

CableFAX Daily™

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What the Industry Reads First

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In the Spotlight: Congress Looking at FCC's Practices

It seems Tues' night's **FCC** vote on 70/70 may just be the beginning. Some members of Congress are already making noise over chmn *Kevin Martin's* handling of matters, among them Sen Majority Whip *Dick Durbin* (D-IL). "Sen Durbin's concerned that we've heard complaint after complaint about this FCC, and the chmn not looking at public service obligations and instead using it as a workshop to expand his political philosophy," said Durbin spokesman *Joe Shoemaker*. He said there's no critical mass, but individual senators are expressing concern. "It's one of the topics we want to discuss," Shoemaker said. On Wed, Sen Commerce member *Claire McCaskill* (D-MO) wrote a letter to Martin expressing concern about the video competition report. "I was shocked and dismayed that your fellow commissioners would have to write you an open letter to demand access to the supporting data of your draft report..." she wrote. Over in the House, Energy Commerce member *Marsha Blackburn* (R-TN) announced legislation to repeal the 70/70 rule all together. "70/70 authority is therefore anachronistic at best, and potentially dangerous at worst," she said. "The statute provides the FCC authority to unilaterally regulate an industry, yet does not demand sound, scientific data to back up market penetration claim." Last week, Rep *John Conyers* (D-MI) sent a letter to Martin questioning how much time he'd given the public and commissioners to study certain issues. Tues night's contentious meeting featured commish *Jonathan Adelstein* accusing the chmn of suppressing data to get to the outcome he sought—70% cable penetration of homes passed, which would let the FCC enact new rules aimed at the industry. Republican *Robert McDowell* said the data being used to justify that the 70% penetration test had been met was "the only fig leaf that could be found to trigger an avalanche of unnecessary regulation to cascade down upon an otherwise competitive industry." Martin downplayed the comments Wed afternoon, saying the commissioners often disagree when dealing with contentious issues. "It's not the 1st time something I've proposed has not been adopted, and I'm sure it won't be the last," he said at a **Phoenix Center** telecom conference in DC. "The Commission was designed to bring together people with diverse viewpoints." Most of the time, the Commission does a pretty good job coming up with something everyone can support, he continued. "It seems that even in this instance the Commission reached a reasonable result," Martin said, pointing to its decision to require all cable operators to report subscriber data to the FCC within 60 days. **ACA** is upset over the reporting obligations, complaining that the FCC never sought public comment from small ops on their impact. "We would have... told the Commission that many small cable operators do not retain subscriber information from years past, and, therefore, providing 2006 information would be difficult or impossible," said ACA pres/CEO *Matt Polka*, who noted that the majority of these systems serve only a few hundred subs. Cable systems with 20K subs or more are already obligated to provide some subscriber data to the FCC.

FCC Recap: In addition to approving a video competition report that didn't conclude that the 70/70 test had been met, the FCC voted 3-2 to force cable ops to cut leased access channel rates by 75% to about 10 cents/month per

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sub. Republicans *Deborah Taylor Tate* and *Robert McDowell* cast the 2 nay votes. Much to **NFL Net's** dismay, chmn *Kevin Martin* dropped a proposal that could have resulted in compulsory arbitration for programming disputes. After the meeting adjourned, Martin proposed the FCC temporarily waive its media cross-ownership rules so that the \$8.2bln purchase of **Tribune** can close by year-end. Martin proposed waiving the rules for 2 years or until litigation over current or new cross-ownership rules is resolved.

TiVo Watch: **TiVo** CEO *Tom Rogers* in a Wed earnings release said **Comcast** will charge subs \$2.95/month for its TiVo service upgrade, confirming bloggers' price point speculation from last month. Full marketing efforts for the service will commence shortly in the Boston area, said Rogers. As for TiVo's 3Q numbers, the company reported an 11% increase in service and tech rev to \$58.3mln and a net loss of \$8.2mln, compared to an \$11.2mln net loss last year. Overall, TiVo-owned subs rose 6% to 1.7mln although gross adds fell 32% to 69K. As of Oct 31, cumulative total subs were 4.1mln. TiVo anticipates 4Q service and technology rev of \$58-\$60mln and a net loss of \$9-\$12mln.

CableNEXT Notebook: **Comcast** CTO *Tony Werner* opened the inaugural CableNEXT conference in Santa Clara by naming 5, 5-year trends: 1) content/device convergence, 2) HD eclipsing of SD (standard def); 3) time and place shifting; 4) Web and TV convergence; and 5) cloud computing. **Harmonic** Pres/CEO *Patrick Harshman's* noted the "unexpected success" of online ad sales among traditional programmers but said "a lot of work needs to be done [by cable] to recapture the initiative" on HD. **Bear Stearns'** *Spencer Wang*, meanwhile, said he's still waiting for an EPG "robust enough" to handle the existing channel lineup. Werner said OCAP (aka OpenCable) would help overcome multiplatform challenges, and that Comcast chmn/CEO *Brian Roberts* would showcase a "very cool navigation paradigm" at CES.

Competition: **DirecTV** launched **Bio HD** Wed. The satcaster also rolled out local HD programming in the Flint, MI, area.

In the States: **NHL Net** is skating to approx 12mln US homes and is expected double that number over the next year, said league commish *Gary Bettman* Tues at the **Reuters Media Summit** in NY. -- **Cablevision** added **The Korean Channel** to its "iO International" package that now features approx 60 global channels in 10 languages.

Technology: **SCTE** is working on 3 addressable advertising standards to help cable target specific viewers. The trio is the last of a 7-part program that 1 MSO is planning to trial for VOD apps. Check out **SCTE.org** for more details.

Deals: Add media buying firm **Carat** to **TiVo's** growing list of audience research clients. Carat receives access to DVR viewing data; the pair will jointly educate Carat clients on ways to reach fast-forwarding viewers through TiVo ad solutions. -- **TiVo** partnered with **Nero**, which will develop a software solution that will bring TiVo features to PCs.

VOD: iN Demand inked a deal to offer on demand subs access to the **Metropolitan Opera's** 2nd season of 8 performances that are transmitted to movie theaters worldwide. Beginning with *Placido Domingo* in "Romeo et Juliette" (Jan 16), each show will be available within 30 days of theatrical release in both SD and HD.

Ratings: Although average viewership for **ESPN's MNF** telecasts is down compared to last year, the 4 games that factor into Nov's cable ratings allowed ESPN (2.3/2.24mln) to snag the monthly prime ratings title. The tilts gobbled up the top 4 Nov slots, averaging an 8.1/7.82mln. **Disney** (2.2/2.06mln) notched 2nd with the help of *Tim Allen* in 2 holiday films, and **USA** (2.1/1.97mln) followed on the power of **WWE**. **TNT** (1.5/1.44mln) and **TBS** (1.4/1.39mln) filled out the top 5.

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Tuesdays 8/7c



BUSINESS & FINANCE

On the Circuit: NCTA announced a community service initiative to assist the New Orleans area in recovering from Hurricane Katrina's devastation. With aid from the city, **Cox New Orleans** and local orgs, the cable industry will focus during **The Cable Show '08** (May 18-20) on the following: area playground and library reconstruction; school refurbishment; "Battle of the Bands" and bike tour fundraisers; and **The Sportsman Channel's** "Hunt.Fish.Feed" hunger-fighting initiative.

Stork Visits: FCC commissioner *Jonathan Adelstein's* media legal adviser *Rudy Brioché* wasn't just pacing the floor Tues wondering when the FCC's open meeting would begin. He was also awaiting the birth of his son, who decided to make an appearance weeks early. *Nicolas Bishop Brioché* beat the start of the meeting by 3 hours, joining this world at 6:17pm ET. Mom, Dad and baby are all doing fine.

People: **Time Warner Cable** promoted *Melinda Witmer* to evp/chief programming officer.

Business/Finance: Major cable stocks popped Wed following the **FCC's** failure to increase industry oversight and amid Dow and NASDAQ market surges. Rising more than 2% were **Charter** (+10.34%), **Time Warner Cable** (+6.58%), **Mediacom** (+3.82%), **Comcast** (+2.57%) and **Cablevision** (+2.07%).

CableFAX Daily Stockwatch

Company	11/28 Close	1-Day Ch	Company	11/28 Close	1-Day Ch
BROADCASTERS/DBS/MMDS					
BRITISH SKY:	53.04	1.35	AMPHENOL:	43.14	0.62
DIRECTV:	23.98	0.49	APPLE:	180.22	5.41
DISNEY:	32.70	0.98	ARRIS GROUP:	10.52	0.44
ECHOSTAR:	42.84	0.41	AVID TECH:	27.03	1.73
GE:	38.46	1.01	BIGBAND:	6.00	0.02
HEARST-ARGYLE:	19.35	1.46	BLNDER TONGUE:	1.55	(0.05)
ION MEDIA:	1.38	0.04	BROADCOM:	28.11	0.74
NEWS CORP:	21.75	0.77	C-COR:	12.15	0.28
TRIBUNE:	29.95	2.70	CISCO:	28.05	0.56
MSOS					
CABLEVISION:	27.05	0.54	COMMSCOPE:	40.00	1.74
CHARTER:	1.28	0.12	CONCURRENT:	0.93	(0.02)
COMCAST:	19.97	0.50	CONVERGYS:	16.60	0.16
COMCAST SPCL:	19.74	0.41	CSG SYSTEMS:	16.62	0.31
GCI:	8.86	0.28	GEMSTAR TVG:	5.54	0.31
KNOLOGY:	13.10	0.53	GOOGLE:	692.26	18.69
LIBERTY CAPITAL:	111.66	0.86	HARMONIC:	10.93	0.48
LIBERTY GLOBAL:	39.74	0.77	JDSU:	13.55	0.39
LIBERTY INTERACTIVE:	20.15	0.31	LEVEL 3:	3.38	0.13
MEDIACOM:	4.08	0.15	MICROSOFT:	33.70	0.64
NTL:	28.22	0.00	MOTOROLA:	15.57	0.24
ROGERS COMM:	42.97	0.00	NDS:	58.57	3.32
SHAW COMM:	24.20	0.36	NORTEL:	17.10	0.09
TIME WARNER CABLE:	25.49	1.46	OPENTV:	1.15	0.03
WASH POST:	799.45	(0.53)	PHILIPS:	42.42	0.07
PROGRAMMING					
CBS:	27.09	0.48	RENTRAK:	14.35	(0.06)
CROWN:	7.42	0.07	SEACHANGE:	5.75	0.11
DISCOVERY:	23.87	0.99	SONY:	54.85	1.54
EW SCRIPPS:	44.21	(0.14)	SPRINT NEXTEL:	14.76	0.28
GRUPO TELEVISA:	24.03	0.93	THOMAS & BETTS:	54.05	1.05
INTERACTIVE CORP:	27.53	0.45	TIVO:	5.98	0.08
LODGENET:	19.02	0.39	TOLLGRADE:	7.58	0.08
NEW FRONTIER:	4.93	0.04	UNIVERSAL ELEC:	37.92	2.56
OUTDOOR:	7.05	0.10	VONAGE:	2.32	0.06
PLAYBOY:	9.22	0.12	VYYO:	4.56	0.13
TIME WARNER:	17.22	0.60	WEBB SYS:	0.07	0.00
UNIVISION:	36.23	0.00	YAHOO:	26.20	0.61
VALUEVISION:	6.62	0.30	TELCOS		
VIACOM:	40.38	0.39	AT&T:	37.57	0.84
WWE:	15.70	0.36	QWEST:	6.69	0.14
TECHNOLOGY					
3COM:	4.60	0.08	VERIZON:	42.41	0.95
ADC:	16.15	0.76	MARKET INDICES		
ADVANTAGE:	5.71	0.00	DOW:	13289.45	331.01
ALCATEL LUCENT:	7.84	0.36	NASDAQ:	2662.91	82.11
AMDOCS:	33.00	1.60			

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FCC Justice

Is the FCC falling prey to the same fate as the Justice Department? I think it is very close at this point to totally losing any credibility. And I mean simple credibility, not “expert agency” status, which it has been losing for some time now.

The latest debacle is the highly publicized Kevin Martin effort to conclude that cable subscribership has increased since last year and now constitutes more than 70 percent of all homes passed by a 36+-channel cable system.



Steve Effros

A few salient facts: Last year the FCC said the penetration count was well below 70%. No one, and I mean no one has suggested that cable subscriber rates have gone up since then, but the number of television households has. So as one analyst put it, the Commission’s new calculations

are a mathematical impossibility. Virtually every analyst has questioned the Commission’s math. The source the Chairman cited to reach his “conclusion” has said the numbers are inappropriately used. No other single study supports the numbers, and there’s more!

I think the most salient fact—and the Commission has these numbers in its own records—is that in the very numbers they used there are five states listed where the total number of cable subscribers is higher than the reported total number of relevant television households passed in the state! All the Commissioners have to do is look at those numbers to know that something has to be wrong! The discrepancy in “number of households passed” was pointed out to the Commission last year. This is not a new revelation.

So if the rest of the Commission accepts what the Chairman is proposing, they are accepting numbers they KNOW cannot be accurate. Reportedly, the Chairman

wants to do this because it will theoretically give the Commission “vast” new powers to adopt all sorts of regulations regarding cable. We can argue about that analysis some other time. I don’t think it is anywhere near clear that passing the 70/70 threshold, if we ever do, triggers any new powers for the Commission other than those directly related to leased channels and “diversity” of information. The Commission would have a great deal of trouble convincing any court that there is a dearth of diverse channels today without additional regulations.

But I think the important point right now is that the Commission may be hurting itself a lot more than cable.

The Justice Department is suffering, with a competent, intelligent staff “hunkered down” waiting out the damage that has been done to their credibility. That’s because the leadership of the Justice Department totally lost credibility with members of Congress on both sides of the aisle. The FCC staff is already “hunkered down.” The credibility of their leadership is now being questioned from all sides.

The “public interest” groups are publicly attacking the Commission for “cooking the books” and moving too fast on media ownership issues while, ironically, also urging the Commission, as the *New York Times* did in an editorial, to regulate first and check the facts later on cable issues. Republicans and Democrats on Capitol Hill and some on the FCC itself are asking why there can’t be a reasoned, detailed look at the questionable cable numbers and many other cable issues before decisions are announced or voted on. In each case, credibility is eroding to where everything the Commission does is becoming suspect.

It shouldn’t be that way. The Commissioners should work hard to avoid the fate that has befallen the Justice Department.

Steve

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