

CableFAX Daily™

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What the Industry Reads First

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Not on Board: McDowell Questions Why FCC Thinks 70/70 Test Is Met

One FCC Commissioner doesn't appear to be buying that the 70/70 test has been met. *Robert McDowell* said from what he knows right now, he's not prepared to vote for a video competition report that concludes that cable has surpassed 70% penetration of homes passed. "The plucking of one study to support what may be a predetermined outcome I think deserves more public comment," the Republican commissioner said at a **Media Institute** lunch Mon. Just a year ago, the FCC determined cable subscribership was at about 60%. FCC chmn Kevin Martin is "asserting that the cable industry, and the cable industry alone, is facing less competition and should be subject to more regulation," McDowell said. "This is a radical departure for the Commission ...". He and fellow Republican Deborah Taylor Tate have requested more info from **Warren Comm**, which the FCC is using to help justify that the 70/70 rule has been met. For its part, Warren has said its data is not suitable for determining whether the 23-year-old rule has been triggered. "Why is the FCC suddenly changing its evidentiary standard and methodology just for this one industry?" McDowell asked, at the same time pondering whether this shift actually weakens the chmn's arguments for updating the cross-ownership ban (an issue he said he's reserving judgment on). "I am searching for credible answers to these and many other questions—thus far to no avail." There's some thought that Martin, as the head of the agency, may be able to send the video competition report to Congress without a vote. If not, Martin may have to rely on convincing the Commission's 2 Dems to vote that the 70/70 test has been met. (Unfortunately, **Cfax** opted not to wear sneakers to the Four Seasons lunch and was unable to chase down fellow attendee *Jonathan Adelstein* to ask about his thoughts). When asked by a reporter if he'd spoken to Martin, McDowell said he hasn't seen him since the Nov 9 Media Ownership hearing in Seattle, which was held the day before the *NY Times* piece in which Martin announced cable had met the 70/70 rule. Martin has frequently criticized cable for its rising prices, but McDowell countered that the Commission doesn't solicit enough data to determine why these prices are going up. "It's not necessarily an apples-to-apples comparison to say cable rates have gone up 100%" since '95 because customers now receive twice as many channels. **Other FCC Doings**: McDowell confirmed that the FCC is also expected to vote on a Martin proposal next Tues that would slash leased-access rates by about 75%, as well as on an arbitration proposal on program-carriage disputes (he declined to say how he'd vote).

M&A Mania: Speculation of an **EchoStar** takeover by **AT&T** has resurfaced in earnest—and with increased conviction—and investors responded Mon by sending DISH stock soaring to a \$47.49 close (+19.23%). The pair is crossing the T's on a \$29.5bln buyout deal that may be announced this week, according to *TheStreet.com*, with the final price for the satcaster's shares likely to range from \$64-\$68. Adding to the likelihood of an agreement, said *Baron's*, is the sharp recent decline in DISH's share price and the pressure to complete an accord ahead of next year's presidential election, which many believe will result in intensified M&A scrutiny if Dems are victorious. Mean-



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while, **Citigroup** upgraded EchoStar to 'buy' from 'hold' and reiterated its belief that a deal is 65% likely to occur within 12 months. "We think the market has more than priced in the higher churn concerns, but is not factoring in the likelihood of AT&T buying DISH," wrote the firm in a research note.

On the Hill: Seven senators are supporting a blanket exemption for small cable ops from the FCC's so-called dual carriage rules. A letter was sent to FCC chmn Kevin Martin last week, signed by Dems *Jay Rockefeller* (WV) and *Byron Dorgan* (ND) as well as Republicans *Trent Lott* (MI), *Olympia Snowe* (ME), *Gordon Smith* (OR), *Jim DeMint* (SC) and *John Thune* (SD). Martin declined to exempt ops with channel capacity of 552MHz or less or systems with less than 5K subs from the rules, instead allowing systems to file individual waiver petitions. **NCTA** and **ACA** have argued that the process is too burdensome. The lawmakers concurred and asked the FCC to reconsider. The rules, adopted on Sept 11, have not been released yet.

Competition: **DISH** has teamed with **Disney/ESPN Nets** to launch 2 new interactive TV apps. "ESPN Interactive Zone" includes updated news and scores through an interactive scroll, and enables subs to continue watching ESPN nets while using the offerings. **Disney Channel's** ITV app allows viewers to set digital recorder timers for net programs and offers preview and play of dozens of arcade-style games featuring net characters and programming.

In the States: **Charter** has selected **BigBand Nets'** switched digital solution to expand digital TV services including HDTV in L.A. and environs. Also, the MSO has enlisted **Alliance Data** to provide marketing and strategic consulting services in support of "Live It with Charter," its customer loyalty program set to roll out over the next year.


Hazardous Subs: Police in Westchester County, NY, arrested a man Fri after he allegedly threatened to blow up a **Cablevision** building. Reportedly perturbed by being charged for repairs to severed cable lines, the man threatened a Cablevision service rep after a 5th call within 7 hours. "We turned the matter over to the proper authorities, and are cooperating fully," said the MSO. All this after an elderly VA woman stormed last month a **Comcast** payment center (**Cfax**, 10/11) and smashed a keyboard with a hammer, blaming her rage on poor customer service from the MSO.

Online: Launched in beta at **SyncTV.com** is a TV download service that's compatible with PCs and counts **Showtime** as a content partner. -- New enhancements at **HallmarkChannel.com** include streaming video, behind-the-scenes original movie footage, star interviews, sweepstakes, and community groups.

Research: Although awareness of the forthcoming digital TV transition is increasing—43% of US adults are privy, compared to 33% a year ago—few actually understand or care about the transition's possible effects, according to **Leichtman Research Group**. In fact, a mere 35% strongly agree that they care about how the transition will impact their household, and just 37% feel similarly about their understanding of the '09 event. Other data: 56% in HHs with a \$75K+ annual income have heard of the transition, while 36% in HHs with lower incomes are knowledgeable.

Honors: The **Assoc of Cable Communicators** received a **MarCom** Gold Award in the "Website Overall" category for outstanding achievement with its newly-revamped site **CableCommunicators.org**.

On the Circuit: **NCTA** is hosting the inaugural "Cable & Games" summit in DC, Nov 27. In cooperation with the **Entertainment Software Assoc** and the **Academy of Interactive Arts & Sciences**, the program will feature presentations,



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BUSINESS & FINANCE

discussion and networking among cable execs and gaming firms. -- **NAM-IC** appointed **AETN** vp, distribution and biz dev **Mark Garner** treasurer of its exec cmte, and elected the following as new board members: **Kenetta Bailey**, svp, marketing, **WE tv**; **Matthew de Ganon**, vp, broadband & consumer apps, **Weather Channel Interactive**; **Filemon Lopez**, regional svp, **Comcast South Florida**; **Reinaldo Llano**, dir, community relations, **Bright House**; **Joiava Philpott**, corp vp & sr counsel, govt affairs & legislative policy, **Charter**; and **Danielle Wade**, vp, customer service & marketing, **Bright House**.

People: **TLC** appointed **Edward Sabin** COO. -- **Broadstripe** appointed former **ESPN** exec **Frank Scotello** svp, programming and new business development. -- **Scripps** tapped **Jonathan LaConti** as vp, ad sales, **Fine Living**. -- **Comcast** named **Glenn Lytle** vp, business services, Three Rivers region. -- **BBC Worldwide Americas** tapped **Andrew Jackson** as svp, marketing.

Editor's Note: Who doesn't need help selling advanced advertising these days? Drill down on how to leverage and sell interactive advertising, local VOD and local broadband with our **Cable360** Webinar Nov 27, 1pm EST (<http://www.cable360.net/webinars/>). **Cox** svp, new media **David Porter**, **ESPN** svp, new media **Jeff Segal** and **Carat Digital's** **Mitch Oscar** are among the speakers.

CableFAX Daily Stockwatch

Company	11/19 Close	1-Day Ch	Company	11/19 Close	1-Day Ch
BROADCASTERS/DBS/MMDS					
BRITISH SKY:	50.93	(0.45)	AMPHENOL:	40.97	(0.65)
DIRECTV:	24.57	0.70	APPLE:	163.95	(2.44)
DISNEY:	31.25	(1.28)	ARRIS GROUP:	9.90	(0.49)
ECHOSTAR:	47.49	7.66	AVID TECH:	26.30	(0.97)
GE:	38.16	(0.49)	BIGBAND:	5.96	(0.03)
HEARST-ARGYLE:	19.92	(0.81)	BLNDER TONGUE:	1.56	(0.1)
ION MEDIA:	1.29	(0.06)	BROADCOM:	28.51	0.04
NEWS CORP:	21.32	(0.44)	C-COR:	11.43	(0.46)
TRIBUNE:	29.04	(0.98)	CISCO:	29.43	(0.51)
MSOS					
CABLEVISION:	25.75	(0.55)	COMMSCOPE:	39.41	(0.96)
CHARTER:	1.28	0.02	CONCURRENT:	0.93	(0.08)
COMCAST:	19.35	(0.54)	CONVERGYS:	16.80	(0.3)
COMCAST SPCL:	19.21	(0.51)	CSG SYSTEMS:	17.26	(0.26)
GCI:	9.11	(0.35)	GEMSTAR TVG:	5.51	(0.19)
KNOLOGY:	12.99	(0.64)	GOOGLE:	625.85	(7.78)
LIBERTY CAPITAL:	113.76	(2.43)	HARMONIC:	10.12	(0.66)
LIBERTY GLOBAL:	36.76	0.29	JDSU:	13.17	(0.15)
LIBERTY INTERACTIVE:	19.66	(0.39)	LEVEL 3:	3.26	0.07
MEDIACOM:	4.20	(0.11)	MICROSOFT:	33.96	(0.13)
NTL:	28.22	0.00	MOTOROLA:	16.04	(0.57)
ROGERS COMM:	42.97	0.00	NDS:	56.79	0.17
SHAW COMM:	24.23	(0.47)	NORTEL:	17.42	(1.09)
TIME WARNER CABLE:	25.24	(0.5)	OPENTV:	1.10	0.06
WASH POST:	793.10	(16.12)	PHILIPS:	39.88	(1.52)
PROGRAMMING					
CBS:	26.57	(0.61)	RENTRAK:	14.58	0.06
CROWN:	7.06	(0.17)	SEACHANGE:	5.35	(0.07)
DISCOVERY:	22.83	(0.42)	SONY:	47.32	(0.91)
EW SCRIPPS:	44.56	(0.31)	SPRINT NEXTEL:	15.06	(0.4)
GRUPO TELEVISIA:	23.50	(0.6)	THOMAS & BETTS:	50.64	(0.77)
INTERACTIVE CORP:	27.60	(0.79)	TIVO:	6.28	(0.23)
LODGENET:	18.01	(0.41)	TOLLGRADE:	7.48	(0.36)
NEW FRONTIER:	5.01	0.01	UNIVERSAL ELEC:	33.14	(0.42)
OUTDOOR:	7.01	(0.31)	VONAGE:	2.17	(0.1)
PLAYBOY:	9.57	(0.17)	VYYO:	5.05	0.39
TIME WARNER:	16.82	(0.48)	WEBB SYS:	0.07	0.00
UNIVISION:	36.23	0.00	YAHOO:	26.76	(0.06)
VALUEVISION:	4.98	0.03	TELCOS		
VIACOM:	41.57	0.05	AT&T:	37.75	(1.8)
WWE:	14.60	(0.64)	QWEST:	6.38	(0.29)
TECHNOLOGY					
3COM:	4.61	(0.1)	VERIZON:	43.05	(0.64)
ADC:	15.90	(0.46)	MARKET INDICES		
ADVANTAGE:	5.73	(0.25)	DOW:	12958.44	(218.35)
ALCATEL LUCENT:	7.82	(0.3)	NASDAQ:	2593.38	(43.86)
AMDOCS:	31.84	(0.46)			

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BLOCK AND TACKLE

I was on the phone the other day with a very good reporter (yes, there are some...). We had an extended conversation about the entire issue of network management and the current brouhaha over Comcast acknowledging that part of its management is to, when necessary, slow the transmission of some upstream data so all customers can receive service.

The reporter kept using the word “block” service. I kept saying that cable companies, or indeed any Internet service provider, is not “blocking” the customer from transmitting his or her data, it is managing the speed at which it is transmitted, but it does not stop the data from getting to its intended recipient.



Steve Effros

This got us into an important examination of what the word “block” means. The reporter turns out to

have been semantically correct. Technically speaking, one can “block” someone or something else without stopping them from ultimately getting where they are trying to go. Think of football. The front offensive line “blocks” the defensive guys, but someone might get through the block and sack the quarterback.

So in that context I had to concede that using the term that way an ISP may, indeed, be “blocking” high-data rate, dense uploads from peer-to-peer applications like BitTorrent to allow all customers an equal chance to use the bandwidth, but we never “tackle” the data, thereby not allowing it to get where it is supposed to go.

Why am I going through all this? Because I don't want semantics to get in the way of the ultimate discussion. The folks who want to use the Comcast episode as “proof” there is a need for “net neutrality” rules are clearly using the term “block” to convey the idea that Comcast is somehow preventing or prohibiting the

power-users from getting anywhere they want to go on the Web. That smacks of censorship, and that is a convenient, hot-button way to try to win an argument for more regulation.

But as the reporter and I worked through the language it became clear that the terminology was getting in the way of a sensible discussion of the issue. So I am going to stop using the word “block” in this context. I will be careful to make it clear that so far as I know the entire cable industry would be supportive of a “net neutrality” rule that says we should not, and indeed may not, prohibit access to any legal site on the Web, and the same is true for any legal application.

However, we have every right, indeed a duty to all our subscribers, to assure that they can all receive good service. The 5 percent or so of “power users” who clog a significant majority of bandwidth with peer-to-peer transmissions are the ones who are “blocking” everyone else's use of the Web. We have an obligation to adopt network management tools to assure that doesn't happen. I would expect that if any regulations were adopted (like the cable customer service rules) they would in fact require that!

There is no such thing as unlimited bandwidth. We have to tell our customers that, and make sure they know they will either be prevented from, or charged for massive data usage that adversely affects the ability of others to also use Internet service. The power users always have the option of buying massive dedicated bandwidth, such as a T3 line, and doing whatever they want. That's not the service we offer. They know that, and we should say so to protect our customers.

Steve

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