

# CableFAX Daily™

Thursday — November 18, 2010

What the Industry Reads First

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## Retrans in DC: Senators Want Something to Change


Wed's Sen Communications subcmte hearing on retrans proved one thing: lawmakers love to talk about TV. While chmn *John Kerry* (D-MA) successfully held a discussion with witnesses present on the state of retrans, it was the broader comments by Sen Commerce chmn *Jay Rockefeller* (D-WV) that grabbed the headlines. "If you fail to fix this situation, we will fix it for you. But when we do, we will seek to do more than referee your corporate disputes," Rockefeller warned. His point being that there are plenty of other problems with TV today, as he ticked off complaints about cable prices, forced purchases of large channel packages and media's "dumbing down" of America. At one point, Rockefeller said he was hungry for quality news that leaned neither left nor right and that a big part of him wanted **Fox** and **MSNBC** "out, off and goodbye." When it came to retrans, cable and broadcast reps presented the arguments expected of them, with **Time Warner Cable's Glenn Britt** complaining that the **FCC** has failed to act. Biggest laughs came after **News Corp's Chase Carey** explained that Fox's signals were available free to viewers, even in **Cablevision** markets. "Which makes the notion of charging for it ridiculous," quipped Cablevision COO *Tom Rutledge*. Carey said retrans fees are necessary for Fox to have a viable business model and mentioned several times that Fox was getting paid nothing before, so any increase is a 100% increase. But Kerry reminded him that Fox was getting value over the years by bundling broadcast with cable nets. Kerry has drafted legislation that would prevent broadcast signals from being pulled until the FCC evaluates the behavior of the parties and decides whether to recommend binding arbitration. He reminded the broadcast and cable reps present (sadly no witnesses from the FCC or a broadcast station owner) that there are actually 4 parties at the negotiating table—the 2 companies, the consumer and the govt. "The truth is public broadcast is receiving billions in subsidy through this thing called spectrum," he said. Kerry was the most talkative, but other senators did weigh in. Sen *John Ensign* (R-NV) said with the video marketplace more competitive than ever, it may be time to consider revising retrans. And outgoing Sen *George LeMieux* (R-FL) suggested the solution might be to get rid of existing regulations instead of adding more. "If we're going to get more involved in this discussion about retrans... we're going to create more unintended problems," he said. Sen *Mark Pryor* (D-AR) asked what was wrong with let-

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ting the signals stay up during negotiations, with **Univision's Joe Uva** responding that it would remove a primary incentive for both parties to get a deal done. "If forced to remain up, there doesn't seem to be any motivation on behalf of distributors to come to an agreement," he said. Also present at the hearing was **Ovation CEO Charles Segars**, whose message was that retrans threatens the existence of independent cable nets like his. "This is a call for a level playing field," he said.

**TWC-Sinclair:** Ah, gotta love that it's not even Dec yet and things are already getting heated between **Sinclair** and **Time Warner Cable**. After TWC complained to the **FCC** this week that the broadcaster was misleading the agency (*Cfax*, 11/17), Sinclair evp, gen counsel **Barry Faber** fired back his own letter late Tues to FCC Media Bureau chief **Bill Lake**. TWC said Faber was wrong in telling the FCC it didn't plan to provide a 30-day notice about channel drops. Faber's newest letter said that it's nice to know the MSO has "changed its mind," but he complained that the cable op intends to come into technical compliance with the rule while avoiding substantive compliance by "telling their customers not to worry about it." Faber said a Sinclair rep was advised by a TWC CSR in a phone conversation that the odds of a Sinclair station going dark were "little or none." Time Warner Cable took umbrage this week with Faber's assertion that a deal before Dec 31 appears doomed. Saying negotiations have taken place for more than 5 months and have included the exchange of 10 different proposals, Faber wrote Tues that the 2 are remarkably far apart. "Unless Time Warner has some covert plan to change its negotiating posture dramatically (and if they do it calls into question why they don't do so now), any objective observer of our negotiations would conclude a deal will not get done," he said. Faber added that Sinclair has voluntarily ceased negotiating for the **Cunningham Broadcast** stations, into which it has entered an LMA and thus has "every legal right to negotiate for them." TWC has complained that Sinclair's marketing material suggests the Cunningham stations will go dark Jan 1.

**On the Hill:** And the lobbying for **House Commerce** chmn continues with Rep **Joe Barton** (R-TX) saying he has earned the support of a majority of the returning Republicans on the Committee: **Ralph Hall** (TX), **Cliff Stearns** (FL), **John Shimkus** (IL), **Joe Pitts** (PA), **Lee Terry** (NE), **Michael Burgess** (TX), **Marsha Blackburn** (TN) and **Steve Scalise** (LA). "You know Joe. He has provided unyielding conservative leadership during our protracted partisan battles over cap-and-trade and health care reform," the members wrote in a letter to GOP leadership that also applauded Barton for killing the Waxman Net Neutrality compromise.

**Cable Cords:** **SNL Kagan** cued the cawing over cord cutting with its estimate that US cable ops shed 741K basic video customers in 3Q, marking the largest quarterly decline for cable since the firm began compiling data in '80. Cable MSO's share of combined video subs fell to 60.3%, versus 62.9% a year ago. The overall multichannel seg-



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ment lost 119K subs, compared to a 3Q09 gain of 346K. Telcos added 476K customers for a market share of 6.4%, up from 4.7% a year ago, and DBS ops gained 145K subs to slightly expand its market share to 33.2%. Although the weak economy and high unemployment continues to pressure ops, said Kagan sr analyst *Ian Olgeirson*, “it is becoming increasingly difficult to dismiss the impact of over-the-top substitution on video subscriber performance, particularly after seeing declines during the period of the year that tends to produce the largest subscriber gains due to seasonal shifts back to television viewing and subscription packages.” -- According to a **Horowitz Assoc** survey of 800 broadband users, 7% of 18-34s are now considering cancelling their pay-TV service and an additional 19% of the demo would consider doing so if more of their favorite content became available online—translating to 22% of overall broadband users who could cut the cord.

**Morgan Stanley Notebook:** Time Warner CFO *John Martin* continued his bullish stance on **HBO** at the **Morgan Stanley** conference, despite his recent admission that the premium net is expected to lose subs this year (*Cfax*, 11/4). HBO’s revenue-generating sub base in the US is “very, very stable,” said Martin, and organic sub rev growth in the mid-single digits is expected in ’10, on par with past years. As Time Warner currently counts 40mln stateside HBO/**Cinemax** customers, Martin believes that continued monetization of HBO content across platforms will spur increases in content rev going forward, chiefly through streaming service **HBO Go**, which he called a “leap forward in a brand enhancement for HBO.” The service’s key strength, he said, will be in helping improve customer retention. Martin also rolled out new term Content Everywhere, which TWX sees including TV Everywhere, a similar initiative slated for films and a bundling of the co’s print content across devices. -- While **AT&T Mobility and Consumer Markets** pres, Emerging Devices & Resale *Glenn Lurie* said the telco’s implementation of tiered data pricing “was one of the longest-discussed, most difficult decisions we have made in a long time,” in hindsight the worry was overdone. The rollout of the tiers “went extremely well [and] feedback has been very, very good,” said Lurie, noting a lower-end \$15 tier among the top performers.

**OTT:** Subscription service **Hulu Plus** emerged from beta Wed with a lower price, \$7.99/month (\$2 off), and with new customers getting a 1-week free trial. The service is now available through myriad devices carrying a collective installed base of more than 50mln US homes, including Web-connected TVs and set-tops, gaming consoles and mobile devices from companies such as **Samsung, Sony, TiVo, Roku** and **Apple**. For the Plus launch, Hulu partnered with marketers including **McDonald’s, Bud Light** and **Microsoft**, and said **Hulu.com** delivers 55% more effective ad campaigns than traditional channels. [*Editor’s Note: CableFAX subscribers can access recent comScore data on Hulu’s traffic. Just go to [www.CableFAXDaily.com](http://www.CableFAXDaily.com) under the “Extras” and “Data Points” sections*]. -- Sony **PlayStation 3** said it will offer HD movies through the **VUDU** on demand service beginning Tues. Owned by **Wal-Mart**, VUDU features more than 4K movies for \$2 for a 2-night rental.

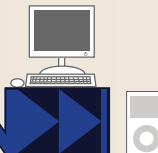
**Advertising:** US Internet ad rev totaled \$6.4bln in 3Q, marking a historical quarterly high and a 17% jump over a year ago, according to the **IAB**. -- **Coors Light** signed on as the presenting sponsor of **ESPN Deportes’** coverage of the ’10 Dominican Baseball League and Caribbean Series, now running through Feb.

**Online:** **PTC** is complaining that popular online video distributors fail to protect kids from explicit content, with not a single one offering a parental control option on their homepages. It also said that content is being mis-rated, saying that **Comcast’s Fancast** gave TV-MA-rated “South Park” a TV-PG rating, or unrated (46% of 602 videos watched during the study period had no rating). PTC gave **Hulu** an overall grade of D, Comcast’s Fancast and **AOL /Slash-control** each received a D-, while **AT&T** was given an F.

**Programming:** **Hallmark** is sticking with *Martha Stewart*, launching her 1st-ever baking-only series, “Martha Bakes” in Jan. Also on tap is new series “Pet Keeping with *Marc Morrone*,” starring Stewart’s “favorite petkeeper,” and a prime-



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time special “Martha Stewart Presents: The Men Who Make Us Laugh.” Also in 1Q, “Whatever with Alexis & Jennifer” will bow at 11pm ET on Sat nights, followed by “Whatever, Martha!” at midnight. -- **TNT** cancelled “Dark Blue” after 2 seasons. -- **Current TV** launched its Creation Studios at **Current.com/studios**, where global users can participate in creating “Bar Karma” (Feb), a new series about a mystical watering hole at the edge of the universe. Viewers are able to influence and alter show eps by pitching their own storyline concepts and storyboards, and voting on the one’s they like best. -- **Spike’s** ’10 “Video Game Awards” will air in 175 global countries and territories on Dec 11 and feature more world premieres of games than ever before. -- **RLTV’s** 4-part series “Taking Care with Joan Lunden” (Mon-Thurs) explores the many facets of caregiving while underscoring the urgent need for understanding the complexities that often arise.

**On the Circuit:** **WICT** will double the size of its Rising Leaders Program to 4 classes next year (120 slots). Applications must be received by noon ET, Jan 28 ([www.wictrlp.org](http://www.wictrlp.org)). -- **Time Warner Cable** hosted its Global Online Town Hall Wed, hosted by *Al Gore*. The forum, “Math, Science and the Future of Our Nation,” included *Sally Ride*, Sec of Ed *Arne Duncan* and the stars of **Discovery’s** “MythBusters.”

## CableFAX Daily Stockwatch

Company	11/17 Close	1-Day Ch	Company	11/17 Close	1-Day Ch
<b>BROADCASTERS/DBS/MMDS</b>					
DIRECTV:	41.60	0.19	ARRIS GROUP:	9.98	0.01
DISH:	19.25	0.17	AVID TECH:	14.91	0.60
DISNEY:	37.22	0.30	BIGBAND:	2.86	UNCH
GE:	15.81	(0.05)	BLNDER TONGUE:	2.12	(0.06)
NEWS CORP:	15.73	0.04	BROADCOM:	40.08	(0.41)
<b>MSOS</b>					
CABLEVISION:	28.93	0.08	CISCO:	19.41	(0.03)
CHARTER:	35.79	(0.08)	CLEARWIRE:	6.73	0.33
COMCAST:	20.39	0.13	COMMSCOPE:	31.93	(0.1)
COMCAST SPCL:	19.24	0.13	CONCURRENT:	4.65	(0.01)
GCI:	10.34	0.21	CONVERGYS:	12.40	0.03
KNOWLOGY:	14.42	UNCH	CSG SYSTEMS:	18.88	(0.13)
LIBERTY CAPITAL:	56.75	0.30	ECHOSTAR:	20.60	(0.16)
LIBERTY GLOBAL:	37.81	0.43	GOOGLE:	583.55	(0.17)
LIBERTY INT:	15.36	0.27	HARMONIC:	6.66	0.05
MEDIACOM:	8.48	0.12	INTEL:	21.08	0.01
SHAW COMM:	20.52	0.04	JDSU:	11.50	0.10
TIME WARNER CABLE:	61.99	(0.08)	LEVEL 3:	1.11	UNCH
VIRGIN MEDIA:	26.42	0.51	MICROSOFT:	25.57	(0.24)
WASH POST:	384.85	(3.53)	MOTOROLA:	7.91	0.10
<b>PROGRAMMING</b>					
CBS:	16.20	(0.01)	RENTRAK:	24.86	(0.22)
CROWN:	2.62	(0.08)	SEACHANGE:	8.22	UNCH
DISCOVERY:	41.66	1.39	SONY:	34.47	0.80
GRUPO TELEVISIA:	22.36	0.14	SPRINT NEXTEL:	3.72	(0.02)
HSN:	27.53	0.26	THOMAS & BETTS:	43.06	(0.05)
INTERACTIVE CORP:	27.00	(0.31)	TIVO:	8.81	0.08
LIBERTY:	38.08	(0.32)	TOLLGRADE:	8.06	(0.02)
LIBERTY STARZ:	62.03	0.25	UNIVERSAL ELEC:	27.16	0.98
LIONSGATE:	7.35	0.01	VONAGE:	2.44	0.03
LODGENET:	2.77	0.06	YAHOO:	16.15	(0.09)
NEW FRONTIER:	1.93	(0.04)	<b>TELCOS</b>		
OUTDOOR:	6.00	0.01	AT&T:	27.96	(0.28)
PLAYBOY:	5.04	0.03	QWEST:	6.75	0.05
SCRIPPS INT:	51.70	0.71	VERIZON:	32.34	0.15
TIME WARNER:	30.54	UNCH	<b>MARKET INDICES</b>		
VALUEVISION:	3.23	(0.17)	NASDAQ:	2476.01	6.17
VIACOM:	43.77	0.07	S&P 500:	11007.88	(15.62)
WWE:	13.77	0.17	S&P 500:	1178.59	0.25
<b>TECHNOLOGY</b>					
ADC:	12.69	(0.01)			
ADVANTAGE:	3.16	(0.08)			
ALCATEL LUCENT:	2.97	0.04			
AMDOCS:	26.13	0.15			
AMPHENOL:	49.07	0.10			
AOL:	25.24	(0.31)			
APPLE:	300.50	(1.09)			

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## Think about that for a minute...

### Cable's 'Carterfone?'

By Steve Effros

We're likely to soon start hearing a lot of references to the famous 1968 FCC decision in the "Carterfone" case. Most of those references, I fear, will be misplaced.

Carterfone was the seminal case where the FCC said that devices could be attached to the public switched telephone network (PSTN) so long as they didn't adversely affect or degrade telephone service. Up to that point, AT&T had blocked others from physically connecting to the network. After Carterfone, the consumer electronics market went crazy with new phones, answering machines and the like, which we take for granted today.



Now there are lobbyists pushing the Commission to adopt a new set of rules allowing anyone to connect consumer electronic devices to cable systems. This push is portrayed as a successor to the "CableCARD" effort to open up retail sale of cable television set-top boxes. But it's not. It's a whole lot more than that, and it's likely to be characterized as a "Carterfone" decision for cable. But it's not that, either.

Let's remember a few fundamentals; cable is not like telephone. In the classic nationwide telephone network—built as a monopoly, regulated service—the telephone company did nothing other than build and maintain the network. It did not originate any information (programming). It was not a First Amendment speaker, as cable operators are acknowledged to be, and it did not act as an editor or marketer of packaged content. It just ran a network that connected two (or more, in the case of "conference calls") folks together who then had total control of their own content.

In Carterfone, the Commission said that so long as the attached equipment didn't hurt the network, the folks using that network for their own communication could use

any equipment they wanted toward that end.

In the case of the new effort to create an "AllVid" requirement, the lobbyists for CE manufacturers and user groups want to require that all MVPD distributors, regardless of their technology, (DBS, IPTV, Cable, etc) must provide a device that delivers a uniform output, in this case, they have already said they prefer "IP," so that not only can devices be connected, they can manipulate the content any way they want.

Again, some fundamentals: a cable or MVPD provider already delivers a signal that can then be used in the home on multiple devices such as television sets, appropriately configured computers, iPads, etc—the equivalents of a Carterfone—and now there are also lots of new devices coming on the market, from Boxee to Roku to GoogleTV, Sezmi, and the like that get similar, competitive video into the home. This is not like the situation we had with telephone.

Further, in the MVPD case, the AllVid lobbyists want to be able to alter and disaggregate the package that is being delivered by the MVPD provider. So AllVid is a whole lot more than a technical connection to the network. It mandates the way the network can deliver and package the content it is delivering. That's real trouble. That would be like saying in the Carterfone decision that the FCC could dictate what the folks using the network could say, and how they could say it.

I admit this is a "pre-emptive strike." I can just feel it in my bones that the folks pushing for an industrial policy based on AllVid are going to bandy about the notion of it being a Carterfone equivalent for cable. It's not, and we need to make sure that's clear right from the start.

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