

# CableFAX Daily™

Thursday — February 20, 2014

What the Industry Reads First

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## Net Neutrality: Commence Round 2

The good news for cable: **FCC** chmn *Tom Wheeler* doesn't plan to appeal DC Circuit's Jan ruling that struck down non-discrimination and non-blocking rules of its Open Internet Order, a senior FCC official said on a conference call Wed. As expected, the Commission isn't taking the Title II reclassification route either, although that option remains on the table. The potentially not-so-good news for the sector? As Wheeler suggested repeatedly, the agency won't give up without a fight: He's drafting new rules designed to fulfill non-discrimination and non-blocking goals, hanging the legal argument on authority affirmed by the court, which Wheeler said invited the FCC to find a different way to preserve an open Internet and gave it the legal authority under Section 706 of the Telecom Act to issue enforceable rules to preserve Internet freedom. In addition, Wheeler intends to make the Open Internet Order's transparency rules even more effective, with the senior official saying DC Circuit's affirmation of these rules is more significant than many may realize. The rules required ISPs to be open about their network management practices. The official didn't specify how the new rules would achieve the non-blocking and non-discrimination goals but noted they might resemble the FCC's data roaming rules applied to wireless carriers. Those rules require providers to offer commercially reasonable terms and allow regulators to determine competitive harm on a case-by-case basis. The new rules might contain some minimum service level requirements, but they aren't expected to prohibit cable/telco ISPs from charging service providers like **Netflix** for enhanced broadband delivery or treatment, **Stifel Nicolaus** analysts wrote. Finally, cable ISPs of all sizes might face new competition from municipal broadband providers. In a rather unexpected move, Wheeler said the agency is looking for ways to enhance Internet access competition, and "one obvious candidate for close examination was raised in *Judge Silberman's* separate opinion, namely legal restrictions on the ability of cities and towns to offer broadband services to consumers in their communities." A new docket was opened Wed called "Protecting and Promoting the Open Internet" to allow for public input. Before the new rules come out, the FCC will hold all ISPs to their promise to honor the Open Internet rules, Wheeler said. Cable's initial reaction was subtle: "The cable industry has always embraced the principles of an open Internet and remains committed to them... We continue to believe that the values of an open Internet can be preserved, while avoiding a damaging move to heavier regulation," **NCTA** said in a statement. **Comcast** supported the original rules and agreed as part of the **NBCU** deal to abide by them for 7 years even if they were modified. The chmn has "taken a thoughtful approach which creates a path for enforceable rules based on the appropriate authority outlined by the Court's findings," evp *David Cohen* said. In light of the proposed acquisition of **Time Warner Cable**, the new rules could give Comcast/TWC "more company under regulation," Stifel analysts said. **ACA** head *Matt Polka* said the group "strongly agrees with Chairman Wheeler that the entire Internet ecosystem requires certainty and predictability to promote investment, and looks forward to working with the FCC with regard to the Open Internet proceeding." Let the net neutrality fun, round 2, begin.



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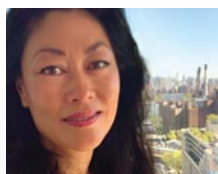
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**In the Courts:** Broadcasters finally got a win with the US District Court in UT granting their request for a preliminary injunction against **Aereo**. It prevents Aereo from operating in UT, NM, CO, OK, WY, KS and MT. In the order released Wed, the court said it is not bound by the holding in the cases cited by the parties and there is no controlling law from the 10th Circuit on the issue. "Based on the plain language of the 1976 Copyright Act and the clear intent of Congress, this court concludes that Aereo is engaging in copyright infringement of Plaintiffs' programs," the court said. "Despite its attempt to design a device or process outside the scope of the 1976 Copyright Act, Aereo's device or process transmits Plaintiffs' copyrighted programs to the public." Broadcasters applauded the ruling, calling it a significant win. They've endured their share of setbacks, with the 2nd Circuit and a MA federal court denying a preliminary injunction. Aereo founder/CEO *Chet Kanojia* said the company would pursue all available remedies to restore customers' ability to use Aereo in those states. "We are extremely disappointed that the District Court in Utah has chosen to take a different path than every other Court that has reviewed the Aereo technology," he said in a statement. "Consumers have a fundamental right to watch over the air broadcast television via an antenna and to record copies for their personal use. The Copyright Act provides no justification to curtail that right simply because the consumer is using modern, remotely located equipment."

**More Reactions:** Fellow **FCC** commish and lawmakers' reactions to chmn *Tom Wheeler's* proposed new net neutrality rules pretty much fell along party lines. "I am skeptical that this effort will end any differently from the last," Republican commish *Ajit Pai* said. Commish *Mike O'Rielly* is on the same page, reiterating that "section 706 does not provide any affirmative regulatory authority." House Commerce's Republican pair *Fred Upton* (MI) and *Greg Walden* (OR), in a joint statement, said "no matter how many times the court says 'no,' the Obama administration refuses to abandon its furious pursuit of these harmful policies to put government in charge of the web." Open Internet backer Rep *Henry Waxman* (D-CA) expects the FCC to move quickly in readopting the rules and grounding them "on a strong legal footing," he said in a statement. Senate Commerce head *John Rockefeller* (D-WV) said the agency has ample authority on the issue and that he has always supported the FCC's use of its full authority under the Communications Act.

**Retrans:** On Tues, **Buckeye** filed a bad faith complaint against **Sinclair** in their ongoing retrans spat that has left 106K of the operator's customers in Toledo, OH, without **NBC** programming from **WNWO** since mid-Dec. Buckeye said that Sinclair made recently terminated negotiations, which it claims violates "one of the few bedrock requirements of good faith retransmission consent negotiations by refusing to negotiate." The operator said Sinclair made an offer on Feb 5, which Buckeye countered, and less than 48 hours later Sinclair terminated negotiations. Sinclair issued a news release Wed saying that negotiations have ended and as a result Buckeye will not carry WNWO for the foreseeable future. "Buckeye was not willing to agree to what we believe, based on our negotiation of hundreds of similar agreements impacting numerous markets, including Toledo, to be fair and customary terms," Sinclair's chief negotiator *Barry Faber* said in a statement. "While we are aware that thousands of former Buckeye subscribers have already switched video providers, we thought it was important to make this announcement so that their remaining subscribers were aware that WNWO and its great programming will not be coming back to Buckeye." Faber went on to say that the 24 cent credit Buckeye has been providing subs in the absence

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of WNWO represents “a mere fraction” of the station’s value. Buckeye told the FCC that Sinclair is also in bad faith for refusing to consider competitive marketplace conditions, complaining that it’s tying carriage of currently non-existent cable channels to WNWO. Buckeye also argues that the broadcaster isn’t taking into account current competitive conditions by making rate demands that are more than double the highest-compensated stations Buckeye carries, even as WNWO “languishes at or near the bottom of the ratings.” Sinclair has a non-duplication complaint against Buckeye now pending at the FCC.

**Show News:** Some of us are just concentrating on making it through the last few weeks of winter, but the year is well underway and so is the planning for various industry events. That includes **SCTE**’s Cable-Tec Expo, which actually falls during Rosh Hashanah. Originally, the show, set in Denver this year, was slated for Sept 23-26, but was moved to Sept 22-25 based on concerns raised by members. It still overlaps with the Jewish holiday beginning at sundown Sept 24. “In scheduling our events, we consider other industry dates, venue availability, civic and religious holidays and weather patterns and make the best available decision,” said SCTE vp, marketing Bill Schanke. “We regret that SCTE Cable-Tec Expo 2014 conflicts with the Rosh Hashanah holiday and have adjusted the dates and the technical program to lessen the impact of this year’s event on the Holy Days.” That doesn’t sit well with everyone, with at least one vendor telling us it puts him at a competitive disadvantage. SCTE said the dates are set, with no options available for moving it. The industry calendar is pretty crowded (Diversity Week falls earlier in Sept) and, perhaps more importantly for the SCTE crowd, **IBC** wraps up Sept 17. Several Expo vendors exhibit at both shows and need time to fly back from Amsterdam and set up in Denver. Speaking of IBC, last year, it fell during Yom Kippur. Last year, SCTE ended up changing the dates of Expo from Sept 18-20 in New Orleans to Oct 21-24 in Atlanta because it was too close to IBC (Sept 12-17).

**Fiberhood:** Google Fiber’s blog details that it’s talking to 34 cities about possibly bringing the service to them. The cities encompass 9 metro areas: San Jose, Portland, Phoenix, Salt Lake City, San Antonio, Atlanta, Nashville, Charlotte and Raleigh-Durham. Google Fiber already has projects in Kansas City, Austin and Provo. It said there’s no promise that it will launch service in all 34 cities, but it will share what it learns during this exploration stage. While some have suggested Google Fiber is just a big experiment, **Bernstein** analysts disagree. “We continue to believe that Google Fiber is an attempt by Google to build a profitable, stand-alone business. It may not make a huge difference for Google or for the incumbents in the next one, two or three years, but Google is taking the long view and we think in 5 or more years, it could turn out to be a significant, profitable business for Google and headwind for incumbents,” they said.

**OTT:** **WWE** unveiled the programming lineup for its streaming network (launches Feb 24 at 9am). Offerings include a live, 30-minute “Raw” preshow that will debut on Mon at 7:30pm ET. The OTT net also will feature “WWE Raw Backstage Pass,” which will air live following Mon Night Raw each week. “WrestleMania 30” will air live on the net Apr 6 at 7pm ET. For the 1st time, the net will present live coverage of the WWE Hall of Fame Induction Ceremony (Apr 5, 9pm ET). Other programming includes a series on ground-making matches, a reality show with WWE stars past and “NXT ArRival,” a live in-ring event featuring rising WWE stars (Feb 27, 8pm). In addition, subscribers will have access to the WWE VOD library, which includes all WWE, WCW and ECW PPVs as well as encores of Raw and Smackdown (more than 1500 hours). WWE discontinued its WWE Classics SVOD service in Feb.

**Programming:** **HLN** released its initial program development slate under its rebrand as a network for the social media generation. A sampling of the lineup (all working titles): “Keywords,” a game show of search and tag trivia—guess a search term from 5 keyword clues; “I Can Haz NewsToons,” social media’s best satire cartoons, produced and created by *Fred Siebert* (“Adventure Time”); “Vacation Hunters” in which viewers send a 140-character vacation description tweet and 2 vacation teams compete to stretch the dollar as far as possible for a vacation of a lifetime; and “One.Click.Away,” the untold stories behind online classifieds (those unused wedding dresses, funny roommate ads, and so on). -- Following the death of a snake-handling preacher featured in **Nat Geo**’s “Snake Salvation” series, the net is running a special that will examine the life of *Jamie Coots* (Thurs, 10pm). “Pastor Coots was a lovely, kind man who was good to our crew during the shooting,” Nat Geo Channels CEO *David Lyle* said in a statement. “And while it may be hard for some to understand the choices he made due to his deeply held convictions, one cannot help but admire his dedication and bravery. We wanted to air this episode tomorrow night as a way to give perspective to the world-wide discussion his death has caused.” -- *Soledad O’Brien* joined Nat Geo’s “Live From Space” event as host and co-exec pro-

# BUSINESS & FINANCE

ducer. She'll broadcast live from Mission Control in Houston during the program, Mar 15, 8pm.

**People:** Former **Disney/ESPN Networks** exec **Steve Raymond** was named vp, affil relations for **DirectTV Sports Nets**, which includes the 3 ROOT Sports RSNs. -- **Eli Velazquez** was promoted to svp, sports of **Telemundo Media**. -- **WWE** upped **Tandy O'Donoghue** to evp, strategy and analytics, effective Mar 15.

**At the Portals:** The **FCC** released a report on FCC Process Reform last week, and is now accepting public comment through Mar 31. The report proposes more than 150 process reform recommendations.

**Editor's Note:** So many ways to learn and grow... and so little time. Here's a quick rundown. March 13 will be an incredible day of insight as **CableFAX** hosts its 1st "Cable Business Boot Camp" in the morning and then segues right into the Digital & Tech Awards luncheon. It's all taking place at the fabulous Yale Club in NYC. -- It's also awards nomination season at **CableFAX**, so don't forget about our Sales Exec of the Year awards (the Feb 21 deadline is this week!); the Faxies (Mar 21 deadline); and of course the Top Ops Awards (Apr 11 deadline). You can find more info on these events and programs, as well as other **CableFAX** content, at [www.cablefax.com](http://www.cablefax.com)

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<b>BROADCASTERS/DBS/MMDS</b>					
21ST CENTURY FOX:	32.77	(0.26)	GOOGLE:	1202.34	(8.54)
DIRECTV:	72.94	(0.12)	HARMONIC:	6.52	(0.01)
DISH:	56.52	(0.57)	INTEL:	24.50	(0.26)
DISNEY:	78.87	(0.71)	JDSU:	13.38	(0.19)
GE:	25.40	(0.25)	LEVEL 3:	38.28	(0.6)
<b>MSOS</b>					
CABLEVISION:	16.12	(0.34)	MICROSOFT:	37.51	0.09
CHARTER:	130.44	(1.06)	NIELSEN:	46.38	(0.18)
COMCAST:	51.57	(1.96)	RENTRAK:	63.38	(2.84)
COMCAST SPCL:	49.81	(1.73)	SEACHANGE:	11.95	(0.12)
GCI:	9.90	(0.12)	SONY:	17.07	(0.27)
LIBERTY GLOBAL:	87.06	(0.45)	SPRINT NEXTEL:	8.16	(0.04)
LIBERTY INT:	29.05	0.04	TIVO:	12.73	(0.15)
SHAW COMM:	23.47	(0.01)	UNIVERSAL ELEC:	36.23	(0.2)
TIME WARNER CABLE:	141.00	(3.98)	VONAGE:	4.50	(0.03)
<b>PROGRAMMING</b>					
AMC NETWORKS:	67.73	0.18	YAHOO:	37.81	(0.49)
CBS:	65.82	(0.47)	<b>TELCOS</b>		
CROWN:	3.08	0.01	AT&T:	32.85	0.03
DISCOVERY:	81.14	0.81	VERIZON:	46.53	0.55
GRUPO TELEVISA:	27.84	(0.82)	<b>MARKET INDICES</b>		
HSN:	56.27	(0.31)	DOW:	16040.56	(89.84)
INTERACTIVE CORP:	71.11	1.31	NASDAQ:	4237.95	(34.83)
LIONSGATE:	31.39	(0.78)	S&P 500:	1828.75	(12.01)
MADISON SQUARE GARDEN:	59.33	(0.1)			
SCRIPPS INT:	79.26	0.49			
STARZ:	29.25	(0.45)			
TIME WARNER:	64.62	(0.68)			
VALUEVISION:	5.72	(0.1)			
VIACOM:	86.06	0.22			
WWE:	23.00	(0.24)			
<b>TECHNOLOGY</b>					
ADVANTAGE:	2.94	0.08			
ALCATEL LUCENT:	4.28	0.02			
AMDOCS:	43.84	(0.45)			
AMPHENOL:	88.55	(0.3)			
AOL:	43.37	(1.69)			
APPLE:	537.37	(8.62)			
ARRIS GROUP:	27.94	(0.51)			
AVID TECH:	7.05	UNCH			
BLNDER TONGUE:	0.95	(0.01)			
BROADCOM:	30.80	(0.35)			
CISCO:	22.28	(0.13)			
CONCURRENT:	8.60	UNCH			
CONVERGYS:	19.70	(0.15)			
CSG SYSTEMS:	26.60	(0.45)			
ECHOSTAR:	47.64	(0.12)			

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CableFAX is looking for cable marketing, PR and communications experts to contribute to the upcoming "**Social Media and Digital Marketing Guidebook**." If interested, please email [cablefaxpress@accessintel.com](mailto:cablefaxpress@accessintel.com) by **Friday, February 21**.

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## Think about that for a minute...

### Proud

#### Commentary by Steve Effros

Needless to say, the phone started ringing off the hook last week with the Comcast-TWC announcement. Heck, I knew there was going to be a big brouhaha when I got three fundraising appeals from a major “public interest” group in a matter of hours asking for money to mobilize against the media Armageddon that they now insist is coming.

Of course, these same folks predicted that same thing when AOL and Time Warner merged, and when AT&T bought TCI, and when Comcast bought NBCUniversal. The only thing that actually happened is more folks got better service and technology continued shooting ahead at a pace the public, and certainly the lawmakers, can't keep up with! This is supposed to be bad? The numbers tell a different story: there are more program channels today than ever before. More diversity, more video production, more competitors both in the delivery marketplace and the programming marketplace. More consumers are watching different, high-quality programming (see, for instance, the latest Emmy Awards). We can all argue over programmer pricing, escalating costs, and whether OTT or a la carte would “solve” that or destroy diversity while upping the consumer cost, but in the meantime, per channel cable costs have gone down, not up. What has gone up is customer satisfaction, particularly for our broadband service, which gets high marks from more than 80% of subscribers.

I tried to explain this in some talk-radio programs where I was paired with “public interest” advocates. Again, needless to say, they basically reverted to form saying the public hates their cable “monopolist,” wants more, cheaper, and thinks that blocking any significant consolidation and encouraging more government-built systems will solve all ills. And oh, by the way, it's “obvious” that an ISP as big as Comcast-TWC would “clearly” discriminate



against all other programmers in favor of their own stuff. Forget the fact that Comcast has already said it would agree to special FCC “net neutrality” requirements extending to all the customers the merger would cover.

That wasn't good enough, they complained, because those restrictions “only” apply until 2018! So now we know what the fight for the next year is going to be about: stop consolidation and extend common carrier prescriptions. What a waste of time. If the “public interest” folks would focus on helping to sensibly rewrite the Communications Act, which is likely to happen around 2018, we would all be better off. But of course that doesn't raise as much money as a raucous “battle,” so it's not likely to happen.

Too bad. Because I think what Comcast is doing is going to be excellent for consumers in major markets. We will finally have an almost-national footprint for a cable operator in the major DMAs, offering real service cohesion and a likely faster transition to cloud navigation services and hybrid IP technology. That's all good for the consumer. I'm hopeful that folks recognize, however, that the smaller towns and the smaller operators are going to be offering a different type of service, as only they can. Comcast has to be wary of creating nationwide over-expectations. I think Comcast will see the benefit of doing so, and of helping the small operators. We don't want a greater geographic “digital divide” than necessary. But for now, I think this proposed merger will finally bring “cable/broadband” to a new level as a national media player, like the broadcast networks, like the satellite providers, and like the biggest telcos. That means more competition, not less. That's good for everyone. It should make us proud.

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*(Steve Effros was President of CATA for 23 years and is now an advisor and consultant to the cable industry)*

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