

CableFAX Daily™

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What the Industry Reads First

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Tit for Tat: Fox and Cablevision Fire Back and Forth

With time running out, things are finally heating up between **Fox** and **Cablevision**. Cablevision broke its silence over the pending contract deadline late Tues (*Cfax*, 10/11), with Fox firing back that the MSO is “hypocritical” if it believes its proposal isn’t fair. Fox claims that based on **SNL Kagan** data, CVC paid itself and charged other pay-TV companies considerably more for **MSG** and **MSG Plus** than all 12 of the Fox Channels it carries, despite higher ratings for Fox programming. “It’s obvious that Cablevision is not concerned about their customers and rather is simply taking cheap shots at Fox,” the programmer said, adding that it has sent CVC 2 proposals in the last week and multiple proposals since May. “We again call on Cablevision to come to the table and negotiate seriously. We have been there since May and will continue to be there.” Cablevision, which has claimed Fox’s offer is more than the MSO pays all other NY-area broadcasters combined, could lose Fox and **My Network TV** O&Os, **Nat Geo Wild**, **Fox Business** and **Fox Deportes** at 12:01 am Sat if a new deal is not reached. Fox has been running marketing over the contract expiration for weeks, but Cablevision didn’t debut its first ads until Wed. The full-page ads ran in newspapers across its footprints. “Hey News Corp, you negotiate by taking away my football,” says the overlay for an ad featuring a dejected looking guy wearing a football jersey. “Hey News Corp, don’t make me part of your latest drama,” reads the text on the 2nd ad, which features a young woman. On Wed, Rep *Peter King* (R-NY) urged both sides to enter into binding arbitration and not remove channels during the process. “I am increasingly concerned that this deadline may pass without a resolution, and Long Island consumers will lose their programming,” he said. “This would be an unconscionable result and unfair to sports and programming fans who have no part in this fight.” Meanwhile, Cablevision evp, programming *Mac Budill* on Wed sent another letter to Fox pres, affil sales & mktg *Mike Hopkins*, this time urging further negotiations “around the clock if necessary” and accusing Fox of “bad faith” tactics: “As for your contentions to the FCC about our unwillingness to negotiate: I should also remind Fox that it’s a federal crime to knowingly make false representations to a government official including any FCC official.” Fox said it is prepared to negotiate in good faith immediately and called on CVC to “reconsider their refusal to respond to either of our proposals.” “Fox has never suggested that Cablevision ‘take it or leave it’ in our negotiations,” Fox said late Wed. “In fact, we’ve provided them with multiple proposals over the past week—all indicating that we want to engage Cablevision in construc-

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tive negotiations that will lead to an agreement prior to the deadline Fri at midnight (ET).” The dispute comes to a boil right before the Mon start of **CTAM Summit**, at which Cablevision evp, marketing & advertising *Jon Hargis* is a co-chair. Given the number of high profile blackouts this year (including one currently underway between Fox and **DISH**), expect plenty of chatter over distributor-programmer relations at the show. **Miller Tabak** said Wed that it’s making no estimate changes to Cablevision at this time because it will likely pass through increases to customers, although it said the timing of the rate hikes could be a factor that affects margins temporarily. The firm’s also not making changes to Fox parent **News Corp** because it has increases for carriage and retrans fees baked into its model. CVC claims it pays News \$70mln a year for its channels and that it now wants \$150mln for the same programming (that figure would include channels not included in the contract that expires Sat). Both sides have Websites—Cablevision’s is at cablevision.com/fox and Fox’s is at keepfox.com. CVC’s CT customers will still have access to Fox and My9 programming out of Hartford, according to CVC’s site.

Ratings: Americans, like many around the world, have been glued to coverage of the Chilean miner rescue. At 11pm ET Tues, when the 1st miner came to surface, **CNN** averaged nearly 4mln total viewers. **Fox News** had about 3.5mln viewers and **MSNBC** had 1.1mln. CNN said its Website served more than 3mln live video streams related to the story over the past 2 days, a 2700% increase. **Telemundo** interrupted programming at 10:20pm ET Tues night to provide live coverage of the rescue efforts and has provided more than 14 hours of uninterrupted coverage. It says it’s the only Spanish-language net in the US to broadcast full-screen, minute-by-minute development of the story.

At the Portals: The **FCC** focused on mobile phone “bill shock” Wed, releasing a white paper that found 764 people complained to the Commission in the 1st half of the year. 67% of the complaints were about amounts of \$100+; 20% were about amounts of \$1K+. It’s clear that the issue could spread beyond wireless, with the **FCC** chmn giving a “consumer empowerment” address Wed at the **Center for American Progress**. “Early Termination Fees have been a consumer headache—both for wireless customers and, increasingly, for people on fixed broadband and bundled plans,” he said. Next up is an NPRM at Thurs’ hearing on mobile bills and a public forum on unexpected phone charges and related issues. Changes to CableCARD rules are also to be voted no at Thurs’ hearing. -- **NCTA**, weighing in on the FCC’s latest request for comments regarding net neutrality, maintains that adopting rules would be counterproductive, stifling investment and innovation. But if the FCC does adopt rules, it should apply them only to clearly defined Internet access service and leave managed services alone, the group said. NCTA also called for fair application of any wired rules to wireless, as well as to search engines and other gateways for consumer access to Internet-based content or apps.

4G: **Clearwire** shares popped 6.8% Wed following a *Bloomberg* report saying the co is close to selling some of its wireless spectrum in order to pad its buildout coffers for next year. Clearwire is expected to raise \$2.5-\$5bln from the sale in which telcos including **AT&T**, **Verizon** and **T-Mobile** are said to be players. The co’s need for additional funding has been known for some time, and majority owner **Sprint** has said it’s not averse to contributing additional cash. But 3 of the telco’s execs, including CEO *Dan Hesse*, resigned from Clearwire’s board late last month, raising questions about the pair’s relationship. **Comcast** and **Time Warner Cable** also own stakes. -- **Broadcom** inked a deal to acquire for approx \$316mln **Beceem Comm**, a private 4G wireless platform provider that says it can support both LTE and WiMAX.

In the States: **Texas A&M** is offering half-price tickets to its Sat football game to fans who can prove they are **DISH** subs, and therefore shut out of the game slated to air on **Fox Sports SW**. DISH said it appreciated the gesture and complained



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Advertising Contacts:

Debbie Vodenos | Publisher | dvodenos@accessintel.com | 301.354.1695
Amy Abbey | Associate Publisher | aabbey@accessintel.com | 301.354.1629

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BUSINESS & FINANCE

about Fox's proposals. But it added the 2 are continuing to negotiate.

On the Circuit: icueTV, HSN, Showtime Interactive, Starz and Zapondemand plan to participate in CTAM's "Get Interactive Awards" during the iTV Idol Summit session Mon. Co-sponsored by Canoe Ventures, the competition will showcase EBIF-based applications in a contest where the audience gets to select the winner. -- Reluctant to dress in costume for Rainbow's CTAM Summit party Tues night? Perhaps this will entice you. He/she in the most outrageous Mardi Gras getup will win an all-expenses paid trip for 2 to the '11 Film Independent Spirit Awards in L.A. A runner up will get tix, airfare and hotel for the 30th Annual John Lennon Tribute at the Beacon Theatre in NYC, Nov 12.

People: Charter hired Don Detampel as evp and pres, commercial services. He comes to the MSO from New Global Telecom, a wholesale VoIP provider that was purchased earlier this year by Comcast. -- Tim Pastore and Rod Riegel joined the Discovery/Sony/IMAX 3D jv as vp, dev and prod and vp, mktg and comm, respectively. -- ION Media Nets tapped Yoay Shahar as vp, West Coast network sales. -- Ex-RCN chief Peter Aquino was named chmn/pres/CEO of Primus Telecom Group. -- Rainbow Media upped Danielle Pantages-Baker to vp, West-ern Region ad sales.

CableFAX Daily Stockwatch

Company	10/13 Close	1-Day Ch	Company	10/13 Close	1-Day Ch
BROADCASTERS/DBS/MMDS					
DIRECTV:	42.45	0.26	ARRIS GROUP:	10.07	0.25
DISH:	19.27	(0.2)	AVID TECH:	13.99	0.39
DISNEY:	34.91	0.43	BIGBAND:	2.96	(0.03)
GE:	17.28	0.09	BLNDER TONGUE:	2.38	(0.02)
NEWS CORP:	15.88	0.12	BROADCOM:	37.35	0.62
MSOS					
CABLEVISION:	26.78	0.00	CISCO:	23.18	0.56
CHARTER:	32.50	(0.4)	CLEARWIRE:	7.21	0.46
COMCAST:	18.14	0.12	COMMSCOPE:	23.39	0.95
COMCAST SPCL:	17.16	0.09	CONCURRENT:	6.38	(0.02)
GCI:	10.09	0.17	CONVERGYS:	11.42	0.18
KNOWLOGY:	14.63	0.17	CSG SYSTEMS:	19.21	0.48
LIBERTY CAPITAL:	56.33	1.44	ECHOSTAR:	19.45	0.05
LIBERTY GLOBAL:	32.32	0.28	GOOGLE:	543.30	1.91
LIBERTY INT:	14.24	(0.1)	HARMONIC:	7.08	0.03
MEDIACOM:	7.01	0.03	INTEL:	19.24	(0.53)
SHAW COMM:	22.33	0.13	JDSU:	12.49	(0.02)
TIME WARNER CABLE:	56.21	0.15	LEVEL 3:	0.89	0.02
VIRGIN MEDIA:	23.91	0.00	MICROSOFT:	25.34	0.51
WASH POST:	428.61	7.97	MOTOROLA:	8.12	(0.01)
PROGRAMMING					
CBS:	17.86	(0.04)	RENTRAK:	28.87	1.32
CROWN:	3.72	1.17	SEACHANGE:	7.84	0.05
DISCOVERY:	43.95	0.46	SONY:	31.95	0.06
GRUPO TELEVISIA:	22.28	0.52	SPRINT NEXTEL:	4.63	0.04
HSN:	30.89	(0.23)	THOMAS & BETTS:	44.07	0.54
INTERACTIVE CORP:	25.88	(0.21)	TIVO:	10.31	0.03
LIBERTY:	39.87	0.39	TOLLGRADE:	7.49	0.12
LIBERTY STARZ:	66.10	0.32	UNIVERSAL ELEC:	21.49	0.99
LIONSGATE:	7.46	0.12	VONAGE:	2.57	(0.03)
LODGENET:	2.62	0.14	YAHOO:	15.25	0.82
NEW FRONTIER:	1.79	0.03	TELCOS		
OUTDOOR:	5.91	(0.06)	AT&T:	28.47	0.08
PLAYBOY:	5.36	(0.01)	QWEST:	6.35	(0.02)
SCRIPPS INT:	48.56	0.92	VERIZON:	32.21	(0.33)
TIME WARNER:	31.49	0.42	MARKET INDICES		
VALUEVISION:	2.37	0.04	Dow:	11096.08	75.68
VIACOM:	41.21	(0.17)	NASDAQ:	2441.23	23.31
WWE:	13.92	0.13	S&P 500:	1178.10	8.33
TECHNOLOGY					
ADC:	12.68	(0.03)			
ADVANTAGE:	3.14	0.06			
ALCATEL LUCENT:	3.68	0.07			
AMDOS:	29.57	0.11			
AMPHENOL:	49.87	0.59			
AOL:	25.12	0.79			
APPLE:	300.14	1.60			

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Policy vs. Politics

In August, I painted a picture in a column about the “net neutrality” true believers looking like a pack of wolves trying to surround their prey, the FCC, and stampede the Chairman over the cliff of Title II reclassification. They failed in that attempt, but we knew they’d be back.

What they were howling about then was the fact that rather than jump into reclassification following the recognition that there are huge problems associated with that approach, Chairman Genachowski decided to seek



Steve Effros

more input on how to address all those problems, if possible, or to seek other solutions to the issues raised by Court findings that the Commission does not appear to have firm jurisdiction to do what the “net neutrality” advocates are seeking.

Let’s review the bidding. The Court in the Comcast case said the Com-

mission doesn’t have sweeping jurisdiction, based on the current “Title I” regulation of broadband Internet delivery, to impose highly invasive regulations on the management of an information services delivery network. The Court did not say the Commission had no jurisdiction, only that it had not made the case for doing what it had proposed, which was to find Comcast guilty of “offenses” that did not even exist in properly adopted rules regarding “net neutrality.”

Can the Commission adopt some of those rules under Title I and proceed with its business? Many lawyers think that some sort of “net neutrality” guidelines could indeed be adopted, but Commission lawyers decided they would be too hard to defend in Court, so an “easier” way was to re-categorize broadband Internet delivery as a “Title II, - common carrier” telecommunications service. They acknowledged, however, that such a move would also inevitably go to court, and the more everyone has looked at the issue, the more they think defending that action would

be as hard, or even harder than the obvious approach of simply “trying again” under the current structure.

Why? Because this significant change would have to be defended on the basis of some solid reasoning for the change. Has there been a massive market failure? On the contrary, the market seems to be working well, and in the ten to fifteen years it has been developing as an incredibly successful technology, there have really been only two “instances” that keep being trundled out as examples of “problems” with the current approach of allowing the industry to deal with issues of “net neutrality.” In both instances, the “Comcast/BitTorrent” and “Madison River” cases, the problems were resolved before any significant government intervention.

So why regulate, especially since a majority in Congress has expressed the view that the Commission should not go that way, and the financial community has clearly said it would hurt, not help broadband deployment?

Because, say the regulation advocates, we BELIEVE this is the RIGHT way to structure our view of what the Internet should be. And more importantly, we currently have the votes! In other words, the effort to force a decision has little if anything to do with careful policy consideration based on fact finding, as the Obama administration always promised it would do, and the Chairman appears to be doing right now; it has to do with politics and vote counting. That’s not a good enough reason for major policy reversals.

So the wolves are circling again, trying to insist action has to be taken right now. No real reason given, other than the fear of loss of political momentum. It’s intelligent policy versus opportunistic politics. The mess this town has always been in.

Steve

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