URGENT! PLEASE DELIVER



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 guite 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 DirecTV'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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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.

<u>At the Portals</u>: 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.

<u>Competition</u>: 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.

<u>VOD</u>: Comcast and Discovery Education launched Discovery Education On Demand by Comcast, a first-in-thenation 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.

<u>Advertising</u>: 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%.

<u>Online</u>: **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.

<u>In the Courts</u>: 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 Chan-

nel'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-Has-bro** 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." -- DirecTV 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.

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ARRIS GROUP:	13.69	0.21		
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BIGBAND:				
BLNDER TONGUE:	1.18	(0.01)		
BROADCOM:		0.41		
CISCO:				
CLEARWIRE:				
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CONVERGYS:	11.22	0.23		
CSG SYSTEMS:				
ECHOSTAR:	19.16	0.53		
GOOGLE:		2.06		
HARMONIC:				
INTEL:				
JDSU:	7.90	0.51		
LEVEL 3:	1.46	0.03		
MICROSOFT:				
MOTOROLA:				
OPENTV:				
PHILIPS:				
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SEACHANGE:				
SONY:				
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THOMAS & BETTS:				
TIVO:				
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UNIVERSAL ELEC:				
VONAGE:				
YAHOO:		(0.18)		
TELCOS				
AT&T:				
QWEST:				
VERIZON:	29.51	0.02		

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Publication Date: October 27

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