

CableFAX Daily™

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What the Industry Reads First

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Court Handicapping: Judges Seem Likely to Uphold Exclusive Programming Ban

It doesn't sound terribly likely that the FCC's program access rules will get the boot by a federal court. "It would be reaching out quite a lot for us to say [the FCC's] predictive judgments are not going to be enough for us," US Court of Appeals for the DC Circuit Chief Judge David Sentelle said during oral arguments Tues in **Cablevision's** challenge to an FCC decision extending the program access rules in '07. **Comcast** is also a plaintiff. Sentelle said he could only think of 1 case years ago where the court did something similar. Cablevision's attorney, outside counsel **Henk Brands**, reminded the judge that the DC Circuit did just that a few weeks ago in vacating the FCC's 30% cable horizontal ownership cap. Sentelle acknowledged that Brands was right, so keep hope alive, cable. Still, we aren't the only ones with doubts about the court rejecting the ban, which prevents vertically integrated cable ops from having exclusive programming arrangements. **Stifel Nicolaus** analysts told clients Tues that it seemed likely the court would uphold the FCC decision, despite raising questions and concerns about the agency's decision making. Judge **Brett Kavanaugh** wondered if doing away with the ban would mean customers would end up paying for both DBS and cable if they wanted access to something like **DirectTV's NFL** Sunday Ticket and Phillies games on **Comcast Sports Net**. But Kavanaugh also put forth some tough questions to the FCC, asking if it would require the *Washington Post*, which he said has about 7 times the market share of the *Washington Times*, to share its columnists with the Times. Cablevision argued that the exclusivity rules are not needed because the market has become much more competitive since they were first introduced in 1992, pointing to the court striking down the 30% cap last month. FCC attorney **Nandan Joshi** rejected that argument, saying the agency had thoroughly evaluated the market before deciding it made sense to extend the ban through '12. It's not a question of whether cable ops would withhold all programming, but whether they would withhold must-have, competitive programming, said an attorney for interveners **AT&T, Verizon** and **DISH**. Sentelle pressed Joshi on what it would take for the FCC to let the rules sunset, asking if the solution would be if cable ops owned 1/6 of English-language programming (the FCC says they own about 1/3 currently). Joshi said that would be "closer," but said the Commission would still have to evaluate the entire landscape. A ruling could come late this year or early next year.

Broadband Dollars: NTIA and RUS have revamped their database for broadband stimulus funding applications, adding

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Source: The Nielsen Co., Live Data, M-Su 8P-11P, 3/30/08-9/13/09. (1) Design Star IV 9/13/09 compared to all HGTV historical telecasts, HH Cvg AA%. (2) 9/13/09 compared to all HGTV historical telecasts, HH, P2+, P/W18+, (000). (3) All HGTV series (including specials) historical telecasts, HH, P2, P/W18+, P/W 25-54, Cvg AA%. Subject to qualifications upon request.

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executive summaries of the applications where applicants granted express written permission for the agencies to publish the summary. In some cases, applicants chose to have a redacted exec summary published or no exec summary at all. Additionally, you can now search for all projects by state (regardless of what state the applicant is based in). The database, available at www.ntia.doc.gov/broadbandgrants/applications/search.cfm, does not include paper applications.

At the Portals: *Jim Dolan* and *Tom Rutledge* were among a **Cablevision** contingent that met Fri with **FCC** chmn *Julius Genachowski* and commissioners *Mignon Clyburn*, *Robert McDowell* and *Michael Copps*. "During these discussions, the Cablevision representatives discussed the competition the company faces in the NY market; the company's new **MSG Varsity** and Optimum WiFi services; and Cablevision's broadband offerings, including its recently-launched Optimum Online Ultra," an FCC filing said.

Competition: **Verizon** officially launched **FiOS TV** in Pittsburgh, where the service's 122 HD channels are currently available in parts of 20 communities. A full rollout is expected within 6 years. The telco's offering packages in the area that include FiOS TV and Internet plus voice service for as little as \$80/month for the 1st 6 months, while touting a \$150 cash back offer to qualifying customers.

In the States: As expected (**Cfax**, 8/12), **Cablevision** has deployed across its footprint a remote DVR scheduling and management feature for dual DVR/HSD customers. Accessible through the **Optimum.net** consumer portal, the feature allows for use from any PC or Mac and integrates programming listings and recommendations.

VOD: **Comcast** and **Discovery Education** launched **Discovery Education On Demand by Comcast**, a first-in-the-nation service delivering IN families instant and convenient at-home access to digital educational media, homework help tools and more. It's available at no additional cost to Comcast digital subs and online to all Indiana parents and students.

Advertising: **Nielsen's** teaming with **Facebook** to help advertisers better measure online ad efficacy. The collaboration's 1st product, **Nielsen BrandLift**, uses opt-in polls on Facebook's homepage to measure consumer attitudes and purchase intent from the site's display ads. It will launch with select test partners this week, and a full rollout is expected in the coming weeks. Nielsen added that as the overall US online ad spend fell 2% YOY in Aug, the overall online ad spend on the top social network and blogging sites surged 119%.

Online: **Big Ten Net's** set to stream at least 200 live events this season, primarily Olympics sports such as women's basketball (100 games), women's volleyball, wrestling and men's ice hockey. Events will cost \$3 each, and the net will train students at conference schools to help produce the streams.

In the Courts: Authorized **DISH** dealers **Vision Quest** and **New Edge Satellite** agreed to settle for a respective \$690K and \$570K charges that they violated **FTC** rules by calling consumers whose numbers are on the Do Not Call Registry. A similar lawsuit against DISH remains in litigation.

Programming: **Starz** acquired 5 docs from **Moriah Films** of the **Simon Wiesenthal Center**, including Academy Award winner "The Long Way Home." All 5 will air Oct 1 on **IndiePlex** to honor the anniversary of the mass execution of more than 1K of the remaining Jewish inhabitants of Luboml, Poland in 1942. The films were acquired at the suggestion of **Comcast** chmn/CEO *Brian Roberts*, who has long been associated with the Wiesenthal Center, said Starz's *Bob Clasen*.

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BUSINESS & FINANCE

Brick by Brick: Sundance Channel's week-long doc series "Brick City" (runs every night this week at 10pm) is getting buzz for its in-depth look at the challenges facing Newark, NJ, and its mayor. But beyond that, it's one of the 1st major programming initiatives for *Sarah Barnett*, who was appointed GM of the net in Apr. "Brick City," in terms of the attention we've been getting before launch, is really gratifying because we really believe in the show," she said. Now that she's approaching the 6-month mark on the job, what sort of stamp does Barnett hope to leave on Sundance? "It's building off this brilliant brand of Sundance, and carrying on making programming that is smart and ever more inviting people in," she said.

People: *Donna Ebbs* was named svp, programming for the **Discovery-Hasbro** kids net slated to launch next year. -- *Mike Sparkman* joined **PCT Intl** as evp, worldwide sales.

Business/Finance: **Wells Fargo** upgraded **DISH** to 'outperform' from 'market perform,' citing an expectation of sub declines in the year's 2nd half "well below that of cable's." -- **DirectTV** completed its previously announced \$2bln debt financing through \$1bln in 4-3/4% senior notes due '14 and \$1bln in 5-7/8% senior notes due '19. -- **Interactive TV** firm **Ensequence** said it secured \$20mln in additional funding, and promoted former **MTV** exec *Peter Low* to pres/CEO. Former CEO *Dalen Harrison* remains on the board.

CableFAX Daily Stockwatch

Company	09/22 Close	1-Day Ch	Company	09/22 Close	1-Day Ch
BROADCASTERS/DBS/MMDS					
BRITISH SKY:	35.73	0.77	AMPHENOL:	39.13	(0.12)
DIRECTV:	27.28	0.49	APPLE:	184.48	0.46
DISH:	19.00	0.49	ARRIS GROUP:	13.69	0.21
DISNEY:	28.38	0.38	AVID TECH:	14.91	0.11
GE:	17.01	0.25	BIGBAND:	4.10	(0.04)
NEWS CORP:	14.44	0.17	BLNDER TONGUE:	1.18	(0.01)
MSOS					
CABLEVISION:	25.07	0.09	BROADCOM:	30.77	0.41
COMCAST:	17.21	(0.05)	CISCO:	23.41	(0.22)
COMCAST SPCL:	16.57	0.08	CLEARWIRE:	8.97	0.18
GCI:	6.88	(0.06)	COMMSCOPE:	32.85	0.61
KNOWLOGY:	8.18	(0.03)	CONCURRENT:	4.95	0.21
LIBERTY CAPITAL:	21.57	(0.02)	CONVERGYS:	11.22	0.23
LIBERTY ENT:	30.85	0.40	CSG SYSTEMS:	15.73	0.43
LIBERTY GLOBAL:	24.46	(0.12)	ECHOSTAR:	19.16	0.53
LIBERTY INT:	11.34	0.03	GOOGLE:	499.06	2.06
MEDIACOM:	5.67	0.08	HARMONIC:	6.82	(0.01)
RCN:	9.59	0.08	INTEL:	19.53	(0.01)
SHAW COMM:	18.10	0.27	JDSU:	7.90	0.51
TIME WARNER CABLE:	42.33	0.09	LEVEL 3:	1.46	0.03
VIRGIN MEDIA:	13.10	0.17	MICROSOFT:	25.77	0.47
WASH POST:	461.60	(0.43)	MOTOROLA:	8.72	(0.13)
PROGRAMMING					
CBS:	12.65	0.27	OPENTV:	1.40	0.01
CROWN:	2.06	0.02	PHILIPS:	25.45	0.41
DISCOVERY:	29.55	0.16	RENTRAK:	18.09	0.25
EW SCRIPPS:	7.74	0.05	SEACHANGE:	7.48	(0.06)
GRUPO TELEVISA:	18.69	0.10	SONY:	28.37	0.04
HSN:	14.08	0.46	SPRINT NEXTEL:	4.29	0.04
INTERACTIVE CORP:	20.49	(0.14)	THOMAS & BETTS:	29.13	0.64
LIBERTY:	34.68	(0.05)	TIVO:	10.55	(0.11)
LODGENET:	6.29	0.04	TOLLGRADE:	5.48	(0.13)
NEW FRONTIER:	2.19	(0.01)	UNIVERSAL ELEC:	20.37	0.10
OUTDOOR:	6.96	(0.1)	VONAGE:	1.44	0.00
PLAYBOY:	2.93	(0.13)	YAHOO:	16.86	(0.18)
RHI:	3.28	0.07	TELCOS		
SCRIPPS INT:	37.41	0.40	AT&T:	26.50	(0.37)
TIME WARNER:	30.14	0.18	QWEST:	3.53	0.06
VALUEVISION:	3.91	0.00	VERIZON:	29.51	0.02
VIACOM:	29.48	0.10	MARKET INDICES		
WWE:	14.31	0.08	DOW:	9829.87	51.01
TECHNOLOGY					
3COM:	4.77	(0.06)	NASDAQ:	2146.30	8.26
ADC:	8.67	0.18			
ADVANTAGE:	2.06	0.03			
ALCATEL LUCENT:	4.51	0.19			
AMDOCS:	27.07	0.08			

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

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