

CableFAX Daily™

Thursday — December 2, 2010

What the Industry Reads First

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Net Neutrality: You've Come a Long Way, Baby

Sure, cable would love for the **FCC** to stay away from any net neutrality regulation, but Wed's highly anticipated proposal from FCC chmn *Julius Genachowski* doesn't taste that bad to the industry. After all, it was just 6 months ago that the FCC flavor du jour was the so-called "Third Way," which basically applied 6 sections of rules under Title II and promised to forebear the rest. That path, dubbed the "nuclear option" by some, had investors worried, particularly over the possibility that forbearance wouldn't stick and there could be broadband price regulation. In fact, cable may come out even better under the FCC proposal than what was earlier floated by Congress (more about that later). "While not perfect from our point of view and in the absence of further action by Congress, we believe that it is a fair resolution of this set of issues and that it is proposed in a way that achieves our essential and shared objectives: preserving the openness of the Internet and the incentives to invest and innovate for the benefit of consumers," said **NCTA** pres/CEO *Kyle McSarrow*. Although he warned if the order changes in any material way from NCTA's understanding, it's willing to vigorously challenge the rule. The biggest threat of that happening would most likely be Dem FCC commissioner *Michael Copps* "Today is the beginning of an important discussion, and not the end" trying to add in more restrictive provisions. The Republican commissioners have already come out firmly against the proposal, so his vote is necessary. Under the proposed rules, broadband providers would have to ensure network transparency, not block lawful content or non-harmful devices and prevent unreasonable discrimination of lawful Internet traffic—all while allowing for reasonable network management. Like **AT&T** and others, NCTA is waiting until final resolution of the order at the Dec 21 FCC meeting before making a final determination. As expected, Republican members of Congress that thwarted a similar compromise proposal from Rep *Henry Waxman* (D-CA) are unhappy. Reps *Joe Barton* (R-TX) and *Cliff Stearns* (R-FL) have asked the FCC to explain by Dec 10 its statutory authority to adopt these rules under Title I, saying that absent clear authority, the Commission should defer to Congress. Barton's rival for the House Commerce chair *Fred Upton* (R-MI) called it an "overt power grab" on the FCC's part. Some net neutrality supporting Dems (as well as public interest groups like **Public Knowledge**) are hoping to get more added to the final order, with Rep *Ed Markey* (D-MA) specifically calling for an explicit ban on paid prioritization and wireless regulations. One of the big differences between Genachowski's proposal and the earlier Waxman draft is that it




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opens the door for usage-based billing, with Genachowski saying the FCC's work has "demonstrated the importance of business innovation to promote network investment and efficient use of networks, including measures to match price to cost such as usage-based pricing." Another difference from the Waxman proposal that could help cable: no 2-year sunset on the provisions and therefore no wrangling over this in 2 years when there's an election at stake and more certainty for investors. **Verizon**, however, did want the 2-year sunset, believing that it would encourage Congressional action. With Republicans taking control of the House next month, expect plenty of heat and proposals, but probably not much progress as long as Dems control the Senate. Legal challenges could carry more weight though, given the DC Court of Appeals ruling in the **Comcast-BitTorrent** case.

Bandwidth Bonanza: When speaking about the co's fresh \$350mln agreement to purchase **NPG Cable** Wed, **Suddenlink** CEO *Jerry Kent* said to expect more industry deals to hit the market in the coming months. Cable offers compelling "predictability, stability and potential growth," said Kent, doing his best *Rocco Commisso* impersonation when saying "the public market is totally missing it." He pointed to *Commisso's* board-approved privatization bid for **Media-com** and the *Dolan's* failed attempts to do the same with **Cablevision** as evidence that industry execs believe cable assets are undervalued. As for the NPG properties in MO, CA and AZ, together expected to deliver \$104mln in rev this year, Kent sees "major upside potential." Current ARPU is approx \$105, \$10 less than Suddenlink's, phone penetration is less than 10% of homes passed and basic penetration is 43%. Plus, DOCSIS 3.0 is available in many of them while none see **FiOS** or **U-verse** activity. Kent said AZ may offer the greatest opportunity because the state may deliver new housing growth coming out of the recession. Suddenlink will spend \$19mln over 3 years to upgrade the systems. As Suddenlink paid approx \$1670/RGU for NPG, Kent said **Cablevision** paid \$1600/RGU for **Bresnan**, **Knology** \$1570/RGU for **Sunflower Broadband**, and **Shendandoah Telecom** \$2200/RGU for **Jet Broadband**.

4G: **Verizon** will officially unwrap its **LTE** network Sun for 38 markets and 110mln consumers initially, but only for laptop connections. Compatible smartphones are expected by summer. An **LG** modem will be available Sun for \$99.99 after rebate and with a 2-year contract, and users can choose from 2 service plans. The \$50/month option offers up to 5GB of usage, the \$80 option 10GB, and customers who exceed those limits will be charged \$10/GB of overage. **VZ Wireless** svp/CTO *Tony Melone* said the all-new 4G network will deliver speeds that are 10X those currently offered on the telco's 3G counterpart. Southern CA (20mln covered) will be the network's largest market. "Not all 4G is the same... this is a big deal," said Melone in repeatedly yet obliquely tweaking the competition. Apparently listening, **Clearwire** disseminated a comparison of **Clear** mobile broadband services and VZ's later in the day. Clear currently covers 120mln people and offers myriad compatible devices, but the most important differences between the pair may be in pricing and usage caps. Clear offers unlimited usage for \$45/month. Also on Wed, **MetroPCS** launched 4G LTE services in the San Francisco area and offers monthly unlimited plans starting at \$55 with no contract required. **[Go to CableFAXDaily.com for more subscriber-exclusive info].**

Net Neutrality Bits: Here's a smattering of the noise Wed on the **FCC** proposal... FCC chmn *Julius Genachowski*: "I want to emphasize that moving this item to a vote at the Commission is not designed or intended to preclude action by Congress. As always, I welcome the opportunity for the Commission to serve as a resource to Congress." **Sanford Bernstein's** *Craig Moffett*: "The tacit endorsement of [usage-based pricing] is, in our view, the biggest news of the day, and must be viewed as very positive for terrestrial broadband operators. We would expect the introduction of UBP plans from major cable MSOs to follow in short order, and we would expect that their stocks will respond well to such introductions." FCC GOP commish *Robert McDowell*: "I strongly oppose this ill-advised maneuver. Such rules would upend 3 decades of bipartisan and international consensus that the Internet is best able to thrive in the absence of regulation." **Free Press** pres/CEO *Josh Silver*: "We are glad the FCC is finally moving forward, but early reports indicate that this proposal looks like the fake net neutrality preferred by foes of the open Internet and retreats from the real consumer protections previously outlined by Chairman Genachowski." **Comcast** evp *David Cohen*: "We believe chmn Genachowski's proposal, as described this morning, strikes a workable balance between the needs of the marketplace and the certainty that carefully-crafted and limited rules can provide to ensure that Internet freedom and openness are preserved."

Competition: Now available for the **iPad** is **DISH Remote Access**, a free app allowing DISH subs to watch their live and recorded TV on compatible devices. -- Once its merger with **Qwest** becomes effective, **CenturyLink** will

organize its 37-state service area into 6 regions led by regional presidents: Eastern (Wake Forest, NC, HQ), Midwest (Minneapolis), Mountain (Denver), Southern (Orlando), NW (Seattle) and SW (Phoenix).

OTT: Netflix inked a deal whereby **FilmDistrict's** 1st-run, theatrically-released films will be available through its streaming service a few months after their DVD release. Among the first films to be covered under the deal are "Drive" and "Lockout."

Mobile: US mobile ad rev will grow from \$491mln in '09 to \$2.9bln in '14, according to **BIA/Kelsey**, representing a 43% CAGR. Growth over the period will be driven by search (93% CAGR), display (31%) and SMS (20%). BIA expects local mobile ad rev to deliver a 57% CAGR over the same period, upping its portion of rev from 44% last year to 69% in '14.

Beta: **ESPN** emerged as basic cable subs' favorite basic net according to **Beta's** cable sub survey, but bunched at the top were **Discovery Channel** and **History** (tied for the top spot in '09), **TNT** and **USA**. History was deemed most important to subs' enjoyment of cable, ahead of Discovery and ESPN, while Discovery, History and **Food Net** were the clear winners on the quality programming scale.

Technology: **Cedar Point's** new Enhanced HD Voice tech is designed to accelerate adoption and marketability of HD voice for service providers. It aims to improve call quality and make mass deployment of HD voice services more practical.

Programming: According to a *Reuters* report from its own Global Media Summit, **WWE COO Donna Goldsmith** said the wrestling empire won't be launching a dedicated cable net in Aug as originally planned, but rather in mid-'12 or even early '13. Goldsmith said WWE is keen on a business model that includes several pay-TV ops owning a stake in the venture. -- As **GMC's** 1st world premiere Christmas movie, "Christmas with a Capital C" (Sun) stars *Daniel Baldwin* and *Ted McGinley*, and centers on an attorney's return to his hometown in AK to find it embroiled in a legal battle. -- A 1-hour special on the inimitable *Snoop Dogg* airs Dec 13 on **TV One**. -- **Spike TV** ordered a 2nd season (20 eps) of "Auction Hunters." The weekly series has averaged 1.1mln viewers since its Nov 9 debut.

People: **OWN** tapped *Darren Olive* as vp, digital media ad sales. -- *Keely Bostock* joins **Insight** as vp, programming and video services, reporting to *Melani Griffith*.

On the Circuit: **SCTE** and **Tuck Exec Education at Dartmouth** have scheduled a tech leadership program for Apr 26-30 at the school. Classes such as "Connecting Strategic Vision to Implementation" and "Understanding and Executing for Value Creation in Broadband Services" are available to execs from the operator, vendor and programmer communities. Apps are available at **SCTE.org**. The deadline is Feb 15.

Stork Visits: Congrats to **Cox** PR man *Todd Smith* and his wife *Ashley* on their first bundle of joy—*James Owen Smith* (6lbs, 15 oz; 20 inches long).

Public Affairs: The on-air and online versions of **MTV**, **MTV2**, **mtvU**, **MTV Hits** and **MTV Jams**, plus MTV's **Facebook** and **Twitter** profiles, will all turn red Wed in honor of **World AIDS Day** and to encourage young people to get

The CableFAXIES awards

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BUSINESS & FINANCE

tested. Also part of the initiative: new doc "Me, Myself and HIV" on MTV and mtvU, special AIDS Day programming on MTV, MTV Hits and MTV Jams, and a partnership with **Planned Parenthood of NYC** to offer free HIV testing in Washington Square Park on Wed.

Business/Finance: Motorola's board approved the spinoff of **Moto Mobility** (Mobile Devices and Home businesses) from the remaining assets be renamed **Moto Solutions** and distinct public trading under the respective tickers on MMI and MSI beginning Jan 4. Moto shareholders of record as of Dec 21 will receive 1 share of Mobility common stock for every 8 shares of Moto common stock, after which Moto will effect a 1-for-7 reverse stock split. **S&P** reiterated its 'buy' rating and 12-month target price of \$11 on MOT shares. -- *Carl Icahn* extended his \$7.50/share tender offer for **Lionsgate** yet again, but this time his previous conditions—requiring at least 50.1% of LGF's outstanding shares be tendered, and the co's issuance of more than 16mln shares to a fund controlled by dir *Mark Rachesky* be rescinded—were waived. Icahn did add another, though: that Rachesky be legally prohibited from voting some shares. **Miller Tabak's David Joyce** reiterated his 'neutral' rating LGF because of "the Icahn overhang" but still believes the stock could be fully valued at \$12.

CableFAX Daily Stockwatch

Company	12/01 Close	1-Day Ch	Company	12/01 Close	1-Day Ch
BROADCASTERS/DBS/MMDS					
DIRECTV:	41.23	(0.3)	ARRIS GROUP:	10.31	0.30
DISH:	18.49	0.10	AVID TECH:	16.23	0.45
DISNEY:	37.12	0.61	BIGBAND:	2.99	0.01
GE:	16.30	0.47	BLNDER TONGUE:	2.12	(0.05)
NEWS CORP:	15.68	0.44	BROADCOM:	46.03	1.54
MSOS					
CABLEVISION:	32.17	0.50	CISCO:	19.32	0.16
CHARTER:	34.38	0.86	CLEARWIRE:	6.82	(0.16)
COMCAST:	20.83	0.80	COMMSCOPE:	31.64	0.03
COMCAST SPCL:	19.64	0.67	CONCURRENT:	4.84	0.06
GCI:	11.47	0.20	CONVERGYS:	12.99	0.10
KNOLOGY:	15.56	0.17	CSG SYSTEMS:	19.16	0.34
LIBERTY CAPITAL:	58.66	1.08	GOOGLE:	564.35	8.64
LIBERTY GLOBAL:	35.75	0.49	HARMONIC:	6.80	0.04
LIBERTY INT:	15.72	0.26	INTEL:	21.48	0.32
MEDIACOM:	8.46	0.01	JDSU:	12.13	0.26
SHAW COMM:	20.63	0.57	LEVEL 3:	0.97	(0.03)
TIME WARNER CABLE:	64.00	2.46	MICROSOFT:	26.04	0.78
VIRGIN MEDIA:	26.17	0.69	MOTOROLA:	8.01	0.34
WASH POST:	378.54	1.52	RENTRAK:	26.76	0.36
PROGRAMMING					
CBS:	17.17	0.33	SEACHANGE:	8.23	0.19
CROWN:	2.68	0.05	SONY:	36.47	0.99
DISCOVERY:	41.34	0.56	SPRINT NEXTEL:	3.77	(0.01)
GRUPO TELEVISA:	24.05	0.75	THOMAS & BETTS:	46.71	2.26
HSN:	28.62	0.27	TIVO:	8.48	0.25
INTERACTIVE CORP:	28.72	0.57	UNIVERSAL ELEC:	27.30	(0.18)
LIBERTY:	37.91	0.50	VONAGE:	2.39	(0.03)
LIBERTY STARZ:	63.99	1.19	YAHOO:	16.15	0.34
LIONSGATE:	7.39	0.18	TELCOS		
LODGENET:	3.20	0.10	AT&T:	28.28	0.49
NEW FRONTIER:	1.89	(0.03)	QWEST:	7.05	0.14
OUTDOOR:	6.55	0.06	VERIZON:	32.35	0.34
PLAYBOY:	4.77	(0.11)	MARKET INDICES		
SCRIPPS INT:	51.34	0.39	DOW:	11255.78	249.76
TIME WARNER:	30.21	0.72	NASDAQ:	2549.43	51.20
VALUEVISION:	3.60	0.11	S&P 500:	1206.07	19.47
VIACOM:	45.34	1.43			
WWE:	13.93	(0.09)			
TECHNOLOGY					
ADC:	12.74	0.02			
ADDVANTAGE:	3.49	0.06			
ALCATEL LUCENT:	2.79	0.05			
AMDOCS:	26.47	0.47			
AMPHENOL:	51.71	1.68			
AOL:	24.50	0.32			
APPLE:	316.40	5.25			



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Think about that for a minute...

A Level 3 Whiff

By Steve Effros

I use the term “whiff” here in lots of different contexts. The brouhaha created this week by the extraordinary effort at negotiating by press release on the part of Level 3 Communications has backfired on so many levels it’s hard to characterize how bad the smell is really going to become.

Level 3 invoked the “net neutrality” mantra in claiming that Comcast was trying to put a “toll booth” on the Internet, and was intending to unfairly block delivery of Level 3’s newly announced “primary CDN” status for delivery of Netflix over the Internet.



But Level 3 intentionally conflated their Internet Backbone Network business, which had a free “peering” agreement with Comcast, with their new role as a major “CDN” (content delivery network). The traditional CDN relationship with an ISP is different from the one between peered networks where the two networks have roughly equal use of each other’s bandwidth. CDNs, like Akamai, pay for the bandwidth use. In fact, Akamai does just that when it delivers content, like Netflix, to Comcast. Level 3 thought that it could sneak through its current peering relationship with Comcast and not have to pay for its CDN services.

When Comcast was asked for massive new connectivity by Level 3 a few weeks ago, Comcast said they had to sit down and talk about the new fee structure that would be required. Level 3 apparently suddenly realized that its plan to enjoy “free” use of Comcast’s bandwidth as opposed to its rivals was not going to fly. So it resorted to a time-tested, bad smelling effort to leverage Comcast with a press release aimed at creating a stir just as the FCC was about to (and just did) announce a new effort at creating “net neutrality” rules, and just as the Comcast/NBCU merger investigations are finishing.

Level 3 didn’t think that strategy through. Within hours, there were very good explanations on the Internet explaining what “peering” and “CDN” contracts were all about (check out George Ou’s explanation at DigitalSociety.org, and the excellent FAQ on news.cnet.com by Marguerite Reardon). Wall Street analysts also chimed in, saying that while Level 3 was trying to disingenuously cozy up to the “net neutrality” cause, this was really a business relationship and contract issue, and what Level 3 was saying was bogus.

Meanwhile, the FCC Chairman has just announced that he will propose a vote on Dec 21 on a set of “net neutrality” rules under Title I. That’s reasonably good news for us, but very bad news for Level 3, since they have just proved that the whole argument over “fast lanes” and “slow lanes” and “priority services” has more to do with other parts of the “Inter-Net” (a vast array of interconnected private networks, after all) than it does with ISP “last mile” broadband providers. If anything, the FCC should punt on any regulations right now and re-look at whether it makes more sense, if any regs are needed at all, to look at the backbone and content providers who are clearly designing advantages for their own Internet content over their competitors.

Level 3 “swung for the bleachers” and instead whiffed the ball. They may have figuratively dislocated their (and the “net neutrality” gang’s) shoulder in the process! Public Knowledge instantly used the Level 3 controversy, as well as a suddenly filed modem dispute, to suggest that Comcast, given the original BitTorrent issue, now has “three strikes” against them. Nonsense. More likely it proves that the government should “walk” on the whole current notion of Internet regulations.

Steve

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