

CableFAX Daily™

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What the Industry Reads First

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One Year Later: Cablevision's Wholesale Bundling Suit Against Viacom

It has been a year since **Cablevision** filed an antitrust lawsuit against **Viacom** over the wholesale bundling of networks. And as the adage goes, the wheels of justice can move slowly. Not much has happened over the past year, with the most recent filings from the parties occurring back in Nov. The judge recently postponed a pretrial hearing that had been scheduled for Fri (2/28) to May. There has been no ruling yet on Viacom's motion to dismiss the case. The litigation—which drew big headlines and analysts' prognostications when it was introduced—didn't garner a single question during CVC's earnings call Wed, which fell on the exact 1-year anniversary date of the lawsuit's filing. Instead, legal eagles are turning their eyes to the upcoming **Aereo** oral arguments in the Supreme Court. That subject did come up on Wed's call, with Cablevision's gen counsel saying the company doesn't believe the high court will do anything that will affect its remote-storage DVR. That has been an issue of concern since Aereo is using the legality of Cablevision's RS-DVRs to combat challenges by broadcasters. See the brief filed Mon by Cablevision below in "In the Courts." As for the pending Viacom lawsuit, here's a quick refresher: The MSO claims Viacom illegally tied lesser-watched networks to must-have channels, such as **Nick** and **MTV**. Despite Cablevision's qualms over the deal terms (it said a deal for just the popular channels would have cost it more than \$1bln), it went ahead and did a deal with Viacom in Dec '12. Then 2 months later, it turned around and sued. Viacom has argued that CVC failed to show that a tying arrangement has caused anticompetitive effects, and that the MSO waited too long to mount such a challenge (operating under the same conditions as far back as 2008). While we're on the subject of Cablevision and complaints, it's worth a quick update on the status of **CWA's** labor complaint against the MSO, which also has been lingering for some time. The **National Labor Relation Board's** hearing on the complaint concluded in Dec. Both sides now have to file summary briefs, due this month. The ALJ will review the evidence and briefs before issuing a decision. No timeframe on when it may come. The waiting continues...

On the Hill: Wed's highly anticipated STELA hearing won't take place after all. The Communications and Tech subcmte postponed the hearing, citing a number of weather-related changes to the cmte calendar. "Despite the curve ball from Old Man Winter, our thoughtful process to reauthorize the nation's satellite television law continues and we remain on track to introduce legislation by the end of the month," said subcmte chmn *Greg Walden* (R-OR).

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At the Portals: The FCC has proposed more than \$1.9mln in fines against **Viacom**, **ESPN** and **NBCU** for running a commercial that sounded similar to the warning sounds used in emergency alerts. In Jan, the FCC proposed a \$200K penalty against **Turner** for a **Best Buy** ad promoting an “A\$AP Rocky” using emergency alert sounds. This time, the problematic ad was a trailer for the film “Olympus has Fallen.” Seven Viacom-owned networks transmitted the ad 108 times over 5 days, resulting in a proposed forfeiture of \$1.12mln. Three ESPN-owned networks transmitted the ad 13 times over 4 days, resulting in a proposed \$280K forfeiture. And 7 NBCU-owned cable nets transmitted the spot 38 times over 6 days, resulting in a proposed \$530K forfeiture. “This case is the latest in a series of FCC enforcement actions to address a recent spike in consumer complaints” about misuse of the EAS alert, the FCC said. ESPN said it is assessing the FCC’s notice and “will respond through its normal process.” Viacom said it regrets the airing of the ad: “Our processes were immediately strengthened when we received word of the error and we no longer accept ads from advertisers containing tones that could be confused with the EAS Attention Signal. We are reviewing our options and will communicate our reply to the FCC.”

In the Courts: While **Cablevision** agrees with broadcasters that **Aereo** is violating copyright law, it continues to take issue with some of the broadcasters’ arguments—chiefly, those that challenge principles confirmed by the 2nd Circuit when it upheld the MSO’s RS-DVR as legal. It filed an amicus brief in the US Supreme Court Mon detailing its position. The **Center for Democracy and Technology** also filed a brief Mon, warning that the wrong approach in this case could undermine the cloud computing industry by creating new legal risks for services that store and transmit data from remote locations (CDT didn’t take a position on Aereo’s legality). The US Deputy Solicitor General also filed a brief Mon supporting broadcasters and arguing that Aereo’s service falls squarely within the scope of public performance under the Copyright Act. Questions involving cloud computing, RS-DVRs and other “novel issues not before the court” can wait pending a case in which they can be squarely presented, the DOJ said.

Press Clippings: The *WSJ* reported that **DISH** and **Disney** have finally reached a carriage deal. **CableFAX** wrote months ago that deal talks included negotiations over **Disney’s** litigation over DISH’s ad skipping service (*Cfax*, 12/17). Citing a person familiar with the matter, the *WSJ* reported Mon that under the deal DISH will curtail ad skipping for **ABC** shows. -- Reports citing anonymous sources say **Comcast** will buy online ad firm **FreeWheel** for about \$320mln.

Progress Report: As **Comcast** gets ready to sell the **FCC** on its merger with **Time Warner Cable**, it’s still obligated to inform the agency how it’s doing meeting conditions adopted in the **NBCU** transaction order. The company filed its 3rd report Fri, stressing that it’s not just meeting conditions but in many cases exceeding them. For example, Comcast exceeded a requirement to provide broadband service of at least 12 Mbps downstream in DOCSIS 3.0 markets, with its “Performance” tier at least 20 Mbps in the top 30 markets. And last year it aired PSAs with a value of over \$61mln, well above the \$15mln annual spend required by the condition. **Bloomberg**, however, successfully convinced the FCC that Comcast wasn’t meeting neighborhood conditions that required it to move Bloomberg TV in some lineups. Several content companies also have challenged an FCC Media Bureau clarification stating that online video distributors invoking the Comcast-NBCU benchmark condition must disclose the terms of comparable peer agreements to NBCU’s outside counsel and consultants.

Deals: **Discovery Comm** acquired London-based indie production house **Raw**, with which it has worked since 2001, commissioning series including “Gold Rush” for **Discovery Channel** and “Unexplained Files” for **Science** and **Discovery Networks International**. Under the deal, Raw can expand into scripted programming and produce independent films. Raw will continue to operate independently from its London headquarters, and all of Raw’s current staff will be retained.

MSO Doings: **Time Warner Cable** will now let phone customers make calls to Mexico landline and mobile numbers for no additional charge with the Unlimited Home Phone plan. Calls to Mexico are now treated the same as long-distance calls anywhere in the US, Canada, Puerto Rico, Guam and the US Virgin Islands. -- **Comcast** is gearing up to bring its Watchathon VOD week, offering a smorgasbord of VOD offerings. The binge-watching stunt will run Mar 31-Apr 6.

Advertising: **Allstate** signed on as the presenting sponsor of **CNN’s** series “Chicagoland,” premiering Thurs at 10pm.

Ratings: **NBCU** says the Sochi Winter Games helped boost **Premier League** ratings, which posted the league’s best-ever monthly audience in the US in Feb (1.1mln viewers on **NBC** and 508K on **NBCSN**).

Programming: **A&E** ordered an original series following “hick hop” artist *Big Smo*. -- Remember Rico Suave, AKA *Gerardo*? The ‘90s one-hit wonder turned successful music exec is getting a reality series on **VH1**. “Suave Says” (wt) has

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been greenlit for 10 eps. -- **USA Gymnastics, NBC Sports** and **Universal Sports** agreed to an extension for TV and digital coverage of USA Gymnastics events, including the **AT&T American Cup** and **P&G Championships**.

Online: **NCTA** has nixed its CableTech Talk blog, replacing it with a new blog called "platform" (www.ncta.com/platform). "Platform is a place to learn about the future of technology, television, and the role the cable industry plays in supporting the networks on which the Internet thrives and grows," said Mon's introductory blog post. "We wanted to design a space that allowed anyone to discover the latest news, statistics, opinions, graphics, and videos on cable. ... And we wanted it to challenge people's idea of what the cable industry is, what it does, and where it's going."

Research: **ESPN** topped all basic cable nets in terms of both perceived value and networks that offer the most value for acquiring subscribers and customer retention, according to a **Beta Research** study. The net's perceived monthly cost per sub is 77 cents, followed by **ESPN2**, which has a perceived value of 44 cents, and **NFL Network** at 40 cents. About 93% of affils saw **ESPN** as very important for driving subscriber acquisition and retention, followed by **The Weather Channel** at 75% and **Disney** at 74%.

People: *Tim Connolly, ex-Disney vp,* digital video distribution & new product dev, is now **Hulu's** head of distribution.

CableFAX Daily Stockwatch

Company	03/03 Close	1-Day Ch	Company	03/03 Close	1-Day Ch
BROADCASTERS/DBS/MMDS					
21ST CENTURY FOX:	33.06	(0.48)	GOOGLE:	1202.69	(12.96)
DIRECTV:	77.96	0.36	HARMONIC:	6.40	(0.09)
DISH:	58.88	0.04	INTEL:	24.50	(0.26)
DISNEY:	79.46	(1.35)	JDSU:	13.72	(0.06)
GE:	25.12	(0.35)	LEVEL 3:	36.52	(0.3)
MSOS					
CABLEVISION:	17.64	0.04	MICROSOFT:	37.78	(0.53)
CHARTER:	125.69	(1.08)	NIELSEN:	46.49	(0.85)
COMCAST:	51.00	(0.69)	RENTRAK:	63.86	(0.25)
COMCAST SPCL:	49.37	(0.53)	SEACHANGE:	10.49	(0.06)
GCI:	10.43	0.02	SONY:	17.21	(0.34)
LIBERTY GLOBAL:	84.92	(1.63)	SPRINT NEXTEL:	8.83	0.09
LIBERTY INT:	28.84	(0.36)	TIVO:	13.46	(0.04)
SHAW COMM:	23.01	(0.14)	UNIVERSAL ELEC:	42.67	0.88
TIME WARNER CABLE:	139.23	(1.12)	VONAGE:	4.51	(0.1)
PROGRAMMING					
AMC NETWORKS:	75.63	(0.39)	YAHOO:	38.25	(0.42)
CBS:	65.95	(1.13)	TELCOS		
CROWN:	3.38	0.03	AT&T:	31.86	(0.07)
DISCOVERY:	82.08	(1.24)	VERIZON:	47.31	(0.27)
GRUPO TELEVISA:	29.54	0.13	MARKET INDICES		
HSN:	56.86	(0.49)	DOW:	16168.03	(153.68)
INTERACTIVE CORP:	77.58	0.05	NASDAQ:	4277.30	(30.82)
LIONSGATE:	29.99	(0.76)	S&P 500:	1845.73	(13.72)
MADISON SQUARE GARDEN:	57.61	0.60			
SCRIPPS INT:	80.90	(0.34)			
STARZ:	32.11	0.13			
TIME WARNER:	66.47	(0.66)			
VALUEVISION:	5.24	(0.35)			
VIACOM:	86.05	(1.71)			
WWE:	23.20	0.28			
TECHNOLOGY					
ADVANTAGE:	3.06	0.23			
ALCATEL LUCENT:	4.17	(0.11)			
AMDOCS:	44.25	(0.23)			
AMPHENOL:	87.78	(0.24)			
AOL:	43.60	(0.18)			
APPLE:	527.76	1.52			
ARRIS GROUP:	28.30	(0.4)			
AVID TECH:	6.70	0.10			
BLNDER TONGUE:	0.99	(0.04)			
BROADCOM:	29.76	0.05			
CISCO:	21.57	(0.23)			
CONCURRENT:	8.29	0.03			
CONVERGYS:	20.14	(0.33)			
CSG SYSTEMS:	27.56	(0.44)			
ECHOSTAR:	50.03	0.21			

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CableLabs Winter Conference: IPTV, 2nd Screen Domination

A big part of **CableLabs'** Winter Conference (March 2-5 in Atlanta) seems to hinge on IPTV, as the consortium inked an agreement with **Cisco** to create a new IPTV Innovation Lab in CO. Cisco will provide core infrastructure and Video-scape components. CableLabs plans to test multi-vendor integration between the components of an all-IP infrastructure, as well as test specifications in a controlled multi-vendor environment and the reliability and efficiency of all-IP video delivery under different impairments. CableLabs runs a multi-gigabyte network between Louisville, CO and its Sunnyvale, CA location, which can be used to extend the capabilities of the IPTV lab and share VPN services, the group said. It will create a proof of concept (PoC) to support the IP video delivery and other R&D projects at both locations. Additional initiatives include the support of client-side application development on an all-IP platform, and the creation of specifications to facilitate the migration of MSOs to all-IP. The move means CableLabs' member companies like **Comcast**, **Charter** and **Time Warner Cable** can develop pay-TV services delivered over an all-IP platform. In the multiscreen space, authentication provider **Synacor** is offering an early look at its technology that "deeply embeds" into MVPDs' native mobile apps, its Android customization capabilities, and a TVE auto-authorization service used during the Sochi Olympics. Among vendors participating in the conference's Innovation Showcase is **aiOTV**, which has introduced an Android-based PassBox that aims to enable MSOs to merge OTT content with their live TV feeds. And it wouldn't be a CableLabs conference without RDK demo: **S3 Group** will showcase its RDK migration process for service providers and set-top vendors. S3 oversees RDK code for **RDK Management**, the Comcast/TWC joint venture.

TVE: **ESPN** launched 15 college sports nets through its WatchESPN TVE apps which are initially available on **Apple TV** and **Roku** devices upon authentication. The net will allow subs to access content through its ESPN3.com

site and other platforms later this year. The conference channels include **ACC**, **America East**, **Atlantic Sun**, **Big South**, **Big West**, **HBCUs** (Mid-Eastern Athletic, Southwestern Athletic and Central Intercollegiate Athletic), **Horizon**, **Mid-American**, **Metro Atlantic Athletic**, **Missouri Valley**, **Northeast**, **Ohio Valley**, **Southern**, **Sun Belt** and **Southland**. Later this year, the channels on WatchESPN will include live college football, Olympic event and non-event programming plus VOD content.

Hulu: **Hulu** agreed to sell its Japan operation to Nippon Television Network. In a blog post last week, CEO *Mike Hopkins* said "we have now reached a point in the growth of the business in Japan where we feel the best path forward is to sell the company to a strategic buyer." Financial terms weren't disclosed. Hulu launched its Japan service in Sept 2011. The deal is expected to close this spring.

Research: By 2019, nearly 40% of pay TV HHs are expected to have access to applications on set-tops, **ABI Research** said. The apps include news and information services, service provider-specific apps, OTT video, games and music services. Video will remain the focus for entertainment apps, the research firm said. It found that telco pay-TV providers like **AT&T** and **Verizon** lead the market for applications on set-tops but that cable and satellite are starting to gain momentum, particularly as more companies look to new standards like HTML5. **Comcast** is expanding the penetration of application platforms to its sub base through licensing deals or potentially via M&A (pending **Time Warner Cable** deal), it said. "While a number of operators garner significant media attention, a great deal of activity is happening behind the scenes in the B2B market," ABI dir *Sam Rosen* said.

People: **ThinkAnalytics**, the content recommendation tech firm that counts **Cox** and **Liberty Global** as customers, named **Comcast** and **Arris** vet *Rich Soucie* as vp of business development, leading a new office that the company is opening in Silicon Valley. Soucie will report to CEO *Eddie Young*.

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