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Thursday — October 3, 2013

What the Industry Reads First

Volume 24 / No. 192

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Shutdown Talk: Despite Delays, Immediate Impact Minimal

A short government shutdown might not slow down various cable and telecom regulatory proceedings at the FCC, but Congressional dysfunction means the Commission may remain a 3-member agency longer than expected. **Senate Commerce** postponed an exec session originally scheduled for Thurs to vote on the nomination of *Michael O'Rielly* as Republican FCC commissioner. FCC chmn nominee *Tom Wheeler* already got committee approval, and it's widely thought the Senate will wait to confirm him until he can be paired with O'Rielly. The shutdown and exec session postponement might delay the process to confirm both nominees, though committee leadership indicated its intent is to get both seated sooner rather than later, according to *Harold Feld*, **Public Knowledge** svp. It's possible the committee approval of O'Rielly could be done behind closed doors, an industry observer said. The problem is that both still need the full Senate vote. And let's not forget the wild card, Sen *Ted Cruz* (R-TX), who pressed Wheeler during his confirmation hearing on political ad disclosure issues and threatened to put a hold on the process. What does the shutdown mean for cable's main lobbying arm? Since it's only day 2 of the shutdown, "the impact is pretty minimal," said *Brian Dietz*, NCTA vp of communications & digital strategy. "If we are still in this situation 10 days from now, that could be a different story." Specifically, spectrum auction proceedings will start to back up, along with many other things that the FCC handles on a daily basis, such as license transfers, equipment authorization and merger applications, Feld said. In addition, a shutdown that lasts more than a week could put **DISH's** spectrum plans at stake. A longer shutdown could also delay the H Block auction, which the FCC planned for Jan. DISH is a potential bidder. The satellite company also has a petition pending at the agency for waiver of certain technical rules governing the terrestrial deployment on its AWS-4 spectrum. **Stifel Nicolaus** analysts expect the agency to approve the petition by mid-Dec, assuming the shutdown ends soon. DISH is looking to pair its AWS-4 spectrum with **LightSquared's** spectrum, which it's hoping to buy out of bankruptcy and includes possible unlinks, Stifel analysts noted. A bankruptcy judge recently set up procedures for possibly auctioning off LightSquared's assets on Nov 25. For now, various cable-related pending proceedings at the FCC aren't anywhere near a decision, therefore there's no practical impact, the observer said. On Mon, a day before the shutdown, the agency beat the clock sending out the tentative agenda for its Oct 22 open meeting. Items include considerations of orders on interoperability issues in the lower 700 MHz band, public safety broadband and rural call completion. FCC chiefs often work on proceedings through government shutdowns. In '95, agency officials continued to work on **Westinghouse's** merger with **CBS** as former Pres *Bill Clinton* fought then-Speaker of the House *Newt Gingrich*.

Spat: Do programmers love **Verizon** or what? While **Time Warner Cable** was embroiled in a month-long dispute with **CBS**, the programmer inked a deal with Verizon FiOS. This time around, **Turner** is trumpeting a deal signed with Verizon at the same time its networks are dark on **Cable One**. Both MVPDs faced an Oct 1 deadline for a new contract. (More on the Verizon deal below.) On Wed, Cable One pres/CEO *Tom Might* issued a blistering statement, claiming again that Turner's



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decision to remove **TBS, TNT** and **Cartoon** was an act of retaliation. "We signed contracts for TBS, TNT and the Cartoon Network through the **National Cable Television Cooperative (NCTC)**, which allows for the purchase of individual channels rather than the entire bundle of eight," Might said, describing how the MSO dropped **CNN, HLN, truTV** and other Turner nets. "In a disgraceful punitive reaction, Turner Networks refused to recognize the NCTC contracts and immediately de-authorized all Cable ONE systems in order to 'teach' Cable ONE a lesson about the power of cable programmers to tie and bundle channels together and force carriage of unwanted bundles. They refuse to give cable operators or their customers any choice about what they can or cannot buy." If this issue of wholesale bundling sounds familiar, it's because it is at the center of **Cablevision's** lawsuit against **Viacom**. In Feb, the MSO filed an antitrust suit against Viacom claiming it illegally forces it to carry and pay for lesser-watched nets that its consumers don't want in order to carry "must-have" channels. The case is still making its way through the court. Turner has said Cable One does not have a right to deliver TNT, TBS and Cartoon through the NCTC agreement. NCTC has stayed mum. Cable One said it will issue customer credits and replace the other Turner nets over time "with more popular networks." "We hope Turner Networks stops their greedy, bullying antics, respects the contracts we have signed for TBS, TNT and Cartoon, and returns them to viewers soon," Might said. Turner has launched a website, SaveMyShows.com, providing FAQs and a number to call Cable One.

Carriage: Turner's new long-term pact with **Verizon** gives FiOS more VOD and live, linear content, and grants full TVE VOD and linear rights for all major Turner nets. It helps FiOS as it builds on its FiOS Mobile app launch last Fri. **CNN, HLN, TNT, TBS, Cartoon/Adult Swim, truTV, TCM, CNN Intl, CNN en Espanol** and **Boomerang** are covered in the deal.

Talking Baseball: TBS' coverage of the National League Wild Card Game Tues (Pirates defeated Reds, 6-2) scored 4.6mIn total viewers and a 3.0 HH rating, based on **Nielsen** Fast Nationals. The telecast was up 15% among total viewers and US HH rating when compared to last year's Wild Card Game (2.6, 4mIn). The game won the night across all cable nets among total viewers. Not watching the game were **Cable One** customers, who lost TBS early Tues because of a contract dispute between the MSO and Turner. Cable One subs are also out of luck for Game 2 of the Cardinals-Pirates as it's on **MLB Network** (there's no deal between the 2). MLB Net has another LDS game on Mon. The net is fresh off its most-watched regular season, with total day viewership through 3Q up 34%. It averaged 205K prime time viewers in 3Q, up 26% over 3Q12. The net saw its highest audiences ever for regular season games in '13, with 239K average viewers per game, up 9% over last season. -- **ESPN's** coverage of the season (79 games across ESPN and ESPN2) was up 14% in ratings vs last year. ESPN finished with a 0.8 HH rating, up from 0.7 last season. It averaged 1.1mIn viewers compared to 1.02mIn last year.

Research: After a short 3-month trial, **Cox's** Internet TV service flarewatch flamed out, with **IHS** analysts figuring the MSO stopped the pilot because the financial rewards proved minimal. IHS estimated the OTT alternative service delivered a financial margin of 22.1% compared to an estimated 46.7% for cable in general before any other expenses. "The end of the flareWatch trial was inevitable because our analysis led to two key discoveries," said *Erik Brannon*, analyst for US cable nets at IHS. "The programming slate represented a minimum in terms of what channels need to be included in a lineup to meet customer expectations; and the financial benefit for Cox to continue offering the service could not be firmly established. But even though its channel lineup represented a minimum in terms of what is likely required to be successful, the overall composition of the lineup was still considered nearly on par with basic digital cable lineups." Cox HSD customers

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in Orange County could sign up for flareWatch for \$34.99/month for 97 channels and 30 hours of cloud-based DVR service. A separate **Fanhattan** set-top had to be purchased for \$100. The monthly price rose to \$39.99 and the OTT set-top price dropped to \$50 as the trial went live.

B2B: Comcast Business continues to woo sports clients. Its latest contract is with the **Oakland Athletics**, which includes delivering HSD at Oakland's O.co Coliseum. The fiber-based 100 Mbps Ethernet connection seeks to enable the team to support daily operations for front office staff and spikes in demand due to media covering each game.

Emmys: CBS bagged the most News & Doc Emmy awards Tues night, with 12 wins. It was followed by **PBS** (9) and **HBO** (6—all of those wins for docs). Other cable nets picking up wins: **CNN** (3), **Nat Geo** (2), **AXSTV** (1), **BBC World News** (1), **Discovery** (1), **History** (1) and **Science** (1).

People: Fox Sports upped **Chris Hannan** to the newly created post of evp, communications and integration. He will continue to report to Fox sports co-presidents and COOs **Randy Freer** and **Eric Shanks**. -- **Alexander Hoehn-Saric**, former policy dir for **FCC** commish **Jessica Rosenworcel**, joined **Charter** as svp, government affairs. Based in Charter's DC office, Hoehn-Saric also served in the **Commerce Dept** and on the Senate Commerce Committee.

CableFAX Daily Stockwatch

| Company | 10/02 Close | 1-Day Ch | Company | 10/02 Close | 1-Day Ch |
|------------------------------|-------------|----------|-----------------------|-------------|----------|
| BROADCASTERS/DBS/MMDS | | | | | |
| 21ST CENTURY FOX: | 33.71 | (0.27) | ECHOSTAR: | 47.72 | 0.53 |
| DIRECTV: | 59.79 | (0.01) | GOOGLE: | 887.99 | 0.99 |
| DISH: | 47.98 | 2.30 | HARMONIC: | 7.69 | (0.09) |
| DISNEY: | 64.88 | 0.05 | INTEL: | 22.89 | 0.06 |
| GE: | 24.33 | 0.16 | JDSU: | 15.06 | 0.17 |
| MSOS | | | | | |
| CABLEVISION: | 17.04 | 0.13 | LEVEL 3: | 27.96 | 1.09 |
| CHARTER: | 133.79 | (1.68) | MICROSOFT: | 33.92 | 0.34 |
| COMCAST: | 45.45 | (0.16) | NIELSEN: | 36.62 | (0.51) |
| COMCAST SPCL: | 43.69 | (0.16) | RENTRAK: | 33.93 | 0.28 |
| GCI: | 9.34 | (0.07) | SEACHANGE: | 11.65 | 0.02 |
| LIBERTY GLOBAL: | 79.66 | (0.24) | SONY: | 21.20 | (0.2) |
| LIBERTY INT: | 24.28 | 0.45 | SPRINT NEXTEL: | 6.35 | 0.06 |
| SHAW COMM: | 23.25 | 0.03 | TIVO: | 12.48 | 0.01 |
| TIME WARNER CABLE: | 112.72 | (0.06) | UNIVERSAL ELEC: | 36.26 | (0.22) |
| WASH POST: | 633.21 | 4.67 | VONAGE: | 3.25 | 0.05 |
| PROGRAMMING | | | | | |
| AMC NETWORKS: | 67.99 | (1.36) | YAHOO: | 34.14 | (0.17) |
| CBS: | 55.47 | (0.29) | TELCOS | | |
| CROWN: | 3.10 | (0.05) | AT&T: | 33.94 | (0.12) |
| DISCOVERY: | 82.52 | (0.71) | VERIZON: | 46.79 | (0.2) |
| GRUPO TELEVISIA: | 28.55 | 0.06 | MARKET INDICES | | |
| HSN: | 53.59 | (0.26) | DOW: | 15133.14 | (58.56) |
| INTERACTIVE CORP: | 55.65 | 0.81 | NASDAQ: | 3815.02 | (2.96) |
| LIONSGATE: | 36.74 | 0.29 | S&P 500: | 1693.87 | (1.13) |
| MADISON SQUARE GARDEN: | 58.90 | 0.10 | | | |
| SCRIPPS INT: | 78.03 | (0.52) | | | |
| STARZ: | 29.02 | UNCH | | | |
| TIME WARNER: | 66.36 | (0.32) | | | |
| VALUEVISION: | 4.49 | 0.02 | | | |
| VIACOM: | 83.12 | (1.32) | | | |
| WWE: | 10.93 | 0.16 | | | |
| TECHNOLOGY | | | | | |
| ADVANTAGE: | 2.54 | 0.04 | | | |
| ALCATEL LUCENT: | 3.99 | 0.32 | | | |
| AMDOCS: | 36.89 | 0.19 | | | |
| AMPHENOL: | 77.55 | (0.07) | | | |
| AOL: | 35.79 | (0.12) | | | |
| APPLE: | 489.56 | 1.60 | | | |
| ARRIS GROUP: | 16.87 | (0.12) | | | |
| AVID TECH: | 6.24 | 0.08 | | | |
| BLNDER TONGUE: | 0.95 | 0.01 | | | |
| BROADCOM: | 26.40 | (0.05) | | | |
| CISCO: | 23.32 | 0.08 | | | |
| CONCURRENT: | 7.17 | (0.15) | | | |
| CONVERGYS: | 18.68 | (0.23) | | | |
| CSG SYSTEMS: | 24.80 | (0.47) | | | |

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Clouds and Aereo

Commentary by Steve Effros

Chet Kanojia, the CEO of Aereo, is reportedly a very good engineer. He's also a good salesman. The question is, what's he selling?

If you read his bio, there's a very succinct description of the "product." "Aereo has developed proprietary cloud-based antenna and DVR technology that allows consumers to watch live or recorded HD broadcast television on virtually any type of Internet-connected device, including smart TVs, smartphones, tablets and computers."



Let's deconstruct that a little. "A proprietary cloud-based antenna..." Well, no, not really. The antenna isn't "cloud based" at all, or if it is, several courts have been given a lot of misinforma-

tion. Let's put that another way: as I've argued many times before, the fact that the "antenna" has lots of little dime-sized receiving sites doesn't constitute an "antenna." The whole thing, with thousands of those little pieces of metal, then has to be electronically connected, tuned, signal processed, and even then you can't really plug it in to the back of your TV, like an "antenna"—you have to use an "Internet-connected device" to see the "live... HD broadcast television."

But wait, again, if you look at the legal briefs Aereo has filed in several courts, they specifically say they DO NOT offer "live" broadcast television! The lawyers recognized that the only way they could continue to play the game of using the Cablevision DVR court decision to confuse folks was to insist that everything was actually recorded first and then played back at the instruction of the consumer who is "leasing" the "antenna."

I've already said I think this ruse will ultimately fail. As one judge has already made clear, the entire Aereo technical construct appears to provide the same service,

multichannel video delivery, to a consumer that the cable operator does. The main distinction is that by doing it with a technical wrinkle, Aereo claims it doesn't have to pay the intellectual property fees its competitors do.

And then, of course, Chet does interview after interview pointing out how inexpensive his service is compared to the cable guys! Well, as Brian Roberts pointed out on PBS the other night, if you don't pay for the products you are using, you're going to be able to deliver them cheaper! But what got me was in an interview where Chet suggested that this is somehow a new business.

What, exactly, is new about it? You use an antenna to pick up broadcast programming and you use wires (in this case ones you don't own, like the old telco lease-back systems of the 1950s) to deliver that programming to viewers. Not new. You use DVR technology to allow video programs to be recorded and played back by customers. Not new. You call the storage area a "cloud" instead of a "headend," and you use 'IP' as your technical protocol for data delivery rather than "QAM." But again, the business is not new.

We get loads of programming on the Internet. We store it and recover it. We can play it on many different "Internet-connected devices." The only "new" part is that while all Aereo's competitors are required to pay for the broadcast product their equipment is receiving and delivering, Kanojia says he doesn't have to. We'll see. Theft is certainly not new. In the meantime he's busy setting up "cloud" delivery centers around the country. That's not new either. Essentially, leaving off the dime-sized antenna thing, he's setting up small, proprietary content distribution networks in various cities. Not new, just clouds and hot Aereo.

Steve

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(Steve Effros was President of CATA for 23 years and is now an advisor and consultant to the cable industry)

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