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CableFAX Daily™

Tuesday — October 16, 2012

What the Industry Reads First

Volume 23 / No. 200

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#1 Among Five Favorite Basic Cable Channels**

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Source: 2012 Beta Research Cable Subscriber Study - Evaluation of Basic Cable Networks *Among Total **Tied

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Original Transition: Cable's Primed to Make More of Its Own Content

A&E is close to ditching acquired series in primetime, said *Bob DeBitetto*, pres & gm, A&E and Bio, at CTAM Summit's gen session Mon. "By the end of next year, we'll be 100% original in primetime. We're probably out of the business for buying network reruns," he said, projecting that companies that own their own content are going to be the real successes. "We're moving away from the rerun model." That's a far cry from when he arrived at A&E, during a time when "ratings were going in the wrong direction" and the median age of the audience was 62—and getting older by one year after year. "Literally, the audience was going to die," he said, inspiring laughter from attendees. And the decision that got A&E where it is today defied "every traditional notion of how to run a network," he said, with the company "rather rudely show[ing] our traditional core audience the door." Once "Growing up Gotti" and "Dog the Bounty Hunter" premiered in '04 and the scathing emails came flooding in, "I knew we were on to something." A&E's next chapter is scripted, which will comprise about 10% of its programming (ideally 4 series a year). It will be "much more highly serialized," and the net will ask whether shows feel like broadcast as a barometer (shall we call it a broadcast-arometer?). "If you can conceive of this show being on broadcast, then it is not right," he said. The scripted slate will play a "very critical part" in A&E's next stage, in part because the press tends to love scripted, it drives buzz and it can even shape pricing. "Great breakout scripted programming does a lot for a network," he said. For **Bravo**, which is moving into scripted as well, the challenge will be to match the degree of drama seen in franchises like "The Real Housewives" with its new scripted slate. "Some of our reality drama is paced so high, you look at it and go, 'you can't make that s@#t up,'" said *Frances Berwick*, pres, **Bravo** and **Style Media**. "Scripted feels a bit quiet by comparison." Additionally, scripted takes a lot longer to develop. And then there's **AMC**, which is taking the opposite road by moving into reality. Scripted has worked incredibly well for the net (see Sun night's "Walking Dead" numbers below, which pres/gm *Charlie Collier* said "exceeded even our expectations"). Rather than try to make every show everyone's favorite, the net's strategy is to "super serve a target viewer," Collier said. With reality, the net's goal is to try to slow down the story and build character more, something AMC has been noted for doing with scripted. Moving into originals territory has been a huge transition for cable, said Collier. The industry has moved from "that which we borrowed to that which we built," he said. "It's not just a brand transformation, but also a business one."

NBCU Changes: NBCU pres, TV nets distribution *Bridget Baker* is leaving at the end of Nov, and *Sports Business Daily* reports the programmer is close to hiring **Cablevision** programming chief *Mac Budill* for a top spot in affil relations. Cablevision declined comment. *B&C* first reported the news of Bakers' departure. When the **Comcast-NBCU** deal was completed, *Matt Bond* became head of content distribution. Baker, who received a Distinguished Leadership Vanguard in May, and *JB Perrette*, pres, digital & affil distribution and content distribution strategy, both reported to Bond. Perrette left last Aug, and now serves as **Discovery's** chief digital officer. In a memo, Bond praised Baker and said with the integration now complete, she'll tackle a new challenge. SBD said Budill will report to Bond, but it's unclear what his title will be.

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Lionsgate's Roar: Here's a shocker: Programming is expensive, and paying for it is an immense challenge as competing channels and new digital platforms vie for eyeballs. So said **Lionsgate** CEO *Jon Feltheimer* during a **CTAM** Summit general session Mon. But monetizing digital growth can help. Take **AMC's** "Mad Men," which costs nearly \$5mln an ep to make. Sure, it's supported by a very sizable license fee from AMC, he explained, but revenues from VOD platforms like **iTunes** and a syndication deal with **Netflix** are extremely important to its financing. In fact, airing "Man Men" eps on Netflix drove viewers back to the show's live airing on AMC, which reported a 15% ratings increase last season. Here's why: The "serialized format of 'Mad Men'" appeals to businesses like Netflix looking to capitalize on "binge viewers," or those whom digest several episodes at a time in one sitting. Feltheimer said the industry should focus on 3 things to ensure monetization of digital video: a better user interface, dynamic ad insertion and the growth of electronic sell-through. He also stressed the importance of the 2nd screen experience, particularly when it comes to appealing to younger generations. "The 2nd screen is our future. They may be 2nd screens to us but they're 1st screens to our kids," he said, adding that once customers leave the ecosystem, it's very difficult to get them back. With Lionsgate's tech partners on track to sell 600mln smartphones this year, "the point is, as we move toward smaller and smaller screens of the future, our ideas need to get bigger and bigger." Feltheimer believes Lionsgate could be "a potential marketing partner for cable." The company recently helped **ABC** to market the launch of "Nashville," which scored 9mln views for its Oct 10 premiere, making it the biggest launch for the network in a year. When the broadcaster made the request, Feltheimer said his 1st reaction was, "isn't that your job?" Then I realized that was the old days... We must accept that already tough jobs just got tougher," in part because consumers have more options than ever before. "These days an educated consumer may not be our best friend," he said. On the challenges on distribution, he noted that **Time Warner Cable's** recent RSN launch in L.A., which occurred sans carriage deals, is proof that "it's hard to find a whole lot of space for new channels." Distributors have "lately taken the position that we don't need more channels," he said. But in his view, "today's playing field is wide open."

Deals: **Larry Flynt's LFP Broadcasting** has agreed to buy adult programmer **New Frontier** for approx. \$33mln (\$2.02/share in cash up front), plus a contingent cash payment right for each common share. This is a 79% premium to NOOF's closing price on Mar 8, the day before it received an unsolicited offer from **Longkloof**, NOOF said. Shares closed down 2.2% to \$1.30 on Mon. "We ... believe that this transaction with LFP Broadcasting creates a great opportunity for our organization, cable television partners and customers as 2 of the premier adult media broadcasting companies join forces," NOOF's board said. -- Ahead of their contract expiration, **Fox Sports Media Group** and **NASCAR** announced an 8-year extension that will keep NASCAR on Fox through '22. The deal also ups FSMG's digital rights to include TVE live race streaming of its portion of the season for the 1st time ever, starting next year. It also keeps TV rights to 13 consecutive NASCAR Sprint Cup Series points races beginning each year with the Daytona 500. -- Nearly 2 years after acquiring **Bresnan**, **Cablevision** is exploring off-loading it, the *WSJ* reports, citing anonymous sources. A Cablevision spokesman said the company doesn't comment on rumors or speculation. The report makes it sound very preliminary, with no investment banks on board. CVC paid **Providence Equity Partners** \$1.4bln for Bresnan in '10. -- Japanese wireless company **SoftBank** agreed to buy a 70% stake in Sprint-Nextel for \$20bln. The deal is expected to close in '13.

CTAM Notebook: During the TED-esque general session, **CTAMers** heard some sobering assessments from outside

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experts, including **Blue Flame Agency** vp *Erica Pittman*, who said “the way that we have done business has got to change” if brands want to influence the next generation. “They want to be individualistic and customize everything that they do,” she said, noting that marketers can no longer jam brand messages down people’s throats until they take. “The way we’re communicating with our audience has got to change,” she said. *Porter Bibb*, **MediaTech Capital Partners** managing partner, said it’s “not a bad idea to bring a teenager into the board room” just to track the pulse of shifting content consumption among younger consumers. “The marketer doesn’t own the brand anymore,” he said. “The consumer owns the brand.” Still, he said despite the threat of “serious cord cutting in the near future,” cable’s in perhaps the best position to capitalize. “Cable still owns the best cards and played right could own the table,” he said, noting new opportunities like home security and cable’s infrastructure advantage. “Cable still has a virtual monopoly on the last mile into your home,” he said. -- News flash... TV Everywhere’s still pretty messy—but both distributors and programmers are working it out. Slowly. “I think it’s just organically happening” said **Charter** svp, programming *Allan Singer*. “The product’s going to get better and better.” *Daniel Hartman*, **DirectTV** vp, programming acquisitions, said that with deals moving along, the biggest challenge is now “getting the customer to understand” TVE benefits. Said **NCTC** evp, programming *Judith Meyka*: “I’m not sure where that tipping point is where everyone realizes, ‘hey, this is a great product.’” Singer said it will follow the path of previous products like VOD and DVRs, with early adopters paving the way for increasingly ubiquitous coverage. **Time Warner Cable** svp, content acquisition *Andrew Rosenberg* said the Olympics—as well as other examples involving big sporting events—can be key to increasing adoption. “Sometimes it’s big-event programming that will get people to try things out,” he said. Meanwhile, Hartman said DirecTV execs have been floored by how many people have been streaming to devices within the home, and “that will eventually lead to an extension of people streaming outside the home.” But he acknowledged that “negotiations are getting tougher and tougher” on digital rights but that both sides have started to get creative with windowing and other deal points that are “finding a place where we can partner and serve each other while at the same time not shutting out those alternative distribution outlets.” -- **NBC News**’ “Meet the Press” host *David Gregory*’s prediction for the election? “If Romney can’t get the Latino votes, it’s almost certain that he can’t win.” In terms of what to expect as the Election Day nears, “you are looking at the final weeks being dominated by debates” and ultimately “who’s going to win over big questions around vision... who can change how Washington operates...,” he said at CTAM’s Super Session Mon. Gregory shed light on the changing media landscape. While some older viewers favor in-depth, long-form conversations with tough questions, younger viewers often don’t spend time watching programs like “Meet the Press” live. Instead they turn to VOD, secondary platforms and social media to get information. As a result, “we need to use social media tools as much as possible to drive people” to linear and online content, he said. “We see the need to expand the ‘Meet the Press’ brand.” It’s about “us finding more viewers” instead of “having viewers find us.”

TVE: **Midcontinent** has launched **Watch Disney Channel**, **Watch Disney XD** and **Watch Disney Junior**, allowing subs to watch the TVE service at home or on-the-go. Non-authenticated users have access to a limited number of on demand eps each month. -- **AT&T U-Verse** subs can now access an expanded lineup of full-length eps from **BET**, **Comedy Central**, **MTV**, **Nick**, **Spike** and **VH1** on demand and on the Web thanks to the 1st TVE pact from **AT&T** and **Viacom**.

Ratings: **AMC** welcomed back “The Walking Dead” Sun night, with 10.9mln viewers and a 7.4 HH rating—a new high and up 50%+ over Season 2’s premiere. And in the encore, and it jumps to 15.2mln. It’s possible that total viewers outnumbered the zombies who were killed last night, but final counts are still being tabulated. The net said it reigns as the biggest telecast for any drama series in basic cable history among all viewers. (Keep in mind, AMC isn’t on **DISH**).

At the Portals: A little more detail on the **FCC**’s 5-0 vote late Fri to remove the ban on cable operator encryption of the digital basic tier (**Cfax**, 10/14). Cable ops will need to notify and provide affected subs with the equipment needed



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to receive encrypted signals for a limited time. Following concerns raised by **Boxee** and **CEA**, the order has the 6 largest MSOs offer equipment compatible with IP-enabled clear-QAM devices provided by 3rd parties. The change provides cable with more regulatory parity with DBS. **ACA's Matt Polka** said it will permit ops to activate and deactivate customer service from remote locations (like headends), thus cutting down on in-home service visits. **Comcast** expects basic tier encryption to allow it to do almost half its activations and 90% of deactivations remotely.


Reading List: **NCTA** pres/CEO *Michael Powell* takes issue with Pulitzer Prize winning author *David Cay Johnston's* critique of US broadband. In a blog post on *The Huffington Post*, Powell said Johnston's just-released book "The Fine Print" displays a "surprisingly fundamental misunderstanding of telecommunications history and little to no sourcing for what is offered as fact." Powell declared that broadband in the US is a success and only getting better. Johnston fired back in the site's comments section: "Powell cites surveys that find most Americans think their Internet is grand. Rubbish. Few Americans know how much better the Internet is in places like South Korea, Japan and many other countries, so of course they think their Internet is grand. What else would they think, not knowing any better? People who had never seen an automobile in the late 19th Century thought their horse-drawn buggies were just fine, too."

Low-Cost Broadband: It's an underserved, cash-stretched market that many providers don't quite understand, yet it's potentially a highly profitable business. **CTAM Summit** dedicated one of its breakout sessions Mon to the low-income market, a segment that ISPs seek to serve more comprehensively. For **Cox**, the key is partnership, comprehensive offerings and credibility, said *Ilene Wolchock*, dir, product mgmt with Cox. "Offering broadband isn't enough... we need computers and digital literacy training," she said. Two years from now, "we will see higher understanding" as children who receive Cox's low-cost broadband from school programs continue to educate their parents on the value of the program, she said. Additionally, some help from the govt wouldn't hurt. "I would love to see some USF relief on broadband," she said. Meanwhile, to make low-cost broadband programs work, ISPs need to make them cost-effective, said *Stefan Bewley*, dir, **Altman Vilandrie & Co**, noting customer acquisition is a big cost. Partnering with non-profits, governments and communities could effectively reduce marketing and customer sign-up cost, he said. Despite various discounted Internet programs, there's a lack of understanding of the low-income market, said *Ted Schremp*, co-founder of **Novation Broadband**. The panel featured an outsider of the cable industry but an insider of the prepaid world:

Boost Mobile (Sprint prepaid unit) vp *Andre Smith*. Prepaid is a cash-stretched market so be sure to make the sign up process as simply as possible (e.g. no credit check), he said. An important strategy is creating a mechanism that drives loyalty, he said. Boost Mobile rewards customers every time they pay their bills on time. Going forward, providers may want to look at ways to prioritize themselves by bundling with comparable products, he said. Prepaid is "a very profitable market" if providers don't go too far with their offer (e.g. trying to create a contract-based model), he said.

CTAM... Turn On, Tune In: After a **CTAM** Insights dinner Sun night featuring a speech by "Brain Games" (**Nat Geo**) host *Jason Silva* invoking quotes from *John Lennon* and *Timothy Leary*, **CTAM** continued its metaphysical journey to the outer realms of human consciousness with Mon's mind-bending speech by *Deepak Chopra*. He told **CTAM** attendees that Gen Z (17 years old and under) is about to undergo a "quantum leap" in brain development stemming from its use of social media and interactive collaboration. Ultimately, these "karmically connected souls" will change "the entire ecosystem of what today we call entertainment." He said entertainment companies that don't understand these trends will be left behind. "Welcome to the next phase of our human evolution," he said. Far out, man.

Research: MVPDs should do all they can to try and keep subs who pay the most happy, based on a new **J.D. Power and Associates** study. It found 31% of premium package subs say they "definitely will not" switch providers, compared with 22% of expanded basic and 20% of basic. They're also more likely to be brand advocates (26% definitely




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will recommend their provider vs 16% of expanded basic and 14% of basic customers). Cable got some bad news, however, in the report's ranking of satisfaction with providers. **Verizon FiOS TV** ranked highest in the East region, followed by **DISH** and **DirecTV**. DirecTV took the South, followed by AT&T and Verizon. Overbuilder **WOW!** was #1 in the North Central region, closely followed by AT&T and DirecTV. In the West, DISH was tops, followed by AT&T and DirecTV.

Carriage: **INSP**, which has added more than 5mln subs this year, picked up distribution in **Comcast's** Heartland Region (includes Greater IN and MI).

People: **Halogen** founder **Becky Henderson** was elevated to evp, marketing for **The Inspiration Nets**. She'll continue to serve as gm of **Halogen**.

On the Circuit: More than 7K people turned out for **The Lustgarten Foundation's** Long Island Pancreatic Cancer Research Walk on Sun, making it the organization's largest walk ever. It raised more than \$1mln for pancreatic research. The Foundation was established in 1998, and named for **Cablevision** vice chmn **Marc Lustgarten** before he died from pancreatic cancer.

Oops: **RLTV's** new tagline is "Experience Matters." "Life Redefined" (**Cfax**, 10/15) is an interim tagline the net has been using.

CableFAX Daily Stockwatch

Company	10/15 Close	1-Day Ch	Company	10/15 Close	1-Day Ch
BROADCASTERS/DBS/MMDS					
BROADCASTERS/DBS/MMDS			CONVERGYS:	16.07	0.29
DIRECTV:	50.52	0.68	CSG SYSTEMS:	21.77	0.05
DISH:	34.53	1.14	ECHOSTAR:	31.11	0.24
DISNEY:	50.79	0.20	GOOGLE:	740.98	(3.77)
GE:	22.64	0.16	HARMONIC:	4.42	0.04
NEWS CORP:	24.80	0.22	INTEL:	21.73	0.25
MSOS					
CABLEVISION:	17.73	0.82	JDSU:	10.37	0.07
CHARTER:	76.73	0.60	LEVEL 3:	21.61	UNCH
COMCAST:	36.43	0.65	MICROSOFT:	29.51	0.31
COMCAST SPCL:	35.42	0.49	RENTRAK:	17.30	0.38
GCI:	9.43	(0.02)	SEACHANGE:	8.63	0.33
LIBERTY GLOBAL:	61.22	0.36	SONY:	11.69	0.33
LIBERTY INT:	19.74	0.26	SPRINT NEXTEL:	5.69	(0.04)
SHAW COMM:	20.83	0.18	TIVO:	9.97	0.03
TIME WARNER CABLE:	98.37	1.51	UNIVERSAL ELEC:	17.41	(0.21)
VIRGIN MEDIA:	31.87	1.16	VONAGE:	2.24	(0.02)
WASH POST:	359.48	(0.01)	YAHOO:	15.68	(0.2)
PROGRAMMING					
AMC NETWORKS:	42.35	0.89	TELCO		
CBS:	34.03	0.26	AT&T:	35.21	(0.42)
CROWN:	1.69	UNCH	VERIZON:	44.50	(0.12)
DISCOVERY:	61.53	0.79	MARKET INDICES		
GRUPO TELEVISA:	23.68	(0.19)	DOW:	13424.23	95.38
HSN:	48.48	0.73	NASDAQ:	3064.18	20.07
INTERACTIVE CORP:	54.87	1.32	S&P 500:	1440.13	11.54
LIONSGATE:	15.21	0.11			
LODGENET:	0.56	(0.04)			
NEW FRONTIER:	1.30	(0.03)			
OUTDOOR:	7.36	0.02			
SCRIPPS INT:	63.07	0.55			
TIME WARNER:	44.97	(0.09)			
VALUEVISION:	2.70	0.15			
VIACOM:	54.73	(0.19)			
WWE:	8.28	0.06			
TECHNOLOGY					
ADVANTAGE:	2.06	UNCH			
ALCATEL LUCENT:	0.97	(0.03)			
AMDOCS:	32.35	0.15			
AMPHENOL:	59.00	0.43			
AOL:	37.22	0.45			
APPLE:	634.76	5.05			
ARRIS GROUP:	12.68	0.10			
AVID TECH:	8.88	0.01			
BROADCOM:	33.12	0.22			
CISCO:	18.55	0.14			
CLEARWIRE:	2.69	0.37			
CONCURRENT:	5.15	0.13			

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OTT Musings: Stakeholders Debate Evolving Content Delivery at CES
 With the Comcast/Disney distribution deal a harbinger for TV Everywhere and Fox's move last summer to put select content behind a pay wall, panelists mulled the ins and outs of over-the-top delivery at an OTT panel at CES. "The tablet, the device, is going to control the TV experience at U-verse," said Jeff Weber, AT&T VP, product and strategy, noting the company's drive into tablet apps and model of providing APIs for developers to send content from device to television. But discernment is critical, panelists agreed. While AT&T has an approval process in place, YouTube abandoned its API-based partnership model two years ago "because we ended up with different apps on diff TV, and performance differed," said Francisco Valera, dir/global head of platform and games partnerships. "Touting YouTube's deals with Samsung, LG and its new Xbox partnership, 'if we can't control the app, and update features quickly, it's a lost cause,' he said. YouTube's recent-day model of investment in original content will stretch the company's presence in specific categories such as "niche cooking and unique travel" channels. "We don't see ourselves becoming a large studio, but we're more than dogs on skateboards," Valera quipped. "We want to bring in proven providers of broadcast quality content that's not sustainable in the cable universe." Valera said YouTube is working on its fourth UI, and moving toward the HTML 5 standard. Noting that unlike other video distributors YouTube always owns its TV and mobile content rights, "Can we bring our content to an AT&T, Cox or Comcast? We can, and that's where we are excited," he said. Initial deals with distributors are rolling out in Europe and Asia, he said. At Cox, focus remains on the UI. "It's important to get the user interface right, especially as more content is added in," said Lisa Pickelsimer, executive director, video product development. Integrated search, recommendations and social media will become more key, Pickelsimer said, noting the bigger role of metadata and the need

GUEST COLUMNIST

Testing the Limits...

By Mark Dzuban
SCTE CEO

Imaginative. Captivating. Visionary.

I'm talking about Orlando at the moment, but I could just as well be talking about the cable industry.

Just like Orlando, we're testing the limits of technology and ourselves. Just like Orlando, we're creating new experiences that are helping the industry attract and retain customers. And just like Orlando, we have our eyes fixed squarely on addressing the challenges of the future.

Year in and year out, SCTE Cable-Tec Expo is an educational theme park for cable telecommunications engineering and operations professionals. From the forward-thinking Opening General Session to expert technical workshops and exhibits that are abuzz with the latest technology, Expo—like Walt Disney World, Universal Studios and other attractions—is always an inspiring experience.

As we gather this year, the missions are clear. As always, a fundamental goal is to make our workforce smarter, to drive the deployment of new technology and to help our industry remain the leader in delivering video and communications services. But an equally important objective this year is to focus cable attention on the need to train the workforce of the future.

The initiative, the innovation, the industriousness of vendors and operators in developing and deploying new technology has revolutionized our industry. Beginning with the efforts of Time Warner almost two decades ago with the Full Service Network—right here in Orlando—cable took increasingly bold steps to become an indispensable part of consumers' lives.

It's a funny thing, though: The higher we set the bar for ourselves, the faster it seems to move. Consumer de-

mand, competitive pressures and our own drive to excel are accelerating the growth of new services, and the need for new engineering and operations skills.

At SCTE Cable-Tec Expo this year, we're addressing the latter point with gusto. Time Warner Cable EVP and CTO Mike LaJoie will have an opening conversation with Dean Kamen, whose inventiveness and entrepreneurial spirit have improved the lives of millions, fathered the Segway and spawned exciting new educational programs around science and technology. Two subsequent panels will bring together leading technologists from MSOs of all sizes to address the future of our industry and how we'll get there. Phil McKinney, the new president and CEO of CableLabs, and Dane Snowden, chief of staff of NCTA, will join me on yet another panel to discuss ways that our organizations can collaborate to drive even greater levels of innovation within our engineering community.

As always, the opening session is just the tip of the iceberg. Time Warner Cable's Jim Ludington and the rest of the Program Committee have organized an extravaganza of technical sessions on Business Services, Capacity Management, Engineering, Network and Technical Operations, Smart Energy Management and Wireless/WiFi. If you're interested in something even deeper, try Thursday's special session on DOCSIS 3.1. And it goes without saying that you should budget time to see the latest innovations on the show floor, and find time to share knowledge among your peers in the industry.

We have tremendous opportunities ahead of us in cable, and as we gather this week, we only have to look around to see how imagination and captivating products and vision can translate to business achievement. By ensuring the readiness of our current and future workforces, we, too, can help take cable to a successful future.



Mark Dzuban

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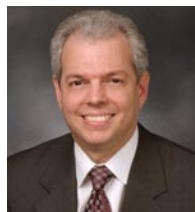
Our roundtable discussion features cable's legal eagles weighing in on everything from retrans to the election. Featured are media attorneys *Paul Glist* of **Davis Wright Tremaine**, *Matthew Brill* of **Latham & Watkins**, *Dan Brenner* of **Hogan Lovells** and *Jeremy Kissel*, who before going out on his own worked in the FCC's Media Bureau.



Daniel Brenner



Matthew Brill



Paul Glist



Jeremy Kissel

How will the changing multiplatform world affect the role of the FCC and the kinds of proceedings that will come out of there in the coming months and years?

Glist: The FCC recently invited comment on whether to define a “multichannel video programming distributor” to encompass online and other video distributors. [It raises a] broader range of issues, including retransmission consent, application of legacy rules to edge-based video providers, and regulation of traditional MVPDs as they move to on-demand or cloud-based distribution. Merger conditions have also constructed new paths for online video distributors to gain access to some programming affiliated with merger partners. The courts have also been addressing the issues, to date through injunctions, that prevent edge-based video providers (like ivi) from obtaining the benefits associated with licensed video distributors without also undertaking the burdens. But in my view, while the FCC and courts will want to deal with these issues, there is a more fundamental issue the government should be addressing. In the long term, extending MVPD regulation onto the Internet would expand the reach of legacy rules that were never designed for today's market. The government should be asking: are there a few social obligations (such as privacy, emergency alert, and protecting children) that should be applied to both edge-based video providers and to incumbent MVPDs, allowing the entire market to be released from more extensive legacy rules designed for a non-competitive era.

Brill: For some time now, FCC debates have centered on how legacy rules should apply to new platforms and services—including in particular how IP voice and video services should be treated. Until Congress overhauls the Communications Act, and potentially thereafter, I think we will continue to see the FCC struggle with how new players fit within the traditional regulatory categories. The FCC's examination of whether over-the-top Internet video providers should be classified as “MVPDs” offers a good example,

as does the FCC's longstanding consideration of whether VoIP should be regarded as an information service or telecommunications service. As technology continues to march forward at a breakneck pace, those “fish or fowl” debates undoubtedly will continue, with significant implications for industry participants and consumers alike. At the same time, we will also continue to debate whether legacy rules retain their justification in the face of the profound changes in technology and the marketplace over the last two decades.

Brenner: Some argue that they are “MVPDs” under the Cable Act and entitled to the rights under Section 628 and elsewhere. That could be a game changer. Authentication so far seems to be beyond any FCC authority—it's really a question of privately negotiated licensing rights.

Kissel: The Commission could also seek to extend its Open Internet rules to ensure that over-the-top video providers such as Netflix and Hulu can compete with Internet service providers that provide their own video offerings.

It doesn't seem the FCC is going anywhere with retrans reform. Is there any hope Congress might do something next year?

Glist: Whatever I may think about the course of retrans battles, my expectation is that Congress will be preoccupied with political gridlock after inauguration, not with retrans.

Brill: While I agree that comprehensive reform seems unlikely at the FCC this year, I do hold out some hope that the Commission could pick the low-hanging fruit, for example by banning collusive negotiations by broadcast stations that are ostensible competitors. On the Hill, it was encouraging at the recent Senate hearing that legislators on both sides of the aisle seem to agree, as do most stakeholders, that the existing regime is harming consumers, rather than advancing the public interest.

Kissel: It seems like this question is asked every year. I think everyone would agree that the Commission is waiting

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for some direction from Congress on the issue. Despite the advocacy of retransmission consent reform backers on Capitol Hill and the relatively frequent Congressional hearings on the issue over the past few years, I don't see Congress taking any action in 2013. With Congress forced to address the upcoming "fiscal cliff," and tax and entitlement reform possibly on the agenda for the year ahead, I believe retrans consent reform is likely to be on the back burner of the Congressional to do list.

What legal issues will most affect the cable business over the next year and beyond?

Brenner: No doubt the appeal of the FCC's net neutrality order will impact cable no matter how the court decides. If the FCC wins, it will suggest the need for Congress to better define what powers over the Internet the FCC has, including cable broadband. If the FCC loses, the losing side will try to affect changes as well.

Glist: As cable operators move to enable subscribers to enjoy cable services on any device, anywhere, any time, they will have to grapple with privacy and security, copyright and licensing terms, and the availability of wireless spectrum. As cable operators succeed in developing new technologies and business models, they will face more patent wars. Cybersecurity will only grow in prominence. We should be able to craft some public-private partnership approaches rather than creating a brand new regulatory apparatus, but an Executive Order may be in the offing. We'll see efforts to rewrite the Communications Act. Even without new law, those in government with a regulatory bent—or just an interest in maintaining institutional power—will flirt with more command and control rules for the entire market, and that bent is likely to be inflamed by calls to regulate broadband just like the "good old days" of Ma Bell. We'll wrestle more with net neutrality, over-the-top, and why government money, whether USF or RUS, should be spent on overbuilds.

Brill: With the continuing increases in competition and innovation, I do not think the FCC is likely to propose significant new mandates for cable operators. Rather, I think the key question will be how quickly and to what extent the FCC will eliminate legacy requirements that were premised on a cable "bottleneck" that no longer exists. There are already a number of pending appellate proceedings regarding the First Amendment implications of the dramatic marketplace changes that have occurred since the 1992 Cable Act, and I expect those cases to have a major impact on the FCC's regulatory approach going forward. For example, there are cases pending in the Second Circuit and the DC Circuit that challenge the FCC's authority to enforce its program carriage rules...

Kissel: I think the legal issue that will most affect the cable business over the next few years will be the Commission's Open Internet rules, assuming they are not invalidated by the courts. While the Commission has provided general guidance for compliance, there are still many unknowns. For example, the Commission has provided guidance on what they would consider "reasonable" network management practices. But it has not expressed a standard by which Internet service providers can ensure they are fully compliant with the Open Internet rules. There is no "safe harbor." Instead, ISPs will continually need to evaluate their network management practices to ensure that they are "reasonable." The same is true for ISPs' disclosure statements, which they must ensure are compliant with the transparency requirements. Cable could also be affected by future changes to the rules. For example, the Commission could choose to limit or prohibit certain "managed services" that are currently permitted under the Open Internet rules. The Commission could also change its current position of favoring—or at least condoning—usage-based billing.

What could be the biggest interruption to cable as a result of the election?

Glist: I don't foresee an "interruption." If housing starts continue to lag, subscriber growth may be modest. Cable could do more for consumers with a little less legacy regulation, but fundamentally cable has always been a remarkably resilient technology and industry, and it will continue to thrive after the election.

Brill: I don't think the election is likely to threaten any major interruption. Whoever wins the election, I think we'll continue to see a rationalization of today's regulatory frameworks, although the extent and pace undoubtedly will vary based on who serves as the FCC's next Chairman.

Brenner: Cable is in a very good spot for the future—it continues to improve what is the nation's best delivery platform, it innovates in the way customers can buy and use programming, and the most robust systems offer reliability that is very high. Moreover, high-wire financing seems to be a thing of the past for the largest players. No one knows where OTT will take the program industry, but however it develops, it will need cable broadband to get there.

Kissel: There could be a significant impact on cable operators' regulatory burdens. For example, a Democratic president and Democratic Congress could seek to impose further network neutrality regulatory obligations, while a Republican president and Republican Congress would likely limit or completely end network neutrality regulatory obligations.

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Please Contact Shannon Nelligan, Senior Marketing Manager,
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