

# CableFAX Daily™

Thursday — December 1, 2011

What the Industry Reads First

Volume 22 / No. 231

## On Deck: Senators Probe FCC Nominees on Cable Act, AT&T Staff Report

FCC commissioner nominees *Jessica Rosenworcel* and *Ajit Pai* received a friendly welcome from Sen Commerce members during Wed's nomination hearing, although there is uncertainty on the approval process. Sen *Chuck Grassley* (R-IA) continues to say he will place a hold on Sen action on the nominees until the FCC provides info on its dealings with **LightSquared**. As for the hearing, cable wonks took note when Sen *Jim DeMint* (R-SC) asked if the Cable Act should be updated. Rosenworcel—who, if approved, would replace outgoing Democratic commish *Michael Capps*—said that it was a broad question, but a lot of it could benefit from a “fresh look.” Pai, who is up for the spot vacated by Republican *Meredith Attwell Baker*, also said the rules need a look, and specifically mentioned the FCC's ongoing proceeding on retransmission consent. The proposed **AT&T** and **T-Mobile** transaction was off limits during the hearing, but its presence was felt. Sen *Roy Blunt* (R-MO) was concerned by the Tues release of the FCC's staff report on the deal given that AT&T's application was pulled. He pressed the nominees on the move. Rosenworcel said she believed it was within the FCC chmn *Julius Genachowski's* statutory authority but acknowledged that it's “probably unprecedented.” Saying he's not fully apprised on the issue, Pai said he would recommend that actions be consistent with Commission rules. Blunt also spoke about how he feels underserved communities are different than underserved when it comes to broadband subsidies, but didn't probe the 2. Instead, he said it would probably be one of the 1st questions he asks them if (more likely when) they become commissioners. The hearing adjourned after Sen Commerce chmn *Jay Rockefeller* (D-WV) called on the nominees to do what they can to protect children from a “coarsening” of the media—TV, **Facebook** and beyond. Pai and Rosenworcel both referenced the current legal uncertainty on indecency. “The legal landscape is probably changing. What's not changing is that it is very important,” Rosenworcel said. “It's incumbent on the FCC and all of us to provide quality content and help parents” by providing tools to help them protect their children. Pai is the father of a 3-month-old, and Rosenworcel has a 2- and 5-year-old. At the start of the hearing, DeMint asked that the record be kept open for at least a week, complaining that the **FTC** nominee record was only kept open for 48 hours. Rockefeller agreed to keep the record open until Dec 6, but asked that questions be submitted by Thurs to give the nominees time to respond. As for Grassley's hold threat, it has nothing to do with Pai and Rosenworcel. He's upset that the Commission hasn't provided him with info on why **LightSquared** has been allowed to move forward with its plans for a terrestrial 4G network despite concerns of interference with GPS systems.

**On the Hill:** Cable, phone and wireless all support the Cyber Intelligence Sharing and Protection Act, introduced by leaders of the House Intelligence cmte, declaring that it will provide better information between stakeholders involved in protecting the nation's cyber infrastructure. “We appreciate that this legislation avoids a prescriptive regulatory regime that does not fit the constantly evolving cyber threat environment and it appropriately allows individual companies to determine how they can best participate,” **NCTA** chief *Michael Powell* said. The key difference between this and Senate legislation is that provisions are voluntary. In addition to allowing the govt to share threat info with approved American companies, the House bill

**BREAKING NEWS:**  
The top choice  
at 11pm!

Source: Nielsen NGI Live +SD October, 2011 (9/29/11 — 10/26/11) Rankings are based on ratings for the respective demographics and time periods: #1 late news program among Adults 18-34, #1 Spanish-language late news among Adults 18-34, 18-49, and 25-54.

Another great performance, brought to you by the Telemundo Station Group.

TELEMUNDO.COM  
A Division of NBCUniversal

NEW YORK'S  
**#1 LATE NEWS**  
REGARDLESS OF LANGUAGE

**47**  
TELEMUNDO  
NUEVA YORK

Contact: Lauren Monks, 201-735-3664, Lauren.monks@nbcuni.com

CABLEFAX DAILY (ISSN 1069-6644) is published daily by Access Intelligence, LLC ● www.cablefaxdaily.com ● fax:301.738.8453 ● Editor-in-Chief: Amy Maclean, 301.354.1760, amaclean@accessintel.com ● Exec Editor: Michael Grebb, 818.945.5309, mgrebb@accessintel.com ● Assoc Editor: Chad Heiges, 301.354.1828, cheiges@accessintel.com ● Community Editor: Kaylee Hultgren, 212.621.4200, khultgren@accessintel.com ● Contributor: Seth Arenstein ● Publisher: Debbie Vodenos, 301.354.1695, dvodenos@accessintel.com ● Assoc Publisher: Amy Abbey, 301.354.1629, aabbey@accessintel.com ● Marketing Dir: Barbara Bauer, 301.354.1796, bbauer@accessintel.com ● Prod: Joann Fato, 301.354.1681, cdaily@accessintel.com ● Diane Schwartz/VP and Group Publisher ● Subs/Client Services: 301.354.2101, fax 301.309.3847 ● Group Subs: Debbie Vodenos, 301.354.1695, dvodenos@accessintel.com

allows private sector entities to share information anonymously or restrict who they share with, including the government.

**In the States:** **DISH** and **Nexstar** forged a retrans agreement covering 55 stations and related digital programming channels owned by Nexstar and **Mission Broadcasting**. -- **Microsoft** said a weekly record of more than 960K **Xbox 360** consoles were purchased last week in the US, including 800K within a 24-hour period. More than 750K Kinect sensors for the system were sold as well. -- According to **Dell'Oro Group**, shipments of higher-functioned cable CPE including DOCSIS 3.0-enabled devices and those with embedded wireless LAN doubled in 3Q compared to a year ago.

**Online:** **Verizon** launched a live online simulcast of **Longhorn Net** that is available to nationwide **FIOS TV** subs who receive the channel. Subs can access the offering anywhere on their laptops and PCs using any broadband connection. The only major pay TV op to feature Longhorn Net, VZ carries the UT-focused channel on all 3 of FIOS TV's HD packages (also in SD) within TX, and elsewhere only on the highest-level Ultimate HD tier.

**In the Courts:** A group of more than a dozen current and former employees of a **Comcast** facility on Chicago's South Side filed a lawsuit against the MSO alleging racial discrimination, according to numerous reports. In the complaint, plaintiffs say they were forced "to work in substandard facilities which were infested with cockroaches and rats" and install infested and/or defective equipment, failed to receive equal pay, referred to in a "racially derogatory manner" and told to follow different protocol than non-African American employees. "Comcast adamantly denies the allegations and will vigorously defend itself in court," said the MSO in a statement. -- A 2-day hearing on the **L.A. Dodgers'** future TV rights kicks off next week in US Bankruptcy court, but current rights holder **Fox Sports** won't be allowed to question team owner **Frank McCourt** or **MLB** commish **Bud Selig**. A judge said evidence will be limited to sports-media experts and the current TV deal between the team and Fox's **Prime Ticket** that expires in '13. Fox contends the team is using the bankruptcy process to unfairly break the deal. The Dodgers and MLB agreed to a court-supervised process to sell the team and its TV rights.

**Advertising/Marketing:** **Verizon FIOS** is launching a marketing and awareness campaign this week aimed at 25-39s in the DC area. For 2 months, according to a VZ blog post, the demo "will be hard pressed to NOT see and hear a flurry of information about FIOS" at venues including shopping malls, health clubs, bars and movie theaters. The telco will also intro "FIOS 50," a list of the 50 must-visit places in the area along with discounts for those who mention FIOS at the spots.

**Beta:** **Discovery Channel** overtook **ESPN** as basic cable subs' favorite basic cable net according to **Beta's** cable sub survey, but statistical insignificance calls for **Food Net**, **History**, **ESPN**, **TNT** and **USA** to be called equally favored. Discovery, however, was the clear favorite among adults viewing TV on a smartphone/tablet and was joined by **History** and **Nat Geo** as the nets named most important to subs' enjoyment of cable.

**MILLION DOLLAR contractor**  
diy

DIY takes your customers behind the scenes of some of the most amazing Manhattan high-end luxury homes.

Watch **Sundays 10p/9c**

diy network

scrippsnetworks | Passionate Viewers Live Here  
interactive

# BUSINESS & FINANCE

**Ratings:** Powered by the top 4 programs of the month—MNF games led by the Bears-Eagles (16.95mln P2+)—ESPN took home the Nov prime ratings title with an avg of 3.66mln total viewers. USA's consistency helped it notch 2nd with 2.95mln. **Disney Channel** (2.62mln), **Fox News** (1.75mln) and **TBS** (1.73mln) completed the top 5 nets. 4 eps of **AMC's** "The Walking Dead" hit the monthly telecast top 20. -- **Brag Book:** **Food Net's** highest-rated and most-watched Nov ever featured a nightly avg of 1.3mln total viewers and a 0.6 rating among 25-54s in prime. -- **A&E** delivered its best Nov in history through double-digit YOY increases in 25-54s (711K), 18-49s (686K) and P2+ (1.4mln). -- **Syfy** scored growth in Nov prime among 18-34s (+13%), men 18-34 (+14%), women 18-34 (+12%) and women 18-49 (+6%). -- **Nickelodeon** continues to suffer sharp ratings declines, perhaps pointing to a serious problem that must be addressed. See tomorrow's Programmer's Page for more info.

**People:** *Steve Dolcemaschio* was tapped as pres, **Comcast Ent Studios**. -- Launching next fall, **Comcast SportsNet Houston** named *Matthew Hutchings* pres/GM. -- **SeaChange** appointed board member *Raghu Rau* as interim CEO, effective immediately, following the retirement of founder/chmn *Bill Styslinger*. *Thomas Olson* was tapped as chmn.

## CableFAX Daily Stockwatch

Company	11/30 Close	1-Day Ch	Company	11/30 Close	1-Day Ch
<b>BROADCASTERS/DBS/MMDS</b>					
DIRECTV:	47.22	1.55	CLEARWIRE:	1.78	0.20
DISH:	24.57	0.56	CONCURRENT:	3.25	(0.12)
DISNEY:	35.85	1.85	CONVERGYS:	12.92	0.75
GE:	15.91	0.99	CSG SYSTEMS:	15.17	0.91
NEWS CORP:	17.85	0.94	ECHOSTAR:	21.98	0.74
<b>MSOS</b>					
CABLEVISION:	15.00	0.26	GOOGLE:	599.39	16.46
CHARTER:	52.87	0.23	HARMONIC:	5.37	0.40
COMCAST:	22.67	0.92	INTEL:	24.91	1.33
COMCAST SPCL:	22.36	0.80	JDSU:	10.98	0.76
GCI:	10.19	1.02	LEVEL 3:	20.61	1.02
KNOLOGY:	14.25	0.33	MICROSOFT:	25.58	0.74
LIBERTY GLOBAL:	39.39	1.15	MOTOROLA MOBILITY:	39.00	0.21
LIBERTY INT:	16.26	0.44	RENTRAK:	14.05	0.92
SHAW COMM:	20.63	0.82	SEACHANGE:	8.01	0.48
TIME WARNER CABLE:	60.48	2.67	SONY:	18.05	0.48
VIRGIN MEDIA:	22.16	(0.17)	SPRINT NEXTEL:	2.70	0.20
WASH POST:	358.91	10.91	THOMAS & BETTS:	52.01	2.44
<b>PROGRAMMING</b>					
AMC NETWORKS:	36.00	0.69	TIVO:	9.88	0.32
CBS:	26.04	1.42	UNIVERSAL ELEC:	16.32	1.07
CROWN:	1.48	0.08	VONAGE:	2.58	0.19
DISCOVERY:	41.98	1.73	YAHOO:	15.71	0.01
GRUPO TELEVISIA:	20.76	1.76	<b>TELCOS</b>		
HSN:	35.80	1.64	AT&T:	28.98	0.92
INTERACTIVE CORP:	41.88	1.28	VERIZON:	37.73	1.10
LIONSGATE:	8.79	0.35	<b>MARKET INDICES</b>		
LODGENET:	2.10	0.04	DOW:	12045.68	490.05
NEW FRONTIER:	1.09	0.02	NASDAQ:	2620.34	104.83
OUTDOOR:	6.99	0.61	S&P 500:	1246.96	51.77
SCRIPPS INT:	39.82	1.05			
TIME WARNER:	34.82	1.44			
VALUEVISION:	1.90	0.20			
VIACOM:	53.35	2.18			
WWE:	9.62	0.51			
<b>TECHNOLOGY</b>					
ADVANTAGE:	1.96	(0.03)			
ALCATEL LUCENT:	1.62	0.04			
AMDOCS:	28.24	0.47			
AMPHENOL:	45.33	2.59			
AOL:	14.34	0.52			
APPLE:	382.20	9.00			
ARRIS GROUP:	10.75	0.53			
AVID TECH:	7.96	0.73			
BLNDER TONGUE:	1.16	0.02			
BROADCOM:	30.34	1.10			
CISCO:	18.64	0.96			

CableFAX's

# Most Powerful Women in Cable

December 9, 2011 | Grand Hyatt, NYC

**REGISTER TODAY**

[www.cablefax.com/cfp/events/most\\_powerful\\_women2011.html](http://www.cablefax.com/cfp/events/most_powerful_women2011.html)

Join us for CableFAX's Most Powerful Women in Cable Breakfast on **December 9, 2011** from **8:00-10:00 a.m.**, as we salute the women who have made their mark on the industry with leadership, innovation and community.

Sponsorship Opportunities:

Amy Abbey  
301.354.1629  
aabbey@accessintel.com

To Register, Contact:

Saun Sayamongkhun  
301.354.1694  
saun@accessintel.com

## Think about that for a minute...

### Jurisdiction

Commentary by Steve Effros

I suspect we're going to be hearing a lot about "jurisdiction" over the next year. The dictionary definition is pretty straight-forward: "the power, right, or authority to interpret and apply the law." Who holds that power, right or authority, however is not so simple. That's especially true when the initial arbiter of whether that power is held is also the one who can write new rules and regulations considered "consistent" with that law. That's the situation we have with the FCC, and things are getting very murky.



Unfortunately, because we are entering a Presidential election year and we currently have an almost non-functioning, deadlocked Congress, virtually any decisions about who really has "jurisdiction" to do what in the fast moving area of telecommunications law is going to

be left up to the Courts. The only slower way to get an answer would be to wait for Congress.

Realistically, as we experienced the last time there were major shifts in telecommunications, such as the break-up of "Ma Bell" and the advent of cable, even if Congress were functioning well it will take years to restructure the current laws, which are now almost impossible to apply.

We are, indisputably, in one of those "major change" times again, with broadband, wireless and the Internet causing exceedingly fast shifts in business plans and relationships regarding video, entertainment, data and just about everything else as it relates to privacy, property rights, usage and the like. The current laws were simply not written to deal with these changes, yet the FCC is being asked by one side or another to "do something" regarding issues that it is highly questionable they have true "jurisdiction" over.

Just a few examples should suffice. The Commission is in the middle of a new rulemaking dealing with cable program carriage. It backed into the whole area to begin with,

but is now suggesting things like applying contract terms, measurements and adjudications among private companies regarding programming (a First Amendment issue, I should briefly note...) having nothing to do with the original jurisdictional claim relating to a distributor that could "favor" its own programming over "competitors."

How does that give authority over a distributor who does not originate programming? If they go that far, the Courts are going to have to decide. Same is true of "retransmission consent" rules that the government's own OMB now acknowledges should be retained primarily because some broadcasters would not survive without the fees now charged to cable subscribers. But where is the legal right for the government to "favor" one speaker over another, especially in the absence of scarcity?

The list can go on... What gives the FCC power over controlling whether a programmer has created a "program length commercial," or controls the volume of commercials they put in their programming? Of course, the FCC may not claim that jurisdiction. The rules technically may not apply to the programmer, but to the distributor! But isn't that just a backhanded way of claiming jurisdiction?

All of these issues are bound for Court until Congress gets its act together and starts a serious reconsideration of the telecommunications law of this country. Remember a few years ago when we were theoretically discussing a conceptual change in regulation from "silos" to "layers" recognizing that we couldn't even define what "television" was any more? Well, we are now stuck very deeply in the mud of old law. It's time to start a rewrite.

I don't say that lightly, having been through the process before. It's a long, hard mess. But we have to start.

*Steve*

T:202-630-2099  
steve@effros.com

#### CableFAX Webinars

**TV Everywhere 2.0**  
**It's Here - So How Do You Monetize It?**

December 1, 2011 ■ 1:30-3:00 EST

Register Today at [www.cablefax.com/webinars](http://www.cablefax.com/webinars)

TV Everywhere has now moved beyond the conceptual stage and into reality cable with operators and programmers working side-by-side to ensure authenticated content retains subscribers and preserves strong business models, while opening the doors for revenue opportunities. But how do you profit from TV Everywhere? Join CableFAX for this exclusive webinar on Dec. 1.

#### You will learn:

- How best to approach TV Everywhere as an operator or programmer.
- Ways consumers are using authenticated content—what's working and what's not.
- Strategies to connect with consumers via authenticated content.
- Monetization and integration of social media elements into the TV Everywhere world.
- Much, much more!