

# CableFAX Daily™

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What the Industry Reads First

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## Unlevel Field: Cable Unhappy With FCC Franchise Rules

Kyle McSarrow's winning streak came to an end Wed when the **FCC** voted 3-2 along party lines to relax franchise rules for new entrants. Under the FCC order, LFAs must act on video applications from competitors with access to local rights-of-way (ie, most telcos) within 90 days, and within 6 months for other new competitors. Cable argues the rules create an unlevel playing field, with **NCTA** holding a news conference shortly after the FCC meeting ended. "If they were going to do anything, they should have done it for everybody today," McSarrow told reporters. He called the FCC's decision to preempt level playing field provisions an "astonishingly backwards step." The FCC order isn't written yet, but McSarrow believes it would mean preemption of most-favored nations clauses contained in many franchises. Such clauses take effect if a new entrant comes in under better terms. The NCTA chief said the assoc would have to evaluate the order before deciding whether to sue, but it sounded like a strong possibility. "We will preserve our options in the meantime," McSarrow said. "We made it very clear from the outset that the fundamental principal for any action taken is a level playing field. We do not see the legal authority for the Commission to treat providers differently." **Stifel Nicolaus** characterized the overall litigation risk as significant (local govts are unhappy as well). Commissioner *Jonathan Adelstein*, who joined fellow Dem *Michael Copps* in voting against the order, said a court rejection is likely. "It will solve nothing, add to the confusion, and provide little or no progress on our shared goal of promoting video competition," Adelstein said, adding that it will "offend many in Congress." The FCC did launch a notice of proposed rulemaking on how cable operators and other existing franchisees should be affected, saying that an order would be released no later than 6 months after this order. The FCC has tentatively concluded that incumbents will have to wait until their franchises expire to be entitled to lesser regulation and the 90-day shot clock. McSarrow, however, did praise the order's clear finding that **AT&T's** video service isn't exempt from local franchises. Under the order's 90-day shot clock, a new entrant could provide video under an "interim authorization" if the 2 were unable to reach an agreement within 90 days. A court would rule on the dispute. McSarrow said that creates an "odd framework," as cities would simply wait until day 89 to deny a franchise in order to trigger court action before the interim authorization occurred. The new franchise regs, which include rules on network build-out and franchise fee calculation, are expected to take effect early next year.

**Retrans:** **Time Warner Cable** and **Sinclair** are closing in on a Dec 31 deadline to reach a new retrans deals for continued carriage of several stations in former **Adelphia** markets, including Buffalo **Fox** affil **WUTV** and Columbus, OH, **ABC** affil **WSYX**. The broadcaster has already urged viewers to call **DirectTV** and **DISH Network**, with Sinclair noting that DISH is offering a special rebate promotion in certain markets. A slightly positive sign: Sinclair gen counsel *Barry Faber* described negotiations with Time Warner as "a little more optimistic" than the **Mediacom** stand-off (see Cable360.net). Mediacom is set to lose its Sinclair stations Jan 6 unless a new deal is reached. The broadcaster has said it doesn't

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expect an agreement. Meanwhile, another retrans fire continues in ID. **KAYU** gm *Jon Rand* has asked North ID mayors to stage a public forum for his broadcast station and TWC to present their cases in a retrans dispute that has seen the Fox affil pulled from subs in Coeur d'Alene and Moscow, ID; Libby, MT; and Pullman, WA. The office of Coeur d'Alene mayor *Sandi Bloem* said it informed Rand that it didn't believe the city was a neutral party (it benefits from TW franchise fees) and wouldn't be the right forum for a public information session. The office suggested he contact local organizations, such as the **Kiwanis**. Time Warner said its local mgmt team is already speaking to customers and elected officials on a daily basis, and a TW spokeswoman said customers have "generally" supported the MSO's stance that they should not pay a surcharge to see KAYU's programming. KAYU is owned by **Northwest Broadcasting** and originates from Spokane, WA. Time Warner subs, formerly Adelphia customers, have been without the channel since 12:01 am Fri.

**Mixed Signals:** Although **Cablevision** COO *Thomas Rutledge* doesn't expressly reject **NFL Net's** free preview offer in a Wed letter to net pres/CEO *Steve Bornstein*, the net is certainly taking it that way. "We are very disappointed that Cablevision and the Dolan family have turned down" the preview offer, said a net spokesperson. Rutledge's letter does urge NFL Net to allow the Texas Bowl to be aired on broadcast TV in NY/NJ, a move that would benefit not only CVC subs but also the roughly 1mln area homes not served by cable or satellite. Furthermore, "cable customers should not be put in the middle of your going and unrelated pursuit of carriage agreements," said Rutledge. Failing an NFL Net concession to air the game on broadcast TV, however, Rutledge said CVC would carry the net on its basic tier for the Texas Bowl only. NFL Net resisted a similar arrangement with Time Warner Cable before agreeing on digital carriage. After hearing of NFL Net's reaction to Rutledge's letter, CVC said late Wed that "dealing with the NFL Network is beginning to feel like dealing with Lucy and the football. We haven't turned down anything. What part of 'yes, we will carry the Rutgers game to 100 percent of our customers,' do they not understand?"

**Power Play:** **Cox** is using **Comcast's** "PowerBoost" trademark. The MSO legally borrowed the name to launch its own speed enhancement service in its first market, Northern VA, this week. Cox broadband subs, like Comcast customers, will automatically get speed boosts when downloading large files. The technology is based on **CableLabs'** DOCSIS protocol. Cox plans to roll PowerBoost out to other markets across the country. Cox will up speeds in N VA to twice as fast for customers who subscribe to its up to 5Mbps service and up to 33% faster for its Premier (up to 15Mbps) customers.

**Oh S—:** According to *WSJ's Amy Schatz*, a Wed NY federal court hearing on the TV nets' challenge to the **FCC's** indecency rules featured Supreme Court specialist *Carter Phillips* spewing irony-laced expletives such as "mother—" and "eat s—," and **C-SPAN** cameras were on hand to record the colorful language. Since its broadcasts are aired simultaneously on fineable C-SPAN radio, this means possible legal trouble for the net, right? Unlikely, according to Schatz, who quoted *Eric Miller*, a media attorney representing the FCC, as saying that "the commission has emphasized it will use great restraint" and would not fine stations for airing the hearing as part of a news program. Oh s—, that was close!

**Mobile:** **MTV** has gone ape and launched "Bananas," the 1st MTV-branded mobile content subscription service. The cross-carrier, direct-to-consumer service offers programming from shows such as "Laguna Beach" and "Two-A-Days" through 2 service tiers, as well as content such as music, ringtones and graphics. Through partnerships with nearly 70 carriers and connections with more than 1bln subs, **MTVN** publishes more than 600 mobile clips and 30 hours of video



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# BUSINESS & FINANCE

per month in the US. -- **VH1** introduced "Mobile Junk 20," a mobile app that allows users to upload video and photos taken with their **Sprint** mobile devices. Content submitted using the new app could be included in future eps of series "Web Junk 20."

**Programming: Hallmark Channel's** strategy to hook viewers with the US TV premiere of "March of the Penguins" was a success, providing the net with a holiday ratings present and lots of cheer. Including the Nov 25 Penguins telecast (4.1), the net aired films on 4 successive Sat nights, all of which combined to average a 3.4 HH rating/2.5mIn HH delivery. Originals "The Christmas Card" (4.2), "What I Did For Love" (2.8) and "Love's Abiding Joy" (2.5) helped the net earn top weekend prime honors in ad-supported cable from 11/23-12/17. -- **Nick Jr** has ordered 20 new eps of preschool series "Go, Diego, Go," a new season of which begins Jan 15. **Nickelodeon** and **Live Nation** will also launch Feb 1 "Go, Diego, Go Live! The Great Jaguar Rescue," a family theatrical tour that will hit 50 nationwide markets.

**People: House Commerce** chief counsel *Howard Waltzman*, the architect of this year's House telecom legislation, is leaving to join the law firm of **Mayer, Brown, Rowe & Mawe**. -- **Narrowstep** appointed former **RCN** exec *Todd Narwid* svp, worldwide sales. -- *Dan Wright* was promoted to vp, eastern group operations, for **Time Warner Cable**.

## CableFAX Daily Stockwatch

Company	12/20 Close	1-Day Ch	Company	12/20 Close	1-Day Ch
<b>BROADCASTERS/DBS/MMDS</b>					
BROADCASTERS/DBS/			AVID TECH:	37.33	0.54
BRITISH SKY:	41.15	(0.12)	BLNDER TONGUE:	1.79	(0.01)
DIRECTV:	25.10	0.05	BROADCOM:	33.26	0.44
DISNEY:	34.61	(0.24)	C-COR:	11.16	0.14
ECHOSTAR:	37.75	0.02	CISCO:	27.39	(0.24)
GE:	38.15	0.14	COMMSCOPE:	30.76	0.13
HEARST-ARGYLE:	25.85	0.06	CONCURRENT:	1.88	0.17
ION MEDIA:	0.62	(0.05)	CONVERGYS:	24.00	(0.02)
NEWS CORP:	22.56	(0.18)	CSG SYSTEMS:	27.18	0.11
TRIBUNE:	31.36	(0.14)	GEMSTAR TVG:	3.80	0.07
<b>MSOS</b>					
CABLEVISION:	28.30	(0.15)	GOOGLE:	462.90	(5.73)
CHARTER:	3.05	(0.01)	HARMONIC:	7.16	(0.16)
COMCAST:	42.64	(0.19)	JDSU:	17.54	0.30
COMCAST SPCL:	42.24	(0.25)	LEVEL 3:	5.65	(0.1)
GCI:	15.88	0.26	LUCENT:	2.55	(0.02)
KNOLOGY:	10.61	0.21	MICROSOFT:	30.09	0.10
LIBERTY CAPITAL:	94.15	(0.88)	MOTOROLA:	20.41	(0.08)
LIBERTY GLOBAL:	28.23	(0.12)	NDS:	47.81	(0.22)
LIBERTY INTERACTIVE:	22.31	(0.07)	NORTEL:	25.89	1.39
MEDIACOM:	7.95	(0.06)	OPENTV:	2.42	0.09
NTL:	25.40	0.53	PHILIPS:	37.37	0.19
ROGERS COMM:	58.84	(0.22)	RENTRAK:	16.08	0.33
SHAW COMM:	32.35	0.26	SEACHANGE:	9.21	0.27
TIME WARNER:	21.96	0.04	SONY:	43.00	0.12
WASH POST:	764.00	3.99	SPRINT NEXTEL:	19.08	0.04
<b>PROGRAMMING</b>					
CBS:	31.74	0.03	THOMAS & BETTS:	48.54	(0.13)
CROWN:	3.42	0.17	TIVO:	5.25	(0.1)
DISCOVERY:	16.12	0.02	TOLLGRADE:	9.70	0.16
EW SCRIPPS:	49.87	(0.62)	UNIVERSAL ELEC:	21.11	(0.11)
GRUPO TELEVISA:	27.48	(0.22)	VONAGE:	7.17	0.09
INTERACTIVE CORP:	36.44	(0.05)	VYYO:	4.18	(0.02)
LODGENET:	25.89	0.37	WEBB SYS:	0.03	0.00
NEW FRONTIER:	9.40	(0.04)	WORLDGATE:	1.30	0.05
OUTDOOR:	12.79	0.09	YAHOO:	25.59	(0.82)
PLAYBOY:	11.43	0.09	<b>TELCOS</b>		
UNIVISION:	35.34	(0.02)	AT&T:	34.95	(0.04)
VALUEVISION:	12.68	0.13	BELLSOUTH:	45.55	0.11
VIACOM:	39.28	(0.09)	QWEST:	8.18	0.01
WWE:	16.54	0.13	VERIZON:	36.45	(0.21)
<b>TECHNOLOGY</b>					
3COM:	4.13	0.06	<b>MARKET INDICES</b>		
ADC:	14.30	0.03	DOW:	12463.87	(7.45)
ADDVANTAGE:	3.00	0.10	NASDAQ:	2427.61	(1.94)
AMDOCS:	37.73	1.76			
AMPHENOL:	62.85	(0.7)			
ARRIS GROUP:	12.25	(0.23)			

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## Think about that for a minute...

### It Ain't Broke!

We've all heard that sage advice repeatedly: "If it ain't broke, don't fix it!" It seems to have been ignored in Washington, and the justifications why are getting less and less credible.

In the case of cable television and competition, the message could not be stronger. Do we have competition? Of course we do! DBS alone has captured thirty percent of the multichannel video delivery market, and now some of the largest wireline owners in the United States, the massive telephone companies, are rolling out competitive services. In addition, the "market" itself is fracturing as programmers offer their products on the Internet. Google, the largest media company in the world, is moving into that space. So anyone who suggests cable is not in a fiercely competitive marketplace is simply out of touch or



**Steve Effros**

in denial. The competitive market "ain't broke."

What does that competition bring? Better and more service and offerings, that's what. Here's where things get difficult. There are some in Washington, seemingly including some Commissioners, some folks in Congress and some alleged consumer advocates who want to redefine what they consider the "benefit" of competition to be: if it doesn't result in a decrease in price, then there is no competition! So they justify any amount of government micromanagement based on the rationale that list prices for some services are going up, hence they want to "encourage" more competition by whatever industrial policy they are proposing at the moment.

Thus, the FCC starts interfering with state and local regulation of franchising. I seriously doubt they have the jurisdiction to do that, but nevertheless, the contrived justification is what tells the tale. The Commission has finally decided to release a "study" it has had for a year

now about "cable prices" as of January 2005! Leave aside the obvious: that the data is now so dated, especially in the extraordinarily fast-moving telecommunications marketplace (YouTube didn't exist when the study was done) that it's of no real value. It also is inherently flawed for the purpose it is being touted.

You see, the data only looks at cable list prices, not value. It ignores the effect on those prices of how cable is now often sold, in bundles. The "bundled" prices are significantly lower, and cable now provides much higher value as reflected by how our customers use the services we offer. That's all ignored by this "study." It also doesn't look at the increases in price by our competitors: DBS offerings (higher than cable on a percentage basis this year) or telco video offerings (just increased more than the cable average.) Nope, they just use a 2005 study of one static and now somewhat irrelevant number and note it has gone up, thus justifying anything they want to do to "promote" competition.

And what do they want to do? Help the poor, little telcos who can't seem to navigate the legal-beagle sharpies in town governments. This is absurd. Actually, the telcos are doing just fine getting franchises and can't currently build all the ones they already have. But let's not confuse the regulators with current facts. Let's just have the government put its thumb on the scale to "help" marketplace competition... Oh, but only for the wealthy folks. It wouldn't do to require service to the entire area, the way cable does. What a mess. The bottom line: cable competition is vibrant, and our services and prices are competitive. The message: "it ain't broke!" Ignore that message, and unintended consequences are sure to follow.

*Steve*

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