

# CableFAX Daily™

Thursday — November 1, 2007

What the Industry Reads First

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## MDU Sue: FCC Order Expected to Draw Litigation

It seems to be a matter of when, not if, someone will sue over the FCC's unanimous vote Wed to not only ban future MDU video contracts, but to annul existing contracts with cable operators. It could even end up being a building owner, real estate developer, or perhaps even a resident—rather than a cable op—who sues. Once again, cable is unhappy because the order doesn't treat all video providers the same. Existing exclusive cable contracts for apartments, condos and other multiple dwelling units are voided, but existing telco contracts are not. Future exclusive video contracts for MDUs are not allowed for cable or telcos, but DBS providers and SMATVs (video providers that only serve MDUs) can still have exclusive contracts in the future. The FCC said it would issue a further notice seeking comment on whether these MVPDs should be subject to the same rules. Wed's order couldn't address those providers because they don't fall under Sect. 628 of the Communications Act. The Commission believes that MDU contracts favor incumbent cable ops and hurt rivals like **Verizon** and **AT&T**, which said they needed the order to get into the MDU marketplace. "If eliminating exclusive contracts for some video providers is good for consumers, then it should have been applied to all providers," **NCTA** svp, law & regulatory policy *Dan Brenner* said. It's an argument cable raised in Dec when the FCC streamlined local franchising rules for telcos but not cable. On Wed, the FCC finally got around (3-2) to extending those same rules to cable—but NCTA says there still isn't parity because the new rules only take effect after existing cable franchises expire. NCTA is challenging that order in court, questioning the FCC's authority to interfere in the local franchise process. As for the MDU decision, Brenner said the "legally suspect" step could "harm consumers and jeopardize the delivery of advanced services to low-income neighborhoods where other video providers have chosen not to offer service." Com-cast piled on. "As noted by Commissioner [*Robert*] *McDowell*, the Commission's unprecedented decision to abrogate existing contracts... will likely guarantee years of litigation and uncertainty for consumers," said *Sena Fitzmaurice*, sr dir, corporate comm and govt affairs. Investment firm **Oppenheimer** described the FCC's action as more of a "headline risk" than an operational one (did ya see this week's *NY Times* piece?), noting that the bulk of cable's MDU subs are in 18 states that guarantee providers' access to MDUs. "The operators with the most significant exposure are those with large urban subscriber populations in 'non-guaranteed access' states such as CA," Oppenheimer said.

**DTV Doings:** Another day, another DTV hearing for the House Telecom Subcmte. Hot topics at Wed's hearing included whether the govt should require broadcasters to air consumer education ads and multicast must-carry. **Insight's** *Michael Willner* said cable ops would carry multicast streams if they are of interest to consumers but said ops shouldn't be required to carry them—a sentiment shared by ranking member *Fred Upton* (R-MI). "There is this misconception that a 750Mhz system is this vast wasteland of bandwidth that has the ability for unlimited use," Willner said. "We are struggling today to try and maneuver the services that we're already offering..." Subcmte chmn *Ed Markey* (D-MA) questioned how

## THE DISCOVERY FAMILY OF HD NETWORKS NOW AVAILABLE FOUR NEW SIMULCAST NETWORKS JOIN HD THEATER



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NAB will get all stations to air DTV transition PSAs in primetime and other dayparts without a govt mandate. But **Hearst-Argyle** pres/CEO *David Barrett* called for the initiative to stay voluntary. "My concern is that we not give a disincentive to do the things that will drive this program," he said, arguing that if the govt were to require 10-12 PSAs to air each day, stations might "believe that's all that needs to be done." **ACA** chmn/**Sunflower Broadband** *Patrick Knorr* said small operators need help with the digital transition. "I think a mandate to deploy digital where there is no financial justification... very likely, almost with economic certainty, will drive these operators out of business," he said.

**More Portals Doings:** The **FCC** also made it clear Wed that the obligation to provide local number portability extends to interconnected VoIP providers and the telecom carriers that obtain numbers for them. The action was, in part, a response to numerous complaints by consumers to port numbers to or from interconnect VoIP providers.

**Disputes Hit Pro Hoops:** The Orlando Magic will tip off its **NBA** season tonight without local air play. **Bright House Nets** and **FSN** are still deadlocked in a distribution battle over **FSN FL** in Orlando, and both sides officially say a pre-game deal is unlikely. FSN FL, which picked up 35 Magic games this year for the 1st time, has so far refused the MSO's offer to place the RSN on a tier. "FSN Florida belongs on expanded basic like other regional sports networks," said FSN spokesman *Chris Bellitti*. Interestingly, Bright House carries the RSN on expanded basic in Tampa and is a corporate sponsor of the Magic. **Sun Sports** will telecast 43 Magic games in the Orlando area this season.

**Competition:** More than 70 **NBA** games produced by **ESPN** this season will air live via **ESPN Mobile TV** on **Verizon Wireless'** V Cast service, beginning Oct 31. -- **DirecTV** joined **DISH** in launching **NBA TV HD**

**Deals:** **TiVo** will partner with **Windstream** to offer Internet and TiVo DVR services. Customers can get broadband and linear TV through TiVo, as well as downloadable content through TiVoCast, Amazon Unbox and Rhapsody. Windstream, a triple-play provider to 3.2mln access lines in 16 states, will begin marketing TiVo in the first half of '08.

**VOD:** **TVN Ent** is using **Harmonic** software in enabling distributors to deliver HD VOD content to consumers.

**Earnings:** While **IAC's** overall retailing segment posted mere 2% growth in 3Q revenue to \$700mln, **HSN** achieved a 5% rise with a higher avg price point, a modest increase in units shipped, improved sales efficiency across most of its product lines and more business from frequent customers. Total active customers remained flat and return rates rose slightly.

**Big Game Ratings:** **ESPN's** most recent **MNF** telecast between the Broncos and *Brett Favre's* Packers earned a season-best 10.5/10.16mln, proving the heavy impact on week-to-week ratings by participating teams and stars. As last season's games seemed to get by on MNF's switch to cable alone, several games this year have disappointed, earning numbers below their corresponding '06 tilts. But games involving Hall of Famer Favre, *Peyton Manning's* scary Colts, *Tom Brady's* mind-boggling Patriots and America's Cowboys all earned a 9.0+.

**Programming:** **ESPN's** **NBA** coverage this season includes myriad new multimedia content: live simulcasts and on demand replays of all ESPN games on **ESPN360.com**; live simulcasts of games and studio telecasts on **ESPN Mobile TV**; and live and on demand studio programming on **ESPN.com**. -- A special edition of **GAC's** "Offstage with Lorianne Cook" (Sat, 9pm ET) features a one-on-one conversation with country music legend *Garth Brooks*.

**Honors:** **CNBC** (8) led in nominations for this year's **Emmy Awards** for Business & Financial Reporting, narrowly

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# BUSINESS & FINANCE

besting CBS (7) and PBS (6). Cable brethren CNN (3) and Bloomberg (1) also received nods.

**People:** Anthony White has been promoted to svp, marketing, Hallmark Channel and Hallmark Movie Channel. -- Comedy Central appointed Deena Stern vp, brand marketing.

**Business/Finance:** Sanford Bernstein sees cable as a better investment than DBS, especially with cable stocks' recent swoon. Cable "offers more attractive long-term growth, and significantly higher free cash flow than its DBS peers," said the firm, noting that telcos are likely to have a greater impact on satellite. One key reason for the assertion: expansion of the telco footprint reduces the marketable footprint for the telco/satellite bundle. Wedbush Morgan's William Kidd, meanwhile, said cable's recent weakened position will help boost 3Q and 4Q results of DISH and DirecTV. Comcast's "basic subscriber loss better reflects head-to-head market conditions in the pay television world, implying that someone—satellite, telco or both—is successfully poaching cable subscribers," said Kidd. Sanford rates Comcast, Cablevision and Time Warner Cable 'outperform' with price targets far above current levels. The firm attaches an 'underperform' rating to DISH and DirecTV. -- GE/NBCU's Peacock Equity took an undisclosed stake in mobile media firm 4INFO, a specialist in SMS/text message content and advertising.

## CableFAX Daily Stockwatch

Company	10/31 Close	1-Day Ch	Company	10/31 Close	1-Day Ch
<b>BROADCASTERS/DBS/MMDS</b>					
BRITISH SKY:	56.68	0.80	AMPHENOL:	44.27	(0.28)
DIRECTV:	26.48	0.42	APPLE:	189.95	2.95
DISNEY:	34.63	0.34	ARRIS GROUP:	11.50	0.16
ECHOSTAR:	48.96	(0.04)	AVID TECH:	29.39	0.69
GE:	41.16	0.68	BIGBAND:	6.00	(0.66)
HEARST-ARGYLE:	22.30	(0.46)	BLNDER TONGUE:	1.16	(0.05)
ION MEDIA:	1.37	0.00	BROADCOM:	32.55	0.16
NEWS CORP:	22.93	0.15	C-COR:	12.26	0.16
TRIBUNE:	30.26	0.25	CISCO:	33.06	0.45
<b>MSOS</b>					
CABLEVISION:	29.33	(0.56)	COMMSCOPE:	47.17	(5.03)
CHARTER:	2.07	0.01	CONCURRENT:	1.14	0.01
COMCAST:	21.05	0.15	CONVERGYS:	18.33	0.18
COMCAST SPCL:	20.87	0.03	CSG SYSTEMS:	20.53	0.23
GCI:	11.73	0.23	GEMSTAR TVG:	6.89	(0.01)
KNOLOGY:	16.79	0.13	GOOGLE:	707.00	12.23
LIBERTY CAPITAL:	124.98	0.09	HARMONIC:	12.32	(0.06)
LIBERTY GLOBAL:	39.25	0.74	JDSU:	15.26	0.07
LIBERTY INTERACTIVE:	21.23	0.68	LEVEL 3:	3.03	(0.02)
MEDIACOM:	5.75	0.02	MICROSOFT:	36.81	1.24
NTL:	28.22	0.00	MOTOROLA:	18.79	0.09
ROGERS COMM:	42.97	0.00	NDS:	59.60	2.20
SHAW COMM:	27.92	0.27	NORTEL:	16.13	(0.04)
TIME WARNER CABLE:	28.59	0.17	OPENTV:	1.36	(0.03)
WASH POST:	849.00	32.00	PHILIPS:	41.34	0.45
<b>PROGRAMMING</b>					
CBS:	28.70	0.32	RENTRAK:	15.30	(0.28)
CROWN:	7.88	0.43	SEACHANGE:	6.21	0.02
DISCOVERY:	28.51	0.48	SONY:	49.46	0.65
EW SCRIPPS:	45.01	0.70	SPRINT NEXTEL:	17.10	0.06
GRUPO TELEVISA:	24.85	0.40	THOMAS & BETTS:	56.01	2.05
INTERACTIVE CORP:	29.46	1.07	TIVO:	7.13	0.20
LODGENET:	21.57	(3.56)	TOLLGRADE:	8.04	0.03
NEW FRONTIER:	6.07	0.03	UNIVERSAL ELEC:	36.10	0.35
OUTDOOR:	8.99	0.17	VONAGE:	2.04	0.07
PLAYBOY:	11.20	0.00	VYYO:	6.03	0.10
TIME WARNER:	18.26	0.29	WEBB SYS:	0.07	0.00
UNIVISION:	36.23	0.00	YAHOO:	31.10	0.27
VALUEVISION:	5.17	0.06	<b>TELCOS</b>		
VIACOM:	41.36	0.87	AT&T:	41.79	0.38
WWE:	15.20	(0.02)	QWEST:	7.18	0.12
<b>TECHNOLOGY</b>					
3COM:	4.88	0.02	VERIZON:	46.07	0.71
ADC:	18.70	(0.1)	<b>MARKET INDICES</b>		
ADVANTAGE:	8.91	0.43	DOW:	13930.01	137.54
ALCATEL LUCENT:	9.69	0.30	NASDAQ:	2859.12	42.41
AMDOCS:	34.40	0.52			

## LAST CHANCE!

**WE ARE MOVING TO A NEW SATELLITE AND CONVERTING TO DIGITAL.**

On Wednesday, November 7th at 12:00 Noon ET, Fox News Channel is moving to Galaxy 11/Transponder 6 from its current location on Galaxy 15/Transponder 21, and will convert its signal from analog to a digital feed.

Please go to [FOXNEWS.COM/SATELLITECHANGE](http://FOXNEWS.COM/SATELLITECHANGE) to access the Digital Authorization Form and additional technical information.



## Think about that for a minute...

### Schizophrenia

I wrote a column last April noting that it appeared the advocates in Washington and elsewhere seemed to have blinders on when they made various inconsistent proposals. You know, on the one hand they are four-square behind the First Amendment, and want to require that any broadband supplier cannot discriminate in favor or against any speaker, programmer or web site. But at the same time they support “must carry” and retransmission consent rules which favor one speaker or

programmer. That’s the sort of thing I said drove me to distraction.



**Steve Effros**

Well, it’s getting worse. While I tend to focus on the policy side of things here in Washington, it seems that this spreading form of depressing schizophrenia is not restricted to the policy forum. Take a look at the stock market! (editorial note: you need not

send me any emails pointing out that I am using a very loose and non-medical use of the term schizophrenia. I know. But it makes the point).

Things are just going crazy (again, I know...) on Wall Street. Cable stocks are tanking, in part because cable operators are not growing as fast as they used to, and they are not “meeting the numbers” that someone outside the industry estimated they should meet. Those “analysts” have decided that the competition from satellite and telephone providers of video is effective (wow, a real revelation, that one!). And instead of correcting their number estimates, they tank cable when the numbers aren’t met!

At the same time, however, the same folks are pointing out that the satellite folks are in trouble because they can’t provide the “triple play” that the cable infrastructure is capable of, and therefore the cable guys should be the “winner” of that competition in the long run! Then, to get even more convoluted, no one seems to acknowl-

edge that what the telephone companies are doing is building (TaDa!) cable systems! So “cable” per se is doing very well, and cable subscribership is going up. “Cable” should be a winning category.

And oh, by the way, the “traditional” cable guys are also now offering telephone and getting close to 10 telephone customers (representing far higher margins) for every one or two video customers the telcos are getting. But the telco stocks are soaring, even with installation times averaging 6 to 7 hours per install, and cable stocks are tanking!

Well, that’s not entirely true. When a cable operator has had enough of this nonsense and tries to “go private,” as the Dolans of Cablevision just tried to do, then suddenly the “experts” and “analysts” proclaim that cable stocks are clearly worth far more than what is being offered!

This all goes hand in hand with the regulatory split personality we see all the time: they want cable to help the DTV transition but impose new costs on cable companies and customers with useless “separate security” requirements that won’t do anything for anyone except drain money away from quickly migrating to all-digital technology.

They want to “protect” folks from programming they don’t want to see but argue for multichannel must carry of leased channel programming no one has even seen yet. They want to impose “a la carte” program availability but require all cable customers to buy all broadcast signals before they can buy anything else.

The same folks who cheer the benefits of more competition and multiple providers of service are also now considering required arbitration of “best offer” prices. It’s bizarre, but the cure of a modicum of consistency is a long way off.

*Steve*

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