

CableFAX Daily™

Thursday — November 15, 2007

What the Industry Reads First

Volume 18 / No. 223

Bad Stats? Tate, McDowell Seek Answers on 70% Figure

Another day, more assaults on an FCC video competition report that claims the 70% threshold of cable subscriptions rates in America has been met. The unreleased report appears to rely on data from *Comm Daily* publisher **Warren Comm**, which found that cable had a 71.4% subscriber rate this year. Problem is that Warren says its figures “aren’t well suited” to determining whether the 70% threshold has been met. FCC Republican Commissioners *Deborah Taylor Tate* and *Robert McDowell* have asked Warren to provide it with all information regarding the data, noting their surprise that Warren found 71.4% subscribership when the FCC’s figure for the past 3 years has hovered around 60% and most large MSOs reported a decline in subs this year. The 2 Commissioners read about Warren’s data clarifications in Wed morning’s *Comm Daily*. The article quoted an FCC official as saying the Commissioners would be “unlikely to seek out data on their own...” Tate and McDowell said they wanted to take this opportunity “to ensure you that at least these 2 Commissioners are indeed seeking the trustworthiness, truthfulness and viability of the data in question.” Warren chmn/publisher *Paul Warren* told **Cfax** that its numbers for subscribership and penetration are based on the figures cable systems give the company—so if a system doesn’t participate, Warren doesn’t have those numbers (**Cfax**, 11/14). “We could go with two dozen footnotes when we start to report this data,” Warren’s *Television and Cable Factbook* managing editor *Michael Taliaferro* told *Comm Daily*. Tate and McDowell said they appreciated Warren’s candor and thoroughness in clarifying the info “upon which our report and its conclusions are based,” adding that they would like all additional info, including the “two dozen footnotes” or “numerous caveats.” FCC chmn *Kevin Martin*, who revealed the video competition report and 70% stat in a *NY Times* story Sat, said Tues that the 70% figure was based upon an unnamed, outside resource—not just an FCC finding. As for the Warren data, **NCTA** has called it into question before. In Apr ’06, the NCTA told the FCC that it appears to “seriously understate the number of homes passed by cable systems with more than 36 channels.” The *Factbook* survey pegged homes passed at 94.2mln and penetration at 67.2mln.

McSlarrow’s Take: FCC Agenda Aimed to Pressure Cable

The FCC is being run more like a political action committee than a govt agency, **NCTA** pres/CEO *Kyle McSlarrow* said in a conference call with reporters Wed. The NCTA chief acknowledged that as a trade assoc head, he’s biased... but added that “objectively, if one looks at the Commission’s agenda, one would have to conclude overwhelmingly that the issues that have been teed up... have been designed to hurt the cable industry.” The FCC responded by issuing a statement from a spokesperson: “Our focus is not on the welfare of a particular industry but the welfare of consumers and ensuring they receive the benefits of competition in the form of lower prices, more choice and better services,” the statement read, saying that cable prices have increased 93% from ’95 to ’05. “The cable industry needs more competition, and we will continue to act to bring more competition and its benefits to consumers.” Calling the FCC “broken,” McSlar-

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row likened the agency to a P.A.C. "When I see leaks to the press, when I see an effort to time the release of documents or delay them or talk about them without anyone actually having seen them so you can't actually refute them... that's the ways guys do it in politics," he said. "All of that's fair when you're in a campaign environment, but this isn't a campaign environment." While McSlarrow offered up several harsh words for the FCC, he stopped short of saying FCC chmn Kevin Martin has a personal vendetta against cable. He did, however, suggest that Martin has created an agenda aimed at "pressuring" the industry to submit to a la carte. "Some of these items may or may not have been proposed even if we had just succumbed at the beginning and said 'Yeah, we'll implement a la carte,' but I doubt it. I rather expect that if that had actually happened, I probably could have gone sailing," McSlarrow quipped. The NCTA head said he didn't think Martin was violating the law or abusing his power but said he would not conduct himself in the same manner if he was heading the agency. He ticked off a list of grievances: sunshine limitations are applied "disparately," delays in rendering decisions (i.e., set-top waiver requests), mergers treated differently (Adelphia merger vs AT&T), using reports to promote "particular agendas." As for whether data was used properly for the so-called 70/70 test, "how would we know," he asked, calling on the FCC to make the report available for public inspection. Wed's conference call was prompted by a NY Times interview with Martin. The chmn revealed that a yet-released FCC video competition report finds that cable has penetration of more than 70% of the homes passed by cable—which would trigger a provision allowing the FCC to promulgate additional rules to "provide diversity of information sources."

HD Wars: Liberty wanted to buy a stake in HDNet? The Mark Cuban-backed net told the FCC Tues that Liberty, "with full knowledge of our deteriorating relationship with DirecTV and the adverse and discriminatory carriage terms to which we were going to be subject," approached HDNet LLC with the suggestion that it sell it a 50% stake in the channel. "When it became clear that HDNet LLC was not coming to an agreement with DIRECTV on its future carriage, Liberty ceased expressing an interest in acquiring a share of HDNet," it said in an FCC filing. Liberty declined comment Wed. HDNet is arguing that the Commission shouldn't transfer News Corp's DirecTV stake to Liberty without conditions to protect independent programmers carried by DirecTV. It points to a lawsuit it filed over DirecTV's plans to move HDNet and HDNet Movies from their current tier, which customers get for a flat \$9.99 fee, to a tier that will cost extra money. "This action, although initiated while News Corp still retains control of DirecTV, will benefit favored partners, including Dr [John] Malone and his Discovery-related affiliates, among others," HDNet said, noting that Discovery HD Theater is among the nets remaining in the standard \$9.99 tier. Other HDNet claims: Discovery "wrongfully" terminated an ad agreement for HDNet on the channel because the ads may result in customers demanding their MVPDs make HDNet nets available on their platform; and DirecTV wants to kill HDNet and HDNet Movies to obtain programming for its own new network, "The 101." -- Meanwhile, HDNet said it won a temporary restraining order in its DirecTV lawsuit that'll keep the net from being moved to a tier at least for a little while. A hearing is slated for next month.

Competition: DirecTV's HD ship continued its skyward trajectory Wed when MTV HD, VH1 HD, Spike HD, Nickelodeon HD and CMT HD were all launched. 5 new HD PPV channels were also added by the satcaster, and Bio HD will be added by month's end. -- SES Americom has agreed to provide international programming to AT&T's U-verse TV service through its IP-Prime platform. -- DirecTV added Spanish-language net V-me to its basic and Spanish Channel lineups.

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BUSINESS & FINANCE

Imus Goes Country: Don Imus' early-year transgression involving the Rutgers women's basketball team got his radio show booted from **MSNBC**, but he's returning to cable Dec 3 on... **RFD TV**?!? That's right, the rural America-focused net signed Imus to a 5-year pact to simulcast his "Imus in the Morning" **ABC** radio program. It will air weekdays from 6-9am ET on the flagship net and 6-9pm on RFD HD, which launches Dec 1.

Research: While consumers' online viewing of video keeps increasing, viewing on alternate video screens such as mobile handsets is seeing much slower growth, according to a **CAB** survey. As 37% of respondents said they have watched a full-feature TV show online in the past month—and 70% of males 18-24 have watched some video form in the past week—there was a mere 3 percentage point increase over last year in the number adopting a 3rd video screen (33%). -- Higher streaming quality is driving robust growth in consumer viewing of TV content online, according to **Move Nets**, a provider of digital media publishing and delivery services that counts **Discovery** as a client. Based solely on Move customers, data shows the addition of 100K unique viewers/day; an avg viewing time of 50mins; and a doubling of the number of viewers that have watched long form video online so far this month than watched in the entire month of Aug.

CableFAX Daily Stockwatch

Company	11/14 Close	1-Day Ch	Company	11/14 Close	1-Day Ch
BROADCASTERS/DBS/MMDS					
BROADCASTERS/DBS/			AMPHENOL:	42.23	0.20
BRITISH SKY:	51.95	(0.41)	APPLE:	166.11	(3.85)
DIRECTV:	23.94	(0.64)	ARRIS GROUP:	10.11	0.07
DISNEY:	31.82	(1.19)	AVID TECH:	28.08	(0.65)
ECHOSTAR:	39.46	(1.79)	BIGBAND:	5.94	(0.21)
GE:	38.98	(0.23)	BLNDER TONGUE:	2.16	0.80
HEARST-ARGYLE:	21.21	(0.14)	BROADCOM:	28.66	(1.34)
ION MEDIA:	1.38	0.02	C-COR:	11.95	0.22
NEWS CORP:	22.03	(0.22)	CISCO:	29.71	(0.43)
TRIBUNE:	29.30	0.77	COMMSCOPE:	41.89	(0.55)
MSOS					
CABLEVISION:	25.70	(0.47)	CONCURRENT:	0.96	(0.04)
CHARTER:	1.38	0.12	CONVERGYS:	17.55	(0.15)
COMCAST:	19.65	(0.27)	CSG SYSTEMS:	18.11	(0.57)
COMCAST SPCL:	19.41	(0.23)	GEMSTAR TVG:	5.85	(0.24)
GCI:	9.53	(0.02)	GOOGLE:	641.68	(18.87)
KNOLOGY:	14.22	(0.14)	HARMONIC:	11.32	0.07
LIBERTY CAPITAL:	113.12	(4.49)	JDSU:	13.27	(0.48)
LIBERTY GLOBAL:	36.27	(0.07)	LEVEL 3:	2.99	(0.06)
LIBERTY INTERACTIVE:	19.96	(0.28)	MICROSOFT:	33.93	(0.53)
MEDIACOM:	4.64	0.02	MOTOROLA:	16.61	(0.28)
NTL:	28.22	0.00	NDS:	58.00	1.02
ROGERS COMM:	42.97	0.00	NORTEL:	18.89	0.16
SHAW COMM:	25.77	(0.64)	OPENTV:	1.06	(0.04)
TIME WARNER CABLE:	25.26	(0.3)	PHILIPS:	42.81	0.12
WASH POST:	801.98	(32.52)	RENTRAK:	15.03	(0.01)
PROGRAMMING					
CBS:	27.29	(0.6)	SEACHANGE:	5.33	0.01
CROWN:	6.97	(0.01)	SONY:	48.60	(0.32)
DISCOVERY:	23.24	(0.61)	SPRINT NEXTEL:	15.82	(0.16)
EW SCRIPPS:	44.17	(0.37)	THOMAS & BETTS:	52.75	(0.18)
GRUPO TELEVISIA:	23.79	0.40	TIVO:	6.64	(0.27)
INTERACTIVE CORP:	28.99	(0.78)	TOLLGRADE:	7.81	(0.25)
LODGENET:	19.51	0.01	UNIVERSAL ELEC:	34.62	(0.73)
NEW FRONTIER:	5.21	0.06	VONAGE:	2.16	(0.13)
OUTDOOR:	7.29	(0.12)	VYYO:	4.53	0.20
PLAYBOY:	9.83	(0.34)	WEBB SYS:	0.07	0.00
TIME WARNER:	17.07	(0.66)	YAHOO:	25.07	(1.03)
UNIVISION:	36.23	0.00	TELCOS		
VALUEVISION:	5.07	(0.14)	AT&T:	39.29	(0.56)
VIACOM:	39.92	(0.9)	QWEST:	6.79	0.12
WWE:	15.15	(0.19)	VERIZON:	43.48	(0.1)
TECHNOLOGY					
3COM:	4.71	(0.09)	MARKET INDICES		
ADC:	16.97	(0.4)	DOW:	13223.93	(83.16)
ADVANTAGE:	6.22	0.58	NASDAQ:	2644.32	(29.33)
ALCATEL LUCENT:	8.42	0.08			
AMDOCS:	33.02	0.27			

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Think about that for a minute...

Power Math

Here we go again. Various famous quote lines come to mind as I read the latest policy pronouncements from the FCC in the form of newspaper articles. Never mind the rulemaking process, which I talked about last week. It has gotten to the point that "preliminary" decisions, and the calculation of whether the Chairman has the votes to do one thing or another are the fodder of exclusive newspaper interviews even before the relevant documents hit all the desks of the other Commissioners!



Steve Effros

But back to the quotes. You've seen them before in various forms; "figures don't lie, but liars can figure," and "power corrupts, and absolute power corrupts absolutely." What we are now hearing coming out of the FCC reminds me of both sentiments.

First, the speculation: apparently an item is being distributed for vote, possibly as soon as this month, that would find that cable has reached "70/70". That is, cable is available to 70 percent of the nation's television homes, and that 70 percent of those homes subscribe to cable television service.

Now there is no argument that cable plant is in front of far more than 70% of the television homes in the country. But that 70% subscribe? Where does that number come from? The FCC itself, in its last accounting of cable subscribers said that nowhere near that number of homes actually subscribed, and in case the Commission has missed this, the number of television homes has gone up, and if you just check with Wall Street, they will tell you that the number of cable subscribers has gone flat, or down! So how and why are these new conclusions being drawn?

First, the reason; there is a provision in the 1984 Cable Act that would give the Commission some new authority

to potentially write new rules to assure program diversity if cable reached a "70/70" position. It is no secret that some members of the Commission would like to aggregate all the power and authority they can over cable television to impose what they see as the "right" way for the industry to conduct its business. It is also no secret that almost everyone who has studied the issue agrees that the most popularly touted "fix" proposed, a la carte, would REDUCE not increase diversity in programming! It's also clear we have more diversity today than ever.

So to get the absolute power to do what they want, the folks who insist they know and have the right to impose industrial policy on the cable industry have to lock down that power by "finding" the numbers they need from a 23-year-old law. Hence the numbers game. How are they going to find that "cable" has reached "70/70"? Well, one suggestion is that they meld the numbers from cable's telephone competitors into the "cable" numbers! So while logic would suggest that the rules worked, that the traditional cable folks are now fighting a spirited competitive battle, the FCC wants to add all the competitors together to justify more power to regulate.

But even then the numbers don't make it. If it were true that "cable" in all forms accounts for 70% of all MVPD subscribers, and we know that satellite represents more than 25%, then only 5% of homes are not served by multichannel video program distributors. But the government itself, as part of the DTV Transition, has been told by groups like the Consumer Federation of America that between 10 and 15% of all television homes rely solely on over-the-air television. That comes out to 110%!

Power math.

Steve

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