

CableFAX Daily™

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What the Industry Reads First

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R-Word: CBS-TWC Dispute Continues to Stoke Retrans Debate

On the Hill and off of it, retrans was the word of the day Wed. It started with incoming **Time Warner Cable** CEO *Rob Marcus*' comments on the **CBS** dispute that left customers without CBS O&Os and **Showtime** for a month. "It definitely had a subscriber impact," both in new connects and in disconnects, he said at **Bank of America Merrill Lynch**'s media conference. "The issues that were at stake had such significant implications that we felt like we were left with no choice. There was a fair amount of pain we needed to endure in order to achieve longer term business objectives, and we felt that was the only path." Later in the day, CBS chief *Les Moonves* took the stage at the Beverly Hills investor conference, declaring that the blackout's impact on the broadcaster was "virtually nothing," with Aug a slow month. "Our national ad dollars did not go down at all because everybody hung in there," he said. Moonves told the audience that the govt should stay out of the retrans consent process, making those comments right as the **House Communications** subcmte met in Washington to discuss video regulation, including retrans. "We believe in the free marketplace. Frankly, so did the cable companies when they had a bit of a monopoly," Moonves said, adding he doesn't think the govt will get involved. "Thank God" CBS and TWC resolved their dispute after 32 days, ranking member *Anna Eshoo* (D-CA), said at the start of Wed's subcmte hearing. On Mon, she unveiled a draft that would allow the FCC to grant interim carriage of a station during a retrans impasse. Eshoo and other members said it was time to examine potential changes to the evolving video marketplace. "We have a satellite law that finds its origins in ensuring access to content for a fledgling industry, a cable law that was passed when cable controlled over 90% of the video market, and broadcast rules that ignore the rise of alternatives to over-the-air reception," said subcmte chmn *Greg Walden* (R-OR). Much of the hearing centered on retrans (though CableCARDS and compulsory copyright also came up). Walden wondered aloud whether subs should get refunds during blackouts, with **Public Knowledge**'s *John Bergmayer* saying that they're good but do nothing to solve underlying retrans problems. PK has joined with **ATVA**, an organization largely comprised of MVPDs, to call for retrans reform. Rep *Michael Doyle* (D-PA) expressed concerns about CBS blocking its online content from TWC Internet subs during the dispute, saying the move broke "new ground." If the tables were turned, "it would be argued we violated net neutrality principles. I was very surprised the FCC didn't say to CBS that you're a broadcaster operating as a public trustee [with

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its] programming involved here,” said witness/**Suddenlink** evp *David Rozzelle*. Doyle also touched on a bone of contention for **ACA**, **TWC** and others: broadcasters’ joint marketing arrangements that allow them to negotiate retrans on behalf of another station in the same market. “There is nothing illegal about these arrangements,” said **NAB’s** rep, **KPHO** gm *Ed Munson*, explaining that in any negotiation in which he’s been involved, an MVPD can always choose to work with just 1 broadcaster. Munson repeated a theme **NAB** raised during Tues’ **House Judiciary** STELA hearing—that **TWC**, **DISH** and **DirectTV** are involved in almost 90% of blackouts. This suggests it’s “not a problem with the process, but a problem with the players.” **NAB** sought to drive that point home to Congress, placing ads in Capitol Hill pubs Wed highlighting the 3 MVPDs’ involvement. **ATVA** had its own ads this week on the Hill, painting broadcasters as “flip-flops” for wanting money for retrans but rejecting calls for radio performance fees. It’s still early in the process for evaluating reauthorization of STELA, which expires at the end of ’14. **Walden** said he expects to circulate a discussion draft that will take a larger look at the video marketplace no later than 1Q14.

Investor Conference: Of course, *Rob Marcus* didn’t say what **Time Warner Cable** is paying **CBS** in the new contract. But he said the MSO started the year estimating programming-cost-per-sub growth of about 10%, with that figure factoring in projections for **CBS**. Now, he said **TWC** projects about 9% for the year. Of course, that’s not to say the MSO got **CBS** for a bargain. Said **Wells Fargo Securities**: “We were already at 9% due to the H1 beat and think this is more of a ‘catch-up’ versus anything else.” -- You want more retrans news? We got it. **NBCU** CEO *Steve Burke* said **NBC** will go from making virtually nothing on retrans consent 2 years ago to about \$200mIn this year—and it’s only upward from there as contracts expire. As for **Aereo**, he thinks it’ll be found unlawful. What about turning a broadcast net into a cable channel? **NBC** has looked at it, but *Burke* said his “bet is that what’s happening here is that the broadcast channels are turning into dual revenue stream businesses, and they’ll remain dual revenue stream businesses for a long time.”

VOD: Ahead of Sat’s big *Mayweather-Canelo* fight, **In Demand** is making 8 recent fights featuring the headliners available free on VOD in cable systems throughout the country. It’s obviously an attempt to further drum up interest for Sat’s big **Showtime** PPV event, which is expected to pull big numbers—though it probably won’t break the 2.5mIn record PPV buys for ’07’s *Mayweather-De La Hoya* match. Still, revenue should be sweet...

Research: **History** (23%), **Discovery** (21%), **ESPN** (20%) and **Food** (20%) ranked highest when **Beta Research** asked cable subs to name their 5 favorite basic cable channels. Heavy social media users mentioned **Discovery**, **Food**, **Comedy Central**, **Syfy**, **ABC Family** and **History** the most (10+ hours/week). Among those who have viewed TV on a smartphone or tablet in the past 30 days, **ESPN** garnered the most mentions, followed by **Comedy Central**, **Discovery**, **Food**, **ABC Family** and **History**. **Discovery** was tops when **Beta** asked adults which basic cable nets were important to their enjoyment of the service, with 63% naming it—62% named **History**, 61% **TNT** and 58% **Weather**. According to **Beta**, 20% of adults would switch cable providers if their op dropped an important basic cable channel. **ESPN** got the highest avg perceived value among total viewers of the net (\$1.51), with siblings **Disney Junior** (\$1.41) and **Disney Channel** (\$1.37) in 2nd and 3rd place, respectively. **History** (\$1.37) and **Food** (\$1.36) round out the top 5. **Beta** conducted the survey online in June from a sample of 2265 cable subs (2065 adults, 200 teens) from 25 cable systems. It measured 47 basic cable nets.

Ratings: The season opener of “MNF” on **ESPN** (**Redskins-Eagles**) drew a 10.1 US rating/16.5mIn viewers. It is the highest-rated and most-viewed opening game since **ESPN** began televising MNF in ’06. The previous record holder was ’10’s **Ravens-Jets** game (9.4/15mIn viewers). Mon’s 2nd game (**Texans-Chargers**) earned a 7.1/11mIn viewers). Worth noting: **WatchESPN** generated an avg minute audience of 605K during the doubleheader, +47% vs last season.

In the Courts: Two former **Cox** employees have been arraigned on charges of allegedly stealing \$900K from the MSO. According to U.S. Attorney *Sally Quillian Yates*, the charges and other information presented in court: *Joysha Flucker*, 36, of Decatur, GA, and *Sakia Allen*, 38, of Jonesboro, GA, previously worked for **Cox**, where they had access to the company’s electronic invoicing system that tracked the company’s payments to various 3rd parties. *Flucker* and *Allen* are accused of manipulating the electronic invoicing system so that **Cox** would issue duplicate payments to the 3rd parties, with the duplicate directed into bank accounts under the control of the defendants. *Flucker* was arraigned and detained this week, while *Allen* entered a plea of guilty to 1 count of wire fraud in July.

BUSINESS & FINANCE

The indictment charges the 2 with multiple counts of wire fraud and 1 count of conspiracy.

Programming: It's official. **AMC** and **Sony Pictures TV** confirmed they will produce a "Breaking Bad" spinoff based on the Saul Goodman character, with the working title, "Better Call Saul." Plans call for a 1-hour prequel that will focus on the Goodman character before he became Walter White's lawyer. -- **Ovation** greenlit "The Art of" for a 2nd season (Oct 30, 10pm ET), which will tackle topics such as the art of burlesque, hair and holidays.

People: *Marcien Jenckes* was promoted to evp, consumer services at **Comcast**, where he'll lead the newly formed Consumer Services Group, which combines video, Internet, phone and home. He'll report to Comcast Cable evp/COO *Dave Watson*. New to Comcast Cable is *Ed Brassel*, formerly svp, marketing and business analytics at **DirecTV**. He'll take the new role of svp, business intelligence. -- *Jennifer Khoury* was promoted to svp, corporate and digital communications for Comcast Corp, and *Lynn Charytan* was upped to svp, legal regulatory affairs and sr deputy gen counsel. -- The **HRTS** appointed new officers this week: **Universal Television** evp *Bela Bajaria* as pres; **CAA** co-head of television *Adam Berkowitz* as vp; **Machinima** head of premium content *Ian Moffitt* as Secretary; and *Martha Henderson*, evp, entertainment at **City National Bank**, as Treasurer.

CableFAX Daily Stockwatch

Company	09/11 Close	1-Day Ch	Company	09/11 Close	1-Day Ch
BROADCASTERS/DBS/MMDS					
21ST CENTURY FOX:	32.47	0.24	ECHOSTAR:	43.40	0.82
DIRECTV:	61.51	0.67	GOOGLE:	896.19	7.52
DISH:	47.03	0.30	HARMONIC:	7.49	0.04
DISNEY:	63.94	1.11	INTEL:	22.81	(0.17)
GE:	24.09	0.22	JDSU:	15.08	(0.05)
MSOS					
CABLEVISION:	17.72	(0.12)	LEVEL 3:	26.00	1.51
CHARTER:	129.11	1.67	MICROSOFT:	32.74	0.35
COMCAST:	43.80	0.96	RENTRAK:	28.54	1.72
COMCAST SPCL:	42.41	0.90	SEACHANGE:	11.48	(0.06)
GCI:	9.34	0.23	SONY:	21.42	(0.03)
LIBERTY GLOBAL:	78.00	0.52	SPRINT NEXTEL:	6.50	0.17
LIBERTY INT:	23.94	(0.11)	TIVO:	12.17	0.10
SHAW COMM:	23.72	0.36	UNIVERSAL ELEC:	32.42	0.44
TIME WARNER CABLE:	110.43	0.30	VONAGE:	3.12	0.04
WASH POST:	583.69	5.49	YAHOO:	29.19	(0.29)
PROGRAMMING					
AMC NETWORKS:	62.79	(0.72)	TELCOS		
CBS:	54.53	0.48	AT&T:	33.97	UNCH
CROWN:	3.10	(0.02)	VERIZON:	46.52	0.05
DISCOVERY:	78.29	0.35	MARKET INDICES		
GRUPO TELEVISIA:	27.78	0.05	DOW:	15326.60	135.54
HSN:	56.32	0.12	NASDAQ:	3725.01	(4.01)
INTERACTIVE CORP:	53.16	0.43	S&P 500:	1689.13	5.14
LIONSGATE:	37.01	(0.45)			
MADISON SQUARE GARDEN:	55.09	0.43			
SCRIPPS INT:	74.42	(0.52)			
STARZ:	26.00	0.01			
TIME WARNER:	63.32	0.38			
VALUEVISION:	4.42	(0.31)			
VIACOM:	82.31	1.40			
WWE:	10.16	(0.1)			
TECHNOLOGY					
ADVANTAGE:	2.48	UNCH			
ALCATEL LUCENT:	3.40	(0.12)			
AMDOCS:	37.64	0.16			
AMPHENOL:	78.11	0.09			
AOL:	33.56	1.07			
APPLE:	467.71	(26.93)			
ARRIS GROUP:	15.93	0.06			
AVID TECH:	5.76	(0.14)			
BLNDER TONGUE:	0.87	0.02			
BROADCOM:	26.09	(0.67)			
CISCO:	24.38	0.22			
CONCURRENT:	7.85	0.09			
CONVERGYS:	18.41	UNCH			
CSG SYSTEMS:	24.10	0.04			

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A Two Sided Win

Commentary by Steve Effros

A lot's been written about Monday's oral argument before the DC Court of Appeals regarding the FCC's "net neutrality" rules. Verizon had challenged those rules on both jurisdictional and constitutional grounds.

It appears there's a consensus, at least of the observers, that two of the three judges hearing the case seemed to strongly indicate they had serious reservations about some of what the FCC did, and are likely to vote to restrict, if not totally throw out, the rules in question.



The reporting about the argument and the rules flowed along familiar lines, with writers who clearly favor the rules leading with the breathless suggestion that the Internet as we know it is going

to be destroyed if the Court goes the way it seems to be heading. On the other side the business, writers were almost giddily speculating that the cable and telephone ISPs might indeed finally get a "win" and be allowed to experiment with new ways to monetize their asset.

I think it's important to remember what the genesis of this fight is all about. Regardless of the breathless reporting, it's never been about "blocking" access to sites on the Internet. The ISPs have repeated over and over that they have no intention of doing so, have never, with very rare and quickly remedied exception, done so, and it would be contrary to their own business interests to engage in selective distribution of Internet service.

The real debate is what the judges focused in on: the FCC's adoption of the notion that "neutrality" is akin to "common carrier" obligations, and that ISPs should not be allowed to offer differentiated services. That is, they can't sell two-sided levels of quality service.

Many other industries have successfully offered levels of

quality of service for years, and the public has benefited. You can buy "Express Mail" service from the Post Office. Yes, you pay more, and you get a delivery guarantee. That doesn't mean the regular mail is intentionally slowed down for some anticompetitive reason. It hasn't been. In fact, studies show it has become more reliable and fast since Express Mail was introduced. Anticompetitive conduct is illegal, either way.

Those arguing for absolute disallowance of a two-sided market structure that would allow ISPs to charge both for "regular" delivery from the recipient and "special" delivery from the sender say that this will lead to a competitive market that is "unfair" to the new entrant, placing a burden on future development of the Internet. But that's pure speculation. If it's true, then Netflix, for instance, which pays not the ISP but other content distribution networks (CDNs) and is now building its own to speed delivery of only its product to broadband recipients, should be stopped since presumably that would be "unfair" to new entrants, too, who can't afford to do that. Amazon's Kindle should be barred from offering "free delivery." That's unfair to the new entrants as well.

This is preemptive industrial policy, pure and simple, and essentially the two judges seem to be calling it what it is: a back-door way of imposing common carrier restrictions on ISPs when the FCC does not have that authority, at least the way they have attempted to do it in these rules. Leaving the Commission some jurisdiction to deal with "transparency" and "anti-blocking" regulations while getting them out of efforts to speculatively impose economic controls and define the business is probably the best solution, and we may just get it. That would be a "two-sided" win.

Steve

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