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Hot Seat: Martin Defends Cap, Dingell Says FCC Appears Broke

Most of Wed's **House Telecom Subcmte** grilling of the **FCC** focused on broadcast media ownership, but there were a few licks that cable would appreciate. Ranking member *Joe Barton* (R-TX) asked FCC chmn *Kevin Martin* whether he saw any irony in relaxing the newspaper cross ownership ban at the Dec 18 meeting, while also reinstituting a 30% ownership cap for cable operators. Sadly for cable though, the answer was no. Martin countered that he was simply leaving all other ownership rules, besides newspaper cross ownership, in place. Only thing the 30% ownership cap isn't exactly a "current" rule, seeing as a federal court threw it out in '01 for violating the 1st Amendment. Republican commish *Robert McDowell* said he was still reviewing the draft order (Dems *Jonathan Adelstein* and *Michael Copps* are on board), but he has concerns that the current draft wouldn't withstand a legal challenge—a certainty from cable. Martin noted that some commissioners would like to see some ownership caps actually lowered. "We're not lowering caps. We're just not going to provide further regulatory relief," he said. Barton also quizzed the commissioners on a proposal for govt arbitration during carriage disputes, something NFL Net has pushed. Martin said he believes the FCC has the authority, pointing to the **MASN-Comcast** dispute. Adelstein said he thinks the FCC only has it when a programmer is discriminated against by a vertically integrated operator. McDowell and **Deborah Taylor Tate** also expressed concern about entering into private negotiations if discrimination had not been proven. At the meeting, House Commerce chmn *John Dingell* (D-MI) sounded a lot like **NCTA** chief *Kyle McSlarrow*, saying that "the FCC appears to be broken." He referred to the hours and hours of delays for open meetings and closed door meetings on important public matters. Dingell has asked the Subcmte on Oversight and Investigation to look into how the FCC is doing business. While he said Martin is ultimately responsible for the FCC's conduct, each commissioner is also responsible for ensuring that the agency works effectively for the American people. "I remind the Commissioners that they are appointed to faithfully interpret the laws. Agency proceedings should not be a forum to pursue personal agendas," he said. Other members also expressed concerns, with *Cliff Stearns* (R-FL) saying he saw "a little bit more friction" between the commissioners than he ever had before.

Wide Lens: Comcast Stresses Big Picture View

What some industry analysts deem old news or unsurprising—namely Comcast's lowered '07 guidance—was not similarly accepted on Wall St. Instead, the notion compelled investors to dump the MSO's stock, sending it down 12.3% on Wed to a 52-week low of $18.18. Although much of the sell-off occurred overnight, upbeat comments made early Wed by Comcast evp/co-CFO **Michael Angelakis** at the UBS conference did little to stem the negative tide. "Nothing goes straight up for perpetuity, but you've got to keep it in context," he said. "The plan that we have [going forward] is a double-digit revenue, OCF and free cash flow plan." Unfortunately, cable investors have recently opted to overlook these metrics to focus primarily on video results. Echoing COO *Steve Burke*'s comments

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from last month, Angelakis said competition, particularly from **Verizon**, has coalesced with the shaky economy to exert pressure on the MSO. "We will lose video share over the next couple of years, [but] we will fight in the streets for customer retention," said Angelakis. But he said there's still "a lot of headroom" in the HSD and VoIP markets. And he noted fresh revenue streams from non-video customers and commercial services, which alone generated $100mln in 3Q revenue. "Our business is diversifying and it will diversify over time," he said. Perhaps to that point, **Citi** and **Bear Stearns** maintained price targets on the MSO's shares of $33 and $28, respectively. "Comcast's new financial guidance is generally right in line with our current expectations," wrote Bear Stearns' *Spencer Wang*. "We continue to view [Comcast's] risk/reward as attractive."

Competition: **Verizon** plans this year to infuse FiOS TV with 150 HD channels and improve the service's interactive programming guide, said pres/COO *Denny Striegl* Wed at the **UBS** conference. The telco also wants to expand availability of a quad-play now offered in a few markets. "This will create significant market differentiation," said Strigl. -- **DirecTV** extended its contract with **NDS** through '13. NDS will continue to provide conditional access tech and related services.

Broadband: **Music Choice** is now available on **TiVo**'s broadband-enabled DVRs. 1K videos are available at launch and more are expected to be added in the coming weeks. -- Broadband service **ESPN360** has launched in Brazil, where it's available through Jan 4 to any national broadband sub. After that date, **Terra** will become the service's 1st affil.

New Age For Ads: Advertisers want the greatest number of eyes on their ads, right? Not necessarily, **TiVo** vp *Bob Pares* told the **Carat Exchange** in NY Wed. Some with less to spend want to be toward the bottom of "the hammock," the downward sloping curve where viewing drops heavily as those watching on DVRs/TiVo fast forward past ads. This knowledge about time-shifted viewing patterns is now available to TiVo clients as the company monitors 20K TiVo units/night, Pares said. That number might soon grow to 50K units. The demand for this data is growing, with it representing "a quantum leap" for the industry, Pares said. While he admitted viewers skip ads, more research is needed. "I guarantee you, viewers who fast forward are looking at the screen while they're doing that," opening up possibilities for advertisers, he said. The Carat Exchange allows advertisers, vendors, programmers and MSOs to interact.

Digital Media: Hoping to stimulate online video distribution, **Nielsen** announced it will team with **Digimarc** to launch "Nielsen Digital Media Manager" in mid-'08. Nielsen says content owners will be able to ID what content is being shared, viewed or mashed up, allowing them to make decisions on what content to allow or disallow on Web sites. Nielsen Digital Media Manager will use digital watermarking to address copyright compliance. The service is aimed at media companies, social networks, peer-to-peer service and user-generated content sites. Nielsen claims the service could help with new rev streams and e-commerce. Nielsen and Digimarc also plan to work on digitally watermarking DVDs, movies, music, video games and other content.

Beta: **Discovery** ranked #1 in Beta's subscribership survey, with 33% of respondents mentioning it unaided as a favorite cable net. **ESPN** (30%) and **History** (24%) round out the top 3 basic cable nets. The ESPN nets dominated in avg perceived value, with **ESPN2** perceived at $2.46, ESPN $2.40 and **ESPN Classic** $2.26.

In the Courts: **NCTA** filed a brief supporting **Comcast**'s petition for a review of the **FCC**'s decision to deny a limited waiver of the set-top integration ban for low-cost set-top boxes. NCTA said major cable competitors have received waiv-

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ers "for virtually any claimed technological innovation, while traditional cable companies have been denied waivers for the very same device," even where the evidence demonstrates waivers are needed for advanced services.

Football Fever: **ESPN**'s Mon Night Football game (New England vs Baltimore) goes down as cable's most-viewed telecast ever, with 17.5mln viewers. Previous record holder, **Disney**'s "HSM2" had 17.2mln. (Wonder how many of those viewers were cable execs hoping the Patriots would lose so they wouldn't have to worry about the team going undefeated with its last game of the season only appearing out-of-market on **NFL Net** or **Sunday Ticket**?)

Milestone: **Comcast**'s on demand service eclipsed the 6bln view plateau.

Honors: The **National Academy of Television Arts & Sciences** gave **Bloomberg News** editor-in-chief *Matthew Winkler* the Lifetime Achievement Award in Business & Financial Reporting Wed night, and also conferred business/financial reporting Emmys on **CNBC** (2) and **CNN**.

Business/Finance: Full-year '08 outlook for **Scripps Nets** includes rev growth of 8-10%, with similarly higher expenses. Programming costs will account for most of the latter, the company said, as steps are taken to increase viewership and investments in interactive initiatives are made.

CableFAX Daily Stockwatch

Company	12/05 Close	1-Day Ch
BROADCASTERS/DBS/MMDS		
BRITISH SKY:	49.38	0.80
DISNEY:	32.73	0.33
ECHOSTAR:	40.03	(0.28)
GE:	36.69	0.44
HEARST-ARGYLE:	19.76	0.39
ION MEDIA:	1.37	0.02
NEWS CORP:	21.24	0.14
TRIBUNE:	29.60	0.00
MSOS		
CABLEVISION:	25.74	(1.15)
CHARTER:	1.23	(0.02)
COMCAST:	18.18	(2.55)
COMCAST SPCL:	18.01	(2.49)
GCI:	8.47	(0.07)
KNOLOGY:	13.51	0.00
LIBERTY CAPITAL:	116.77	(3.04)
LIBERTY GLOBAL:	40.82	(0.36)
LIBERTY INTERACTIVE:	20.02	0.07
MEDIACOM:	4.60	0.14
NTL:	28.22	0.00
ROGERS COMM:	42.97	0.00
SHAW COMM:	23.96	0.24
TIME WARNER CABLE:	25.91	(1.14)
WASH POST:	791.94	(8.06)
PROGRAMMING		
CBS:	27.21	0.51
CROWN:	6.28	(0.17)
DISCOVERY:	25.91	(0.29)
EW SCRIPPS:	43.84	0.70
GRUPO TELEVISA:	24.02	0.30
INTERACTIVE CORP:	28.47	0.80
LODGENET:	19.02	(0.08)
NEW FRONTIER:	4.84	(0.01)
OUTDOOR:	6.75	(0.06)
PLAYBOY:	9.50	0.21
TIME WARNER:	16.99	(0.03)
UNIVISION:	36.23	0.00
VALUEVISION:	6.67	0.23
VIACOM:	42.03	(1.25)
WWE:	15.10	(0.01)
TECHNOLOGY		
3COM:	4.44	0.07
ADC:	17.07	0.97
ADDVANTAGE:	5.74	(0.11)
ALCATEL LUCENT:	7.81	0.07
AMDOCS:	33.10	0.60
AMPHENOL:	44.95	1.75
APPLE:	185.50	5.69
ARRIS GROUP:	10.29	0.10
AVID TECH:	26.56	0.33
BIGBAND:	5.71	(0.24)
BLNDER TONGUE:	1.50	0.00
BROADCOM:	27.96	1.45
C-COR:	12.23	0.11
CISCO:	27.48	0.52
COMMSCOPE:	46.37	6.18
CONCURRENT:	0.90	(0.01)
CONVERGYS:	15.94	(0.16)
CSG SYSTEMS:	16.47	0.03
GEMSTAR TVG:	5.87	0.05
GOOGLE:	698.51	14.35
HARMONIC:	10.55	0.17
JDSU:	13.83	0.81
LEVEL 3:	3.37	0.20
MICROSOFT:	34.15	1.38
MOTOROLA:	15.83	0.16
NDS:	58.00	(0.33)
NORTEL:	16.46	0.05
OPENTV:	1.14	0.04
PHILIPS:	42.00	0.53
RENTRAK:	14.64	0.09
SEACHANGE:	7.40	0.05
SONY:	53.63	0.65
SPRINT NEXTEL:	15.43	0.02
THOMAS & BETTS:	52.89	0.70
TIVO:	8.17	0.31
TOLLGRADE:	7.78	0.26
UNIVERSAL ELEC:	37.43	0.54
VONAGE:	2.07	0.06
VYYO:	3.74	(0.66)
WEBB SYS:	0.05	0.00
YAHOO:	25.98	(0.44)
TELCOS		
AT&T:	38.44	0.58
QWEST:	6.81	0.07
VERIZON:	44.47	0.67
MARKET INDICES		
DOW:	13444.96	196.23
NASDAQ:	2666.36	46.53

Think about that for a minute...

It's Not Pretty

The news from Washington about the strange happenings at the FCC has now spread to local papers nationwide. Meetings that are delayed for 11 hours while the Commissioners horse trade in the back rooms have become the norm, and now Congress is going to start looking much more carefully at what's going on. It's not pretty.

There's been a lot written on these pages and elsewhere about the issue of "cooked books" and the tendency of the Commission to derive numbers to support policy initiatives rather than the other way around. It happened in the "a la carte" studies when a newly ordered "economic study" came to a different conclusion than an earlier one. Subsequent analysis by just about every economist, including ones from the Congressional Research Office, dismissed the "new" study as seriously flawed.

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And then, of course, we have the "70/70" analysis of cable penetration I detailed last week. Virtually no one, including most of the Commissioners, bought that attempted manipulation of the numbers.

The problem with all this, as I also noted, is that the FCC's credibility is rapidly eroding. I suspect the erosion is going to accelerate now that House Commerce Committee Chairman John Dingell has announced that the Investigations subcommittee will start looking into the entire question of how the Commission has been operating.

One of the more important points that Chairman Dingell raised was how the Commission constructs its rulemakings. Does it, he asked, release the wording of proposed rules so that the public can comment on them before they are voted on? Well, that's somewhat of a rhetorical question from my point of view since I have been complaining for years that the Commission is not abiding by the spirit of the Administrative Procedure Act and ignoring any effort to publish and seek comment on specific proposed rules before voting on them. The 11th-hour wrangling delays often result in "rules" that no one, including the Commissioners, had seen before they voted!

While Congress is investigating that issue, they hopefully will also discern that rules are sometimes just "made up" with no real basis beyond the policy intentions of those who vote on them. We heard one Commissioner, Mr. Adelstein, refreshingly acknowledge that fact when he voted last week on the "leased channel" proceeding. The Commission chopped the allowable rates for cable leased channels by 75% because, they said, this might induce more folks to actually lease channels and create diverse voices. Seems the entire Commission is blind to the fact that those voices are now heard constantly on the Internet, a much more efficient way to get to more potential listeners (and now viewers) than leased channels ever were. But we'll get to that in another column.

The stunning thing about what Mr. Adelstein publicly said was that while he was voting for the item, he wished they had put some of the rules out for comment first, as the staff had essentially "made up" the numbers "out of whole cloth!" That's exactly what Chairman Dingell, and presumably the rest of Congress, is going to be very upset to learn—that the Commission is just making things up as they go, without solid analysis, without notice so the public can comment, and sometimes without even knowing what the wording of their "conclusion" is before they vote on it!

That's no way to run an "expert agency." By the way, to some degree, much of this was going on long before Chairman Martin arrived. It's time it stopped.

Steve

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