

# CableFAX Daily™

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What the Industry Reads First

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## On Deck: DISH-Voom Trial to Get Underway This Week

After literally years of pretrial motions and the complete folding of the Voom satellite networks in the US, **DISH** and **Voom's** trial is set to get underway in the Supreme Court of NY on Wed. If you're new to the industry, or have just forgotten the details, here's a breakdown of the situation. In Jan '08, after unsuccessfully trying to move Voom's 15 HD channels to a less popular tier, DISH pulled the channels, which included **Voom HD Movies** and art-themed net **Gallery HD**. DISH and **Cablevision** were the only US distributors carrying the high-def nets. **Rainbow**, which was then part of Cablevision, filed suit. DISH, no stranger to contract lawsuits, was in year 3 of a 15-year contract for the Voom channels, with the agreement part of a larger transaction that gave DISH a 20% equity stake in Voom without needing to make an upfront cash investment. Voom's take is that DISH's change of heart came as its monthly sub fees ballooned to \$2.9mln in '07 from \$210K in '06 as it added many more HD customers, something Voom believes its high-def lineup contributed to. DISH argues that it had the right to bow out because Voom was not meeting contractual obligations. The DBS provider also told the court it had complained repeatedly about a lack of compelling content on the channels. By the end of '08, Rainbow opted to shutter the Voom nets, blaming the lawsuit. "While that lawsuit is progressing, the expectation is that it will be at least a year before any sort of resolution is reached," said a memo from Rainbow chief *Josh Sapan* in Dec '08. "At least a year" turned out to be a conservative estimate. While the case has meandered through the courts, interest was renewed over the summer when DISH dropped **AMC** and its sister nets on July 1. **AMC Networks** (formerly Rainbow, which is now separate from Cablevision) has blamed the drop on the litigation—specifically claiming retaliation for the court rejecting DISH's appeal to a prior trial court decision sanctioning the DBS op for bad-faith destruction of evidence (emails) in the case. DISH has said the channel drops were because of their limited value. So, what will the jury hearing this 4-year-old dispute have to do? Decide whether DISH violated its contract. According to Voom's pretrial memo, DISH could only terminate its contract if Voom did not spend \$100mln on the service in a given calendar year, until it had invested \$500mln in the service. DISH has argued that general overhead costs should not be treated toward the \$100mln requirement, and Voom claims otherwise. "The unambiguous language of the affiliation agreement does not permit Voom HD to count every conceivable business expense—including for instance, millions of dollars of corporate overhead which

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was simply allocated to Voom HD from its parent entities and spending on its separate international business—to meet its spending requirement,” DISH said in its pre-trial memo. Voom said DISH took this position despite the fact it had conducted due diligence in '05 and had reviewed projections of total operating expenses in '06 that included various overhead costs, etc. It believes it's entitled to \$2.4bln in lost licensing payments, saying in court filings that the DISH agreement started at \$3.25 per sub/month but reached nearly \$6.50 per sub by the end of the deal (it's using a former economic adviser to President Clinton to arrive at that figure). “The evidence at trial will overwhelmingly confirm that Voom HD fulfilled its contractual obligations to EchoStar and that EchoStar's premature termination—based on purported underspending by Voom HD—was pretext to get out of a deal it no longer liked,” Voom's memo said. Jury selection and opening statements are expected Mon, with the trial expected to last about a month. Given how long it has taken for the case to go to trial, any bets on how long the appeals process will last?

**Exclusivity:** Get ready to wave goodbye to the programming exclusivity ban, which keeps MSOs from making exclusive contracts that prevent their competitors from carrying satellite-delivered programming that they own. Anything can happen between now and the rules' Oct 5 sunset date (**DirectTV** and **Verizon** certainly hope something will), but the **FCC** chmn has circulated an order that would not renew the prohibition for another 5 years. Many believe the writing was on the wall, with a 3-judge DC Circuit Court of Appeals panel in '10 indicating that the Commission would really have to justify a further extension (the panel's comments came during **Comcast** and **Cablevision's** unsuccessful challenge of the '07 extension). While there had been talk that the FCC chmn might opt to extend the ban for RSNs or other sports programming, that doesn't appear to be the case. Instead, pay TV distributors can file a complaint to the FCC alleging that an MVPD is unfairly denying them programming.

**At the Portals:** Cable and CLEC weddings have the **FCC's** blessing. The Commission unanimously adopted an order that relieves the telco-cable cross-ownership restrictions in region. Rules prevented cable from acquiring more than a 10% interest in a CLEC. CLEC acquisitions could become more attractive to cable as companies ramp up business service activity. “We commend the Commission for removing outdated obstacles that have historically deterred pro-competitive transactions between cable operators and competitive local phone companies,” said **NCTA's** Michael Powell. “The cable industry provides millions of American businesses and consumers with competitive digital voice services and today's decision will help ensure that more Americans can benefit from the savings and convenience that cable offers.” **ACA** also applauded the move, saying it should provide substantial benefits to customers in smaller markets.

**NHL:** Buried in all the football games over the weekend is the premiere of “**NHL Lockout**,” due to labor conflicts between the league and the **NHL Players' Assoc.** The league's labor contract expired midnight Sat and no deal was reached by COB Mon. With hockey season starting Oct 11, **NBC Sports Network** is “hopeful that the lockout is resolved soon and does not affect our NHL programming.” However, if games are missed, “we have a large amount of quality live-event programming available to replace them, including soccer, boxing, and college hockey and basketball,” a spokesman said. Another reason for NBC Sports parent **Comcast** to hope the lockout ends soon: Comcast owns the Philadelphia Flyers.

**Wireless:** **Time Warner Cable** is selling its **Clearwire** interest, no shocker given that it has stopped re-selling Clearwire's WiMAX service and the **SpectrumCo** transaction is expected to close soon. Late Fri, TWC exchanged 46.4mln Class B shares of Clearwire into Class A shares and notified Clearwire's other strategic investors (**Comcast**, **Bright House** and **Intel**) of its intent to sell. **UBS** raised Time Warner Cable's price target to \$105 and reiterated its “buy” rating on the stock, saying it expects the MSO to accelerate share buybacks with the cash raise from Clearwire and SpectrumCo.

**Advertising:** **CAB** said cable nets' '12-'13 upfront totaled \$9.8bln, up 5% from a year ago. It's the highest-ever investment for cable nets during the upfront. In '11-'12, cable's \$9.3bln upfront was up 16% YOY. The '10-'11 upfront was up 19% to \$8mln. The economy factored in to the 13% drop in the '09-'10 cable upfront (\$6.7mln).

**Ratings:** The last ep of “Weeds” aired on **Showtime** Sun night, with 1.28mln viewers turning in for the night (864K at 10pm). Season 8 has averaged 3.2mln total viewers across platforms (VOD, replays, DVR) on par with season 7. -- Slight uptick for the return of “Boardwalk Empire” on **HBO** Sun night. The Season 3 debut drew 4.6mln viewers across its 3 plays, up from the 4.5mln a year ago (2.9mln tuned in for the 9pm showing).

**Board Moves:** Four newcomers were appointed to **SCTE's** board: **CableLabs** CTO *Ralph Brown*; **Time Warner Cable**

# BUSINESS & FINANCE

group vp, CLO *Pat Crull*; **ComScope** svp, global broadband sales *Jim Hughes* and **Comcast Univ** and **Comcast Cable** svp, CLO *Martha Soehren*. **Time Warner Cable** CTO *Mike LaJoie*, chmn of the current SCTE board, was reappointed as a dir. Eight were elected as dirs: **Midcontinent's** *David Haigh*, **Mediacom's** *Tommy Hill*, **Armstrong's** *Roger Hughes*, **Buckeye's** *Joe Jensen*, **Suddenlink's** *Bob Legg*, **Comcast's** *Ed Marchetti*, **Charter's** *Nick Segura* and **Times Fiber Comm** and **Amphenol's** *Rick Sullivan*.

**People:** **Comcast** extended chmn/CEO *Brian Roberts'* contract for a year to June 30, '13, according to an **SEC** filing. -- Former **FCC** commish/**RUS** administrator *Jonathan Adelstein* was named pres/CEO of the **Wireless Infrastructure Association**.

**Awards:** **CTAM** will recognize its '12 Rainmaker and TAMI Award recipients Oct 15 during the Summit in FL. The Rainmaker recipients are *Tony Maldonado*, vp, acquisition & marketing sciences, **Cox**; *Julia McGrath*, svp, marketing & biz dev, **Cablevision**; *Schuyler Merrihew*, exec dir, marketing, **Sony Pictures**. The TAMI Award recipients are *John Barker*, pres, **Barker DZP**; *Jamia Bigalow*, svp, distribution marketing, **Fox Cable**; *Kathy Filosa*, vp, direct marketing, **Cablevision**; *Janet Gallent*, vp, strategic research, **NBCU**; *Rick Lang*, svp, marketing & sales, central division, **Comcast**.

## CableFAX Daily Stockwatch

Company	09/17 Close	1-Day Ch	Company	09/17 Close	1-Day Ch
<b>BROADCASTERS/DBS/MMDS</b>					
DIRECTV:	54.18	0.05	CONCURRENT:	4.35	0.02
DISH:	32.01	(1.06)	CONVERGYS:	16.04	(0.05)
DISNEY:	52.15	(0.2)	CSG SYSTEMS:	22.64	(0.04)
GE:	22.05	(0.06)	ECHOSTAR:	28.99	(0.91)
NEWS CORP:	24.82	(0.09)	GOOGLE:	709.98	0.30
<b>MSOS</b>					
CABLEVISION:	16.82	(0.16)	HARMONIC:	4.86	(0.09)
CHARTER:	80.74	(1.8)	INTEL:	23.31	(0.06)
COMCAST:	35.06	(0.24)	JDSU:	13.19	(0.26)
COMCAST SPCL:	34.24	(0.21)	LEVEL 3:	23.85	(0.9)
GCI:	9.76	0.71	MICROSOFT:	31.21	UNCH
LIBERTY GLOBAL:	57.54	(0.83)	RENTRAK:	17.39	0.07
LIBERTY INT:	18.79	(0.47)	SEACHANGE:	8.07	0.05
SHAW COMM:	20.73	0.08	SONY:	13.11	0.06
TIME WARNER CABLE:	92.10	(0.28)	SPRINT NEXTEL:	5.27	0.01
VIRGIN MEDIA:	29.66	(0.14)	TIVO:	9.81	(0.03)
WASH POST:	362.98	3.22	UNIVERSAL ELEC:	16.94	(0.5)
<b>PROGRAMMING</b>					
AMC NETWORKS:	41.04	(0.77)	VONAGE:	2.48	0.01
CBS:	37.13	(0.02)	YAHOO:	15.68	(0.09)
CROWN:	1.69	0.02	<b>TELCOS</b>		
DISCOVERY:	58.58	(0.17)	AT&T:	37.60	0.34
GRUPO TELEVISA:	24.10	(0.17)	VERIZON:	44.58	0.05
HSN:	48.24	0.11	<b>MARKET INDICES</b>		
INTERACTIVE CORP:	51.92	(0.73)	DOW:	13553.10	(40.27)
LIONSGATE:	15.39	(0.37)	NASDAQ:	3178.67	(8.46)
LODGENET:	0.38	(0.04)	S&P 500:	1461.19	(4.58)
NEW FRONTIER:	1.35	(0.02)	<b>TECHNOLOGY</b>		
OUTDOOR:	7.24	0.02	ADVANTAGE:	2.20	(0.05)
SCRIPPS INT:	62.04	(0.29)	ALCATEL LUCENT:	1.27	UNCH
TIME WARNER:	44.87	0.16	AMDOCS:	33.19	(0.09)
VALUEVISION:	2.13	(0.02)	AMPHENOL:	63.09	(0.09)
VIACOM:	53.03	0.17	AOL:	33.66	(0.25)
WWE:	8.88	(0.02)	APPLE:	699.78	8.50
<b>TECHNOLOGY</b>					
ARRIS GROUP:	14.05	(0.02)	ARRIS GROUP:	14.05	(0.02)
AVID TECH:	9.90	0.07	AVID TECH:	9.90	0.07
BLNDER TONGUE:	1.01	UNCH	BLNDER TONGUE:	1.01	UNCH
BROADCOM:	36.09	(0.14)	BROADCOM:	36.09	(0.14)
CISCO:	19.16	(0.33)	CISCO:	19.16	(0.33)
CLEARWIRE:	1.54	(0.08)	CLEARWIRE:	1.54	(0.08)

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