

# CableFAX Daily™

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What the Industry Reads First

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## Net Neutrality: And Now We Wait...

Heading into Monday's oral arguments for **Verizon's** challenge of the **FCC's** Open Internet order, prevailing thought was that the telco would land a victory. After the back and forth Mon morning, most court watchers thought at least 2 of the three judges hearing the case indicated they believe the Commission may have overstepped its authority by applying common carrier regulation to broadband providers. "The FCC attorney repeatedly denied the agency had done so because broadband providers were still free to offer or not offer service to end users, but the 2 judges seemed to agree with Verizon's contention that the agency had thwarted its ability to negotiate paid agreements with edge providers in a "two-sided market," constituting common-carrier regulation," **Stifel Nicolaus** analysts concluded in a research note. **Free State Foundation** pres *Randolph May* said it certainly didn't appear to be a slam dunk for either side, but "with the usual caveat that predictions based on oral arguments can be hazardous, my sense is that Verizon is more likely than not to win on important aspects of its appeal," he said, pointing chiefly to the court seeming to agree that the FCC's rules are trying to convert Internet access to a common carrier service. **NetCompetition**, an e-forum representing broadband interests, said the court's reaction should alleviate some of the concerns that if the FCC loses it may go back and try to rewrite these rules by classifying broadband as a Title II service. "If the court's decision is written as they suggested it would be in oral argument, the potential legality of the FCC reclassifying broadband Internet service as a common carrier telephone service is much less likely to pass muster with this court than before the court so deeply discussed the illegality of imposing common carrier regulation on broadband," said NetCompetition chmn *Scott Cleland*. *Michael Copps*, now a special adviser to **Common Cause's** Media and Democracy Reform Initiative, had pushed for Title II classification as an FCC commissioner. Copps, who was not at the arguments Mon because he's a fellow at the **Harvard Kennedy School** this fall, told us he still believes the Commission can and should pursue classifying services under Title II. "I hope we're not going to get years of uncertainty on this," Copps said. **Free Press' Matt Wood's** take was that all 3 judges indicated that they believe the FCC has some authority over broadband Internet access—it's just a matter of how the agency got there. "We've said all along that the FCC should fix the mistakes it made a decade ago and put Internet access and broadband telecommunications back under the regulatory framework that

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Access Intelligence, LLC, 4 Choke Cherry Road, 2nd Floor, Rockville, MD 20850

Congress intended,” Wood said. **NCTA** took to its blog Mon to talk about the case, but declined to get into predicting the outcome. Instead, it assured consumers that no matter what happens in the court, they “should have confidence that they will continue to enjoy the same fast and open Internet experience that millions of Americans cherish every day.” That’s an important message for cable to get out there, given the “monumental” designation the hearing has been given by the media. Net neutrality proponents including Free Press, **Public Knowledge** and the **Future of Music Coalition** pushed a mockumentary short dubbed “The Internet Must Go” in which a market researcher starts off working with ISPs on why net neutrality must go, but eventually understands through talking to people like Columbia Law prof *Tim Wu*, that the mission is misguided. NCTA specifically tackled the criticism that it has an incentive to limit access to online video because of competition risks. “In fact, cable has invested over \$200 billion in upgrading our broadband networks that have enabled streaming video services to succeed and grow. Consumers now expect the ability to enjoy online video and cable has consistently provided a robust nationwide platform that allows it,” the trade group said. “And if instances of anticompetitive conduct do occur, agencies like the **Federal Trade Commission** and the **Department of Justice** have the necessary authority to police it. Thus, even if the FCC loses today’s case and its rules are overturned, one thing that will not change is consumers’ access to an open, growing and vibrant Internet.” Stifel Nicolaus analysts do think there could be some possible promising news for cable and telco providers from today’s arguments (not **Comcast** though, since it will remain subject to the Open Internet conditions per the **NBCU** order). “We believe a DC Circuit panel majority signaled today at oral arguments that it’s inclined to pare back FCC Open Internet rules in a way that would allow cable and telco broadband providers to charge Internet edge providers for improved connections to broadband customers,” analysts said. It will likely be at least a few months until there is a ruling, and then there is always the issue of a possible appeal.

**Retrans Reform:** While Rep *Anna Eshoo*’s draft retrans reform legislation sounds straight out of the **ATVA** and **ACA**’s wishlist, **DISH** (an ATVA member) probably has the most reason to be excited. With its contract up with **Disney** at the end of the month, the legislation—whether or not it goes anywhere—ratchets up the pressure on the broadcaster to avoid a blackout. A week after **CBS** and **Time Warner Cable**’s blackout finally ended, Eshoo (D-CA) released a draft of “The Video CHOICE (Consumers Having Options in Choosing Entertainment) Act,” which would give the FCC explicit authority to grant interim carriage of a broadcast station during a retrans consent negotiation impasse. Eshoo released the draft ahead of Wed’s subcmte hearing on regulation in the video marketplace, saying, “Recurring TV blackouts, including the 91 U.S. markets impacted in 2012, have made it abundantly clear that the FCC needs explicit statutory authority to intervene when retransmission disputes break down. This discussion draft is intended to spur constructive, actionable debate on ways to improve the video marketplace for video content creators, pay-TV providers and, most importantly, consumers.” Those calling for retrans reform have to be giggling in excitement as other provisions include ensuring that consumers can purchase cable service without subscribing to the broadcast stations electing retrans consent, prohibiting a broadcast station engaged in retrans consent negotiations from making their owned or affiliated cable nets a condition for receiving broadcast programming, having the FCC examine whether blocking a broadcaster’s online content during a retrans negotiation constitute “good faith,” (recall that CBS blocked TWC HSD subs from viewing its online content) and requiring the FCC to study programming costs for RSNs and national sports nets in the top 20 regional sports markets. **NAB** came out swinging, with pres/CEO *Gordon Smith* saying it has a “pro-pay TV slant.” “Our overriding goal is to increase viewer access to broadcast programming. A truly ‘pro-consumer’ bill would ask whether Time Warner Cable’s attempts to restrict that access to only its ‘TV Everywhere’ model does the same,” Smith said, adding that there is no such thing as a “blackout” because broadcast programming is always on and available on multiple platforms, including over-the-air. The NAB chief also suggested a pro-consumer bill would delve into rebates for the loss of broadcast programming and would tackle early termination fees that some pay TV providers charge.

**New Style:** **NBCU** has thrown out plans to rebrand **G4** as **Esquire Net** and will instead makeover **Style** into the channel aimed at upscale males come Sept 23. Esquire will be led by *Adam Stotsky* and his team, with Style head *Salaam Coleman-Smith* to “play an integral role in the transition and at NBCUniversal in the future,” NBCU Cable ent

chmn *Bonnie Hammer* said in a memo to staffers. G4 will continue to operate unchanged for the foreseeable future with *Stotsky* in charge. Recall that G4 was supposed to transition to *Esquire* in April, but the brakes were abruptly put on the switch shortly before the relaunch (and 2 months after *Hammer* took over oversight of *Style*, **Bravo**, **Oxygen**, **Sprout** and **TV One** from *Lauren Zalaznick*, who was upped to evp, NBCU). *Style* presents “brand overlap within our portfolio,” *Hammer* said, pointing to *Bravo*, *E!* and *Oxygen*. She also outlined several staff changes Mon. **USA**’s *Jeff Wachtel* assumes the newly created position of pres and chief content officer for NBCU Cable Entertainment, with **USA** co-pres *Chris McCumber* becoming the sole president of the net. Other changes include *Jason Klarman* leaving *Oxygen* this week, which he has headed as pres since ’10. “After more than five years at *Oxygen*, I’ve decided it’s time to move on and take on a new challenge. It’s a decision I have weighed for some time and I’m confident it’s the right one,” he wrote in a note to staffers. *Frances Berwick* added oversight of *Oxygen* to her current responsibilities. The change-up could result in some layoffs at *Style*, but NBCU is said to be looking at moving staffers to other NBCU female-skewing nets.

**STELA:** Congress should keep the Section 111 cable statutory license in place because it has proven to be an “efficient and effective” means of clearing copyrights when cable ops retransmit broadcast signals. That’s the main message of prepared testimony by **Shentel** evp, COO *Earle MacKenzie* for Tues’ House Judiciary subcommittee hearing on reauthorizing **STELA**. While the satellite industry gets a check-up every few years because of Congress’ review of the act, cable’s rules don’t expire in the same way. “Congress has never conducted a similar type of physical in decades” for cable, *MacKenzie* says, calling for a review. He used his appearance as a witness representing **ACA**’s view to—surprise!—call for retransmission consent reform, pointing to the recent **Time Warner Cable-CBS** fire-works. *MacKenzie* also takes aim at the Sports Broadcasting Act, which has a legislative exemption of antitrust rules for professional sports leagues. Also on *Shentel/ACA*’s wishlist: an update of the FCC’s definition of a buying group so that program access protections are extended to **NCTC** and abolishment of the set-top integration ban.

**Carriage:** **Pac-12** channels went live Sat on **AT&T U-Verse**, in time for week 2 of college football. **AT&T** is carrying 3 **Pac-12** nets (network, Bay Area and L.A.) and will be the exclusive wireless sponsor for **Pac-12**.

**TVE:** It’s final. *Fresno* has access to the **WATCH ABC** authenticated live viewing service, meaning all 8 **ABC** O&OS have the **TVE** offering. MVPDs with agreements for it include **Comcast**, **AT&T U-verse**, **Verizon FiOS**, **Cablevision**, **Cox**, **Charter** and **Midcontinent**.

**At the Portals:** The **FCC** Media Bureau granted **Samsung**’s waiver request, allowing it to sell its cable-compatible, Internet-enabled “Smart Media Players” without an analog tuner (*Cfax*, 6/24). The Bureau determined the request, which was unopposed, is in the public interest because it will reduce the cost and power consumption of the device and provide consumers with a retail set-top box that can better compete with those leased by cable operators. *Samsung* must label the device and provide retailer marketing so there is no customer confusion about its limitations. Last month, the Bureau granted *TiVo*’s unopposed request for a waiver so that it could sell DVRs that receive only digital cable services.

**Advertising:** **Sony Pictures TV** Ad Sales will provide national representation for commercial ad sales for **Rural Media Group**’s **RFD-TV**, **Rural TV** and **Rural Radio** on **SiriusXM**.

**Ratings:** “Boardwalk Empire” returned to **HBO** Sun for a 4th season, with 2.4mln viewers tuning in (ahead of last season’s 2.3mln viewer avg, but about 500K shy of Season 3’s debut). With the 11pm replay added, total viewership hit 3.2mln.

**Programming:** **HBO Films**’ look at *Muhammad Ali*’s historic Supreme Court battle, “Muhammad Ali’s Greatest Fight,” will debut on the premium net Oct 5. -- **ION**’s slate of holiday specials consists of 5 new original movies, including “Defending Santa” and “Christmas Belle.” It all kicks off Thanksgiving week, with the new films running with 13 returning movies. -- **WE tv** is bringing back “L.A. Hair” for a 3rd season next year. Season 2’s avg grew +66% among women 25-54.

**Social Circle:** Six out of 10 social TV conversations in primetime were about cable programs, according to a **Cabletelevision Advertising Bureau** analysis of 1Q and 2Q **Trendrr** data (Spanish programming, awards, specials and Super Bowl excluded). CAB put together a rah-rah cable infographic highlighting cable’s accomplishments across **Facebook**, **Twitter**, **GetGlue** and **Viggle** for the first half of 2013. Other brags: cable ranked #1 16 out of 26 weeks in the first half of ’13, 64% of the cable programming comments reflected a positive sentiment and 10 different cable nets ranked among the top 20 programs. The top 5 buzzed about ad-supported cable shows in prime were **AMC**’s “The Walking Dead,” **NBA** on **TNT** and **ESPN**, **USA**’s “WWE Mon Night Raw,” **NHL** on **NBCSN** and **ABC Family**’s “Pretty Little Liars.”

# BUSINESS & FINANCE

**Ratings:** August was the 3rd-most watched month in primetime in **MLB Network's** history, averaging 221K viewers. Last month also saw 2 of the net's top 10 games of the '13 season: the MLB Network Showcase telecasts of the St Louis Cardinals at Pittsburgh Pirates on Aug and the Detroit Tigers at New York Yankees on Aug 9, which each averaged 355K viewers. -- **YES Net's** Red Sox-Yankees telecast Thurs night averaged a 4.76 TV HH rating and 486K total viewers in the New York DMA, making it YES' highest-rated and most-viewed program of the year. -- **TV One's** Wed premiere of "R&B Divas LA: Reunion Part 1" scored a .83 rating among 25-54 and a .95 rating among HHs. The special is tied with the debut of original sitcom "The Rickey Smiley Show" as the net's #1 telecast among adults 25-54. A total of 834K viewers 2+ tuned in during its 10pm premiere and encore airings.

**People:** D'Angela Proctor was named svp, programming and production at **TV One**. She joins from **Strange Fruit Media**, where she was co-owner and co-pres. -- **Entropic** named *Matthew Rhodes* as svp, global marketing. -- **Discovery** named *Kaliel Roberts* as vp, product & tech for Discovery Digital Networks. -- **TruTV** promoted **Marissa Ronca** to svp, development & original programming. *Michael Lanzillotta* was upped to svp, gm of truTV.

## CableFAX Daily Stockwatch

Company	09/09 Close	1-Day Ch	Company	09/09 Close	1-Day Ch
<b>BROADCASTERS/DBS/MMDS</b>					
21ST CENTURY FOX:	32.13	0.03	ECHOSTAR:	41.96	0.57
DIRECTV:	59.66	0.98	GOOGLE:	888.05	8.47
DISH:	46.11	(0.51)	HARMONIC:	7.36	0.02
DISNEY:	61.59	0.20	INTEL:	22.91	0.24
GE:	23.39	0.23	JDSU:	14.88	0.48
<b>MSOS</b>					
CABLEVISION:	17.88	(0.07)	LEVEL 3:	23.31	0.44
CHARTER:	126.70	1.68	MICROSOFT:	31.66	0.50
COMCAST:	42.30	(0.18)	RENTRAK:	25.46	0.36
COMCAST SPCL:	41.11	(0.12)	SEACHANGE:	11.43	0.57
GCI:	9.20	0.13	SONY:	21.61	0.59
LIBERTY GLOBAL:	76.78	(0.19)	SPRINT NEXTEL:	6.37	(0.1)
LIBERTY INT:	24.12	0.43	TIVO:	11.96	0.15
SHAW COMM:	23.60	0.33	UNIVERSAL ELEC:	31.59	0.35
TIME WARNER CABLE:	109.56	0.49	VONAGE:	3.11	UNCH
WASH POST:	573.98	(1.05)	YAHOO:	29.24	1.07
<b>PROGRAMMING</b>					
AMC NETWORKS:	63.53	0.99	<b>TELICOS</b>		
CBS:	53.58	(0.04)	AT&T:	33.63	0.22
CROWN:	3.13	0.05	VERIZON:	45.91	(0.43)
DISCOVERY:	78.46	0.91	<b>MARKET INDICES</b>		
GRUPO TELEVISIA:	27.54	0.43	DOW:	15063.12	140.62
HSN:	55.95	1.01	NASDAQ:	3706.18	46.17
INTERACTIVE CORP:	52.36	0.45	S&P 500:	1671.71	16.54
LIONSGATE:	36.89	0.39			
MADISON SQUARE GARDEN:	55.88	0.13			
SCRIPPS INT:	75.05	(0.33)			
STARZ:	25.98	0.19			
TIME WARNER:	62.24	0.79			
VALUEVISION:	4.89	(0.01)			
VIACOM:	80.66	(0.07)			
WWE:	10.26	0.06			
<b>TECHNOLOGY</b>					
ADDVANTAGE:	2.46	UNCH			
ALCATEL LUCENT:	3.44	0.29			
AMDOCS:	37.24	0.27			
AMPHENOL:	76.20	1.25			
AOL:	32.91	0.15			
APPLE:	506.17	7.95			
ARRIS GROUP:	15.95	0.10			
AVID TECH:	5.49	(0.02)			
BLNDER TONGUE:	0.85	(0.04)			
BROADCOM:	26.93	0.45			
CISCO:	23.92	0.37			
CONCURRENT:	7.74	0.03			
CONVERGYS:	18.27	0.39			
CSG SYSTEMS:	24.01	0.31			

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## CableFAX TECH

### Slinging for the Fences...

As the streaming habit shows no sign of abating among increasingly tech-savvy consumers, **Arris** has partnered with **Sling Media** on a media streaming device that aims to let distributors offer up to 4 simultaneous live HD channels and other recorded content. Dubbed the Arris Media Streamer 4000, the device is powered by Sling tech and available to any distributor that already deploys the Arris Whole Home Solution product. The standalone box works with the Arris MG5000 Media Gateway series that includes multiplatform support. The companies “are empowering service providers to go to market with the kind of media experiences that consumers demand,” argued *John Burke*, Arris’ svp of corporate strategy & development and pres of its Cloud Solutions Business. A recent Sling survey found that **Apple** tablets and smartphones remain the preferred devices for streaming. And with **Sony**’s Mon announcement of its own third-party streaming device called Vita TV, traditional pay-TV providers are all feeling the pressure to give customers options and keep them from straying too far from the nest. Perhaps that’s why Sling Media vp/gm *Michael Hawkey* made sure to emphasize Sling’s willingness to partner with traditional players, vowing an “unrivaled multiscreen video solution to MSOs and MVPDs who are looking to add more value to their current customer offerings and extend the entertainment experience beyond the living room TV.” Let the games continue...

**Trunking Tech:** **Cablevision** has certified its Optimum Voice SIP Trunking service with **Barracuda Networks**’ Cudatel 270 Communication Server, aimed at small businesses that want to use IP-based PBX systems that are generally cheaper than typical analog gateway or T-1 lines. The CudaTel Communication Server is designed to enable seamless voice and video communication, including VoIP PBX services, conferencing, follow-me and automated attendant services. Businesses can use a Web-based interface to control the server, and Barracuda vp *Sean Heiney* said it enables up to 24 lines or maintain as few as 4.

**Content Security:** **RGB Networks** has partnered with content security firm **Conax** in an effort to bolster the security of multiplatform content that RGB encodes and delivers for numerous distributors and content owners. The joint offering—integrating conditional access and DRM from Conax within RGB’s TransAct Packager—aims to use adaptive streaming technology to enable the segmentation of video and audio into chunks that go to PCs, mobile devices and set tops using HTTP. “As video service providers continue to battle it out to win subscribers, they cannot afford to encounter a performance gap when it comes to content delivery, or tie themselves up in compliance issues,” said *Simone Sassoli*, RGB’s vp of marketing and business development. Conax evp, products and partners *Tom Jahr* said the RGB-Conax combo enables distributors “to deliver quality video content to customers without the risk of hijacking or disruption en route which has obvious negative impacts on business operations.”

**Navigation:** Video content discovery solutions provider **Jinni** scored a multi-year deal with **Microsoft** to beef up entertainment discovery on Xbox video game and entertainment systems. The new features—when paired with other Xbox signals like user’s viewing history—are designed to let Xbox go beyond the standard recommendations based on genre similarities.

**In Case You Missed It:** In the wake of posting solid 2Q results (\$37.4 million in 2Q, up from 1Q’s \$36.7 million), **Seachange** appointed interim CFO *Anthony Dias* to permanent CFO, SVP and Treasurer of the video software vendor. Dias predicted more growth through year-end. “We expect third quarter revenues to be sequentially higher than the second quarter, and fourth quarter revenues to be sequentially higher than the third quarter,” he said. However, due to the uncertainty of timing in customer acceptance of new products, the company expects its full year revenues to be at the lower end of its previously provided guidance of \$165 million to \$175 million.

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