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CableFAX Daily™

Tuesday — September 22, 2009

What the Industry Reads First

Volume 20 / No. 181

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It's the Principle: Court Challenge Continues as FCC Plans NN Rulemaking

On the same day that FCC chmn *Julius Genachowski* delivered his plans for a network neutrality rulemaking, the Commission filed a court brief defending its decision last year that **Comcast** violated the FCC's net neutrality principles while managing its network. "The modest regulatory steps taken here fall comfortably within the FCC's ancillary authority," the FCC told the US Appeals Court for DC. Comcast specifically argues that the agency overstepped its authority and never adopted its so-called Internet principles as formal rules. It's an argument that carries weight with the FCC's Republicans. "Curiously, today's speech appears to admit that the Commission did not have enforceable rules at the time of last year's Comcast/BitTorrent decision while the Commission simultaneously files its appellate brief defending that decision," commissioners *Robert McDowell* and *Meredith Baker* said in a joint statement expressing concern that "factual and legal conclusions may have been drawn before the [rulemaking] process has begun." The 2 also noted that they hadn't received a draft or summary of the proposal. During a **Brookings Institute** speech Mon, Genachowski proposed that the FCC adopt the existing principles, along with 2 new more, as "Commission rules." The first new principle would not allow ISPs to discriminate against particular apps or content—but would allow for "reasonable network management." The other new principle would require ISPs to be open with their network management practices. Additionally, he wants it clear that the principles/rules apply to wireless providers as well. The FCC court brief Mon rejected the claim that it couldn't enforce the principles in the Comcast case, saying to argue that "ignores the Commission's explication of the statutory standards in the Internet Policy Statement, which announced the principles the agency would use in future adjudications." Asked about the court case, a Comcast spokesperson said Mon, "Our legal challenge to the FCC's order against us last year is primarily based on the improper handling of the matter by the prior leadership of the Commission." A decision is not expected in the case until spring, giving the FCC "ample time" to work on the rules, members of the pro-net neutrality **Open Internet Coalition** said. Genachowski plans to present the proposal for a vote at the FCC's Oct open meeting.

GOP Says No: Republicans are gearing up to fight the FCC's net neutrality efforts. Ranking Sen Commerce member *Kay Bailey Hutchison* (R-TX) introduced an amendment Mon to the Interior Appropriation bill that would prevent the FCC from expending funds to develop and implement new regulatory mandates. It is cosponsored by Sens *John*



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Ensign (R-NV), *Sam Brownback* (R-KS), *David Vitter* (R-LA), *Jim DeMint* (R-SC) and *John Thune* (R-SD). "Where there have been a handful of questionable actions in the past on the part of a few companies, the Commission and the marketplace have responded swiftly," Hutchison said. "The case has simply not been made for what amounts to a significant regulatory intervention into a vibrant marketplace."

Prime Emmys: Though cable's 56 overall wins led by HBO's 21 was an impressive haul, the real story Sun night was about broadcast, whose big 4 combined for 47 nods. After recent grumblings about broadcast's ailing business model, the Emmys telecast playfully yet officially acknowledged the medium's trouble. While CBS was busy touting some of its talent and upcoming shows throughout (Watch us! Watch us!), the event featured several telling quips, including: *Julia Louis-Dreyfus'* thankfulness for being asked to present an award during "the last official year for broadcast network television," and *Kristen Chenoweth* saying, "I'm unemployed now so I'd like to be on 'Mad Men'" during her acceptance speech for the Best Supporting Actress in a Comedy Series award, for the canceled ABC series "Pushing Daisies." Aside from Chenoweth's pass, AMC's acclaimed "Mad Men" also received 2 honors including Best Drama for a 2nd consecutive year. "With each success, more of the creative community is looking to be embraced by cable," said a proud AMC chief *Charlie Collier*. Interestingly metaphoric, cable shows took home the lion's share of major acting awards, while broadcast content dominated those for supporting roles. For her role in FX's "Damages," *Glenn Close* won her 2nd straight statuette for lead actress in a drama, saying that actors always go where there's great writing. Increasingly that's to cable, a trend that's beginning to lead annually to "awesome" performances by cable at major events, said FX pres/gm *John Landgraf*, clearly pleased that Close "kind of chose to enter the series business through us." Other cable award totals: **Cartoon Net** (6), **Showtime** (6), **AMC** (5), **Comedy Central** (3), **History** (3), **FX** (2), and with 1 each **A&E**, **Bravo**, **Discovery Channel**, **Disney Channel**, **Fox Movie Channel**, **MTV**, **Nickelodeon**, **Spike** and **syfy**. -- E!'s Sun red carpet coverage (6-8pm) prior to the Prime Emmys garnered nearly 1.4mln total viewers, up +15% vs a year ago and nearly 3X the net's 3Q prime delivery avg among total viewers. Also, the net's pre-red carpet coverage (4-6pm) delivered more than 500K total viewers.

More Neutrality Reax: Everybody had something to say on the proposed net neutrality rules. While groups like **Free Press** and **Public Knowledge** were not surprisingly over the moon, cable treaded carefully, raising doubts about the necessity of such action. **Comcast** EVP *David Cohen* blogged (blog.comcast.com) the familiar refrain of whether "increased regulation on the Internet is a solution in search of a problem." **NCTA's** *Kyle McSparrow* complimented **FCC** chmn *Juilius Genachowski* on his "very thoughtful" speech and plans for a fair, fact-based proceeding. But he added that cable will "continue to present facts and data to the Commission that suggest that any regulation in this arena should be approached with great caution and only in the most targeted way, and to advocate policies that avoid government entanglement in operational decisions that could undermine the very dynamism of the Internet we all seek to preserve." **ACA** used the event to push against "a closed Internet business model," like **ESPN360**. ACA objects to ISPs paying for such services based on the total number of broadband subs an op has, regardless of whether those subs want the content. "This FCC Chairman takes net neutrality with utmost seriousness, but a holistic examination of the Internet marketplace won't be complete until ACA's ongoing calls for Content Neutrality are given the time and attention they deserve from FCC regulators," ACA's *Matt Polka* said. FCC Democratic commissioners *Michael Copps* and *Mignon Clyburn* support the chmn's proposal, as does Rep *Ed Markey* (D-MA), who has his own net neutrality bill pending in Congress. "Rules put forward by the Commission in this area would be a key complement to the bill that Chairman [Henry] Waxman (D-CA), Congresswoman [Anna] Eshoo (D-CA) and I are advancing to codify these vital protections for consumers and innovators, and I look forward to working with the Commission and my colleagues in the weeks and months ahead," Markey said.

VOD: Suddenlink and **Mediacom** struck deals with **Blockbuster** whereby the rental chain will rebrand certain aspects of the ops' VOD services under its own name, beginning this month in Charleston, WV (Suddenlink), and Des Moines (MCCC). At a later date, Blockbuster is expected to further enhance the services by offering its by-mail, vending, in-store and digital channels features therein, with the MSOs slated to further promote the cooperation through local broadcast advertising, direct mail and other marketing support.

In the States: Comcast's currently offering DOCSIS 3.0 services in parts of CO including Denver, and expects to complete the state rollout by year-end. While most existing subs will receive free speed upgrades, 2 new tiers are available featuring speeds up to 50Mbps for \$100/month and up to 22Mbps for \$63/month.

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Steve Necessary
Cox Communications

SESSION HIGHLIGHTS

- Discover ways to impact the TV viewing experience using social media
- Find out how TV widgets can be a gateway for marketers
- Understand the value chain of mobile broadband
- See examples of ITV & how to tap tools to deliver interactivity
- Make every dollar work like ten with ways to sync consumer & affiliate marketing
- Get the picture on 3D TV



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Online: Expected to go live next month, premium channel **Epix** announced marked expansion plans for its attendant Web service **EpixHD.com**. To be made available through the net's distribution partners such as **Verizon**, the value-add site will eventually feature more than 3K titles from partners **Lionsgate**, **MGM** and **Paramount**, who are planning to complete the process of converting a slew of past films to digital format next year.

Competition: 1 new sign up deal from **Verizon** includes a \$150 prepaid Visa card and 24-month price guarantee for the purchase of certain double- and triple-play bundles, while another features \$75/month pricing for 3 months on a bundle featuring HSD, a **DirecTV Plus DVR** package with free **Showtime** for a year, and unlimited local and long distance calling. Pricing for the latter bundle in months 4-12 runs \$100-\$110, contingent on Internet speeds. -- **AT&T** launched in Charlotte a public trial of its **3G MicroCell**, an in-home networking device designed to support up to 4 phone or Web users simultaneously through an existing broadband service. Customers in the trial can purchase the device for \$150, and rebates apply to customers who upgrade certain AT&T service plans.

Honors: **Advance/Newhouse** chmn **Bob Miron** is the winner of **CTAM's** '09 Grand TAM Award, which recognizes commitments made to ensure the future of the industry through marketing, education and leadership.

CableFAX Daily Stockwatch

Company	09/21 Close	1-Day Ch	Company	09/21 Close	1-Day Ch
BROADCASTERS/DBS/MMDS					
BRITISH SKY:	34.96	(0.31)	AMPHENOL:	39.25	(0.12)
DIRECTV:	26.79	0.46	APPLE:	184.02	(1)
DISH:	18.51	0.42	ARRIS GROUP:	13.48	(0.02)
DISNEY:	28.00	(0.44)	AVID TECH:	14.80	(0.31)
GE:	16.76	0.26	BIGBAND:	4.14	0.05
NEWS CORP:	14.27	(0.05)	BLNDER TONGUE:	1.19	(0.01)
MSOS					
CABLEVISION:	24.98	(0.1)	BROADCOM:	30.36	0.38
COMCAST:	17.26	(0.03)	CISCO:	23.63	0.23
COMCAST SPCL:	16.49	0.09	CLEARWIRE:	8.79	(0.41)
GCI:	6.94	(0.15)	COMMSCOPE:	32.24	0.80
KNOLGY:	8.21	0.10	CONCURRENT:	4.74	(0.02)
LIBERTY CAPITAL:	21.59	0.12	CONVERGYS:	10.99	(0.32)
LIBERTY ENT:	30.45	0.56	CSG SYSTEMS:	15.30	0.04
LIBERTY GLOBAL:	24.58	0.09	ECHOSTAR:	18.63	(0.17)
LIBERTY INT:	11.31	(0.01)	GOOGLE:	497.00	5.54
MEDIACOM:	5.59	(0.13)	HARMONIC:	6.83	(0.04)
RCN:	9.51	(0.07)	INTEL:	19.54	(0.02)
SHAW COMM:	17.83	(0.31)	JDSU:	7.39	(0.15)
TIME WARNER CABLE:	42.24	(0.43)	LEVEL 3:	1.43	0.00
VIRGIN MEDIA:	12.93	0.22	MICROSOFT:	25.30	0.04
WASH POST:	462.03	(0.47)	MOTOROLA:	8.85	(0.11)
PROGRAMMING					
CBS:	12.38	(0.22)	OPENTV:	1.39	(0.08)
CROWN:	2.04	0.15	PHILIPS:	25.04	(0.27)
DISCOVERY:	29.39	(0.21)	RENTRAK:	17.84	0.93
EW SCRIPPS:	7.69	(0.28)	SEACHANGE:	7.54	(0.15)
GRUPO TELEVISA:	18.59	(0.04)	SONY:	28.33	(0.13)
HSN:	13.62	(0.41)	SPRINT NEXTEL:	4.25	(0.03)
INTERACTIVE CORP:	20.63	(0.09)	THOMAS & BETTS:	28.49	(0.31)
LIBERTY:	34.73	(0.06)	TIVO:	10.66	(0.03)
LODGENET:	6.25	(0.19)	TOLLGRADE:	5.61	(0.13)
NEW FRONTIER:	2.20	(0.01)	UNIVERSAL ELEC:	20.27	(0.24)
OUTDOOR:	7.06	(0.1)	VONAGE:	1.44	(0.04)
PLAYBOY:	3.06	(0.02)	YAHOO:	17.04	(0.35)
RHI:	3.21	(0.12)	TELCOS		
SCRIPPS INT:	37.01	(0.27)	AT&T:	26.87	(0.18)
TIME WARNER:	29.96	0.38	QWEST:	3.47	(0.03)
VALUEVISION:	3.91	0.08	VERIZON:	29.49	(0.1)
VIACOM:	29.38	(0.31)	MARKET INDICES		
WWE:	14.23	0.10	DOW:	9778.86	(41.34)
TECHNOLOGY					
3COM:	4.83	0.08	NASDAQ:	2138.04	5.18
ADC:	8.49	(0.19)			
ADVANTAGE:	2.03	(0.15)			
ALCATEL LUCENT:	4.32	0.00			
AMDOCS:	26.99	0.34			

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Speaker Snapshot*

Marc Goldstein, Group M
Peggy Green, Zenith Media
Steve Lanzano, MPG
Steve Sturm, Toyota
Mark Owens,
 Vanguard Entertainment
Jon Stimmel, Unilever
Pam Zucker, MediaVest

*Subject to change

EYE ON ADVERTISING

Make Way for Bollywood

Direct-to-consumer auto insurance company **Esurance** decided to revel in Bollywood in a big way, sponsoring IFC's "Wake Up to Bollywood" block on key Sundays from Aug 30 to Dec 20. **CableFAX** editor Amy Maclean chatted with Esurance CMO John Swigart and IFC & **Sundance Channel** pres Evan Shapiro about the partnership.

Why was Bollywood appealing to Esurance?

John Swigart: It was a combination of Bollywood and doing something with IFC. Our national television advertising is primarily on cable. We've always been interested in looking to do something with IFC. They don't run traditional advertising, so this opportunity ... to integrate our brand in a little bit more meaningful way than traditional television advertising was pretty appealing. On the Bollywood side, it has a pretty significant following and it seemed exciting to integrate [Esurance animated character] Erin into that environment.

Evan Shapiro: We made a bet on Bollywood and India about 3 years ago when we greenlit "Bollywood Hero." We started to see that there was a larger opportunity than what we were working on. There's a huge South Asian community ... that is a bit underserved, to be perfectly frank.

Was Esurance looking to reach that demo?

JS: It certainly was a pretty significant secondary goal. I wouldn't say we were out actively seeking ways to do that, but we're very focused on the online consumer and certainly that's true of the South Asian demographic, particularly the younger South Asian demographic.

Why do you mainly use cable for TV ad buys?

JS: We find it to be a little more efficient. We're able to target more. The broadcast networks certainly have tremendous reach relative to most cable properties, but more of that reach tends to get outside our target demographic. We're able to get better efficiency for our targets in cable.

Is there something cable could be doing better for you?

JS: The key is content. If you have good content, you will get viewers and you will get advertisers. Cable has probably been more of a leader in developing that good content over the last few years, in my perspective. It's a little bit edgier, little bit more appealing. They have the flexibility to appeal to smaller, more targeted audiences.

ES: If you look what's happening on cable, John hit it right on the head. Good content is the key to audience loyalty and audience engagement. I think he was being very, very polite. I think it's universally accepted right now—especially if you look at the Emmys—that the most progressive and forward-thinking work on TV is done in cable.

John, what other networks are on your radar?

JS: Obviously, we need reach as well. We work closely with the larger, broader cable networks—**TNT, TBS, FX, USA**. We work with a lot of the **Viacom** networks. In small reach networks, we'll look at **G4** or some of the other smaller, very male networks. And we look for networks that are willing to work with us on packages that make sense. We'll take opportunities on broadcast as they're presented to us, but we're not out there actively buying.

What are you hoping for in the interactive ad space?

ES: We have a tremendous amount of research on what's working across our competitive set... What we see, especially when you look at a television network, is that it's very important to engage the on demand channel and online. We work very hard to create campaigns for our clients, but also for ourselves, that engage on all 3 platforms, or all 4 if you include mobile... We go wherever the audience goes.

JS: I completely agree you have to let the consumer consume content in many different ways, but the fact of the matter remains, the linear network—whether its IFC or any other TV programming outlet—is where the bulk of the reach, the bulk of the frequency is going to come.



CableFAX: The Magazine's Most Influential Minorities in Cable issue

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