.13)	MOTOROLA:	9.41	(0.10)
TIME WARNER CABLE:	27.34	0.36	NDS:	60.53	(0.07)
VIRGIN MEDIA:	12.00	0.08	NORTEL:	5.90	0.00
WASH POST:	606.32	0.74	OPENTV:	1.71	(0.08)
PROGRAMMING					
CBS:	16.67	0.27	PHILIPS:	32.46	(0.46)
CROWN:	4.99	0.19	RENTRAK:	15.00	(0.02)
DISCOVERY:	20.16	0.24	SEACHANGE:	8.79	0.04
EW SCRIPPS:	6.77	(0.07)	SONY:	37.66	(0.02)
GRUPO TELEVISA:	23.39	(0.25)	SPRINT NEXTEL:	8.57	(0.26)
LIBERTY:	N/A	N/A	THOMAS & BETTS:	46.02	0.52
LODGENET:	4.20	0.08	TIVO:	8.75	0.24
NEW FRONTIER:	3.85	(0.03)	TOLLGRADE:	6.67	(0.05)
OUTDOOR:	8.01	0.05	UNIVERSAL ELEC:	26.91	0.11
PLAYBOY:	4.25	0.16	VONAGE:	1.29	(0.01)
RHI:	14.51	0.87	WEBB SYS:	0.04	0.00
SCRIPPS INTERACTIVE:	41.49	(0.02)	WORLDGATE:	0.05	0.02
TIME WARNER:	16.33	(0.37)	YAHOO:	18.76	0.01
VALUEVISION:	2.51	0.05	TELCOS		
VIACOM:	29.25	(1.03)	AT&T:	32.42	0.17
WWE:	16.49	0.07	QWEST:	4.11	0.26
TECHNOLOGY					
3COM:	2.21	0.02	VERIZON:	35.70	(0.13)
ADC:	9.68	(0.44)	MARKET INDICES		
ADVANTAGE:	3.43	0.21	DOW:	11532.88	15.96
ALCATEL LUCENT:	5.68	(0.21)	NASDAQ:	2333.73	(15.51)
AMDOCS:	29.79	(0.40)			

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Think about that for a minute...

Cable News

It's said with a sneer... especially by those who like to think of themselves as the "real" mainstream media, or "MSM" as they are now labeled by the bloggers. We've got "news" people deriding other "news" people left and right! The old-line network news folks and newspaper columnists fulminate about "cable news." Whenever things get out of control, when the media is in a frenzy, somehow it is "cable news" that takes the rap.

But at the same time that's going on, look on the Internet. The bloggers and innumerable web sites are devoted to all things "news," and particularly now all things "political." The entire "MSM" media conglomerate is now the subject of scorn. There is no distinction drawn between the "cable" nets, the broadcast network "anchors," and the "MSM" newspapers from the New



Steve Effros

York Times and the Wall Street Journal to the Daily News and the tabloids. It seems like nobody is impressed with the job anyone else is doing reporting the "news."

Of course that's in part because various folks have different definitions of what "news" is, or at least what is important. The older MSM have long had a lock on what is considered "news." Having worked for both ABC and NBC Network News and The New York Times, I participated in that editorial process. We tried to make sense of the day's happenings, and we made judgments all along the way as to what was important, and what wasn't. There were no guarantees we were correct on any given call, and depending on the perspective of the critic, we were often accused of being wrong, biased, blind or worse.

In fact, there is no objective way to decide the relative importance of various news stories. Those who criticize

"cable news" tend to forget that one of the attributes of the cable news channels is that they are always on, unlike the half-hour summaries the "Network News" guys are used to. So, sure, there is more stuff, and it is repeated over and over again, and all that means is that you shouldn't just turn on the channel and watch it all the time and then criticize the editors for repeating the same story. The repeat wasn't meant for you... it was meant for the person just tuning in to conveniently get "the news!"

The same thing is true of the blogs, but in a slightly different context. They are, for the most part, "reporting" from a known point of view. That's very different from what we've been used to, of journalists claiming to be "objective." So don't be surprised by the blogs being a bit "over the top" when it comes to what and how they report. Factor that in when you read them. The same is true of "talk radio." Just think what Rush would have done had there been a teen pregnancy during the Clinton years!

The very nature of "news" has changed. Not that there shouldn't be priorities and editing and fact checking. Of course there should be. Decorum would be nice, too. But the shrill opprobrium of looking down on "cable news" misses the point. What has happened—because of cable, because of the Internet—is that there are far more voices. There is that vaunted objective we have long heard from the halls of the FCC: diversity. And with that diversity comes both the good and the bad; and it is louder, and it's more unconstrained, and it's sometimes even totally wrong and inappropriate. But that should no longer be news to anyone.

Steve

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Call for Nominations

CableFAX
THE MAGAZINE

2008 Most Powerful Women in Cable

Who are cable's most powerful women executives? Help us decide by nominating the executives you think should be included in our annual list of the Most Powerful Women in Cable. We will rank the top 50 most powerful women, and run a list of the second 50, in the November issue of CableFAX: The Magazine. Nominations are open to all cable operators, programmers, vendors and trade associations.

Deadline for nominations: Sept. 8, 2008 • Nominate online at www.CableFaxMag.com

Call For Nominations

The 2008 **100** *CableFAX*

Deadline for nominations: Sept. 5, 2008

It's that time again. Nominate your colleagues, your boss or even yourself for the CableFAX100—our annual cable industry power list—which will appear in the December edition of *CableFAX: The Magazine*.

There are a number of changes we have made to the 100 for this year, so please read the online form carefully.

Please do not limit yourself to CEOs, SVPs, etc. Also nominate influential people who might not be headline makers but who are influential behind the scenes within their company and the industry.

New for 2008!

We are also looking for important regional/local/state cable executives (operators, vendors, programmers and others in the industry) to honor on a new Regional 100 list.

**Visit www.cable360.net/cablefaxmag/2008cablefax100.html
to nominate online today!**