

# CableFAX Daily™

Thursday — March 20, 2014

What the Industry Reads First

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## STELA Responses: Cable vs Broadcast

Following a heated debate at the **House Communications** subcommittee hearing on reauthorizing the Satellite Television Extension and Localism Act last week, cable butt-headed with broadcasters again in their responses to **Senate Commerce's** questions on how legislators should proceed with the renewal. The committee sent the questions to a diverse array of stakeholders in Feb (**CFX**, 3/3). As expected, **NCTA** believes retrans reforms are "warranted" as part of the process. The group wants lawmakers to ban Joint Sales Agreements (and Shared Services Agreements) unless the stations are co-owned. The same issue (JSAs) is being discussed on the House side, as Democrats on the subcommittee were unhappy with the provision of the draft STELA legislation (introduced by subcommittee head *Greg Walden*) that would undercut the **FCC's** effort to restrict JSAs. The House draft bill doesn't include the elimination of a must-buy requirement. **NCTA** told lawmakers on the Senate side that getting rid of the requirement would "promote greater competitive neutrality among video distributors." At the least, Congress should limit must-buy stations to must-carry stations. "Retransmission consent stations should not have a government-mandated right to be included in cable operators' "must buy" basic tier," **NCTA** said. The trade group, which counts both operators and programmers as members, didn't take a position on several general video policy issues like mandating refunds for consumers during blackouts, eliminating the "sweeps" exception, and prohibiting broadcasters from blocking online access to content on the Internet. The group did recommend legislators repeal the set-top box integration ban (such a provision is in House draft bill) and asked the committee not to extend any provisions of the 1992 Act to online video distributors. The broadcasters, on the other hand, wanted a clean renewal, arguing adding unrelated reforms would "prolong, complicate and threaten" the reauthorization process. In addition, in the context of a larger Comm Act update, **NAB** asked the lawmakers to ban MVPDs from assessing early termination fees on consumers seeking to switch pay-TV providers and to require MVPDs to refund subs for loss of content. **NAB** also said "it would be wise to retain any tools that have the potential to constrain cable prices at this time." Like **NCTA**, **ACA** saw STELA as a venue for retrans overhaul. The group agreed with **NCTA** when it comes to set-top integration ban and restricting JSAs but asked lawmakers to direct the FCC to ensure continuation of service during retrans disputes and opposed the idea of mandating refunds for consumers affected by blackouts. It also wants broadcasters banned from blocking access to their online content during retrans negotiations, noting the tactic was used in the **Time Warner Cable/CBS** and **Cablevision/FOX** disputes. **ACA** also asked legislators to modernize the definition of a "buying group" to include **NCTC**, something the FCC hasn't acted on since it initiated a rulemaking more than a year ago. Both **NCTA** and **ACA** say 5 years is a reasonable period for periodic examination of the Act.

**Merger Mania:** Sen *Al Franken* (D-MN) sent a letter to the **DOJ** Wed expressing his opposition and concern over the proposed **Comcast-Time Warner Cable** merger. Meanwhile, *Reuters* reported that FL and other states will join DOJ in seeking to determine if the deal is legal under antitrust law. Franken is "very concerned that Comcast could use its clout in the broadband market to dictate the content consumers receive and the prices they pay, and these concerns are only intensi-

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fied by Comcast's proposal to acquire Time Warner Cable," he wrote. In asking the DOJ to evaluate Open Internet issues in its analysis of the deal, Franken noted that Comcast's net neutrality obligations expire in Jan '18 and don't extend to peering arrangements. Comcast said the deal will bring millions more under Open Internet rules as soon as the deal closes. "We fully expect that the FCC will have in place Open Internet rules that will apply to all companies by the time our current condition from the NBCUniversal deal expires in 2018," the company said in a statement. "That condition was always meant as a bridge to enforceable rules that would be applicable to all companies in the industry. Comcast has supported the Open Internet rules since they were first proposed and is the only company that is currently required to abide by them."

**Over-the-Airheads:** As we've reported, **NAB** is trying to hammer the interconnect agreements that allow MVPDs to jointly sell advertising across multiple providers' markets (**CFX**, 3/19). That's not sitting well with **NCTA** chief *Michael Powell*. "NAB's latest attack is an unfortunate and desperate attempt to divert attention from examination of discrete broadcast ownership issues. This collateral attack on pay TV providers should be seen for what it is—a transparent stunt to muddy the waters and confuse the issue," he said in a statement Wed, referring to the upcoming FCC vote that would restrict JSAs. Of course, NAB CEO *Gordon Smith* paints a different picture: "Heavily regulated local broadcasters in smaller markets are being scrutinized by the FCC for a practice that involves one local TV station selling ads for another local TV station. Yet the heavily consolidated pay-TV industry, unshackled by any ownership rules, is free to engage in this most collusive of advertising sales practice on a massive scale in multiple markets."

**Multiscreen:** Comcast added 18 live streaming channels to the Xfinity TV Go app including **A&E, Bravo, Cooking Channel, DIY Network, E!, Food Network, HGTV, HISTORY, mun2, Oxygen, Sprout, STARZ, Syfy, TBS, TNT, Travel Channel, truTV and USA Network**. Subs now can access more than 50 live channels through the app over a WiFi connection.

**Wakshlag Leaving:** Turner employees received word Wed that longtime chief research officer *Jack Wakshlag* will leave the programmer at the end of the month. Frequently quoted in the press, Wakshlag has long provided analysis on the numbers—particularly cable's dominance over broadcast—and has served on the boards of **The Advertising Research Foundation** and **The Council for Research Excellence**. The researcher told us the time was right, having spent 42 years in TV research. He is looking forward to spending more time with his family. "When I was young, I watched too much TV. Then I went to college and studied TV. Then I became a professor of telecommunications and taught others to study TV. But my ultimate dream was to run a network television research department. I have done that. But Turner offered me so much more," he wrote in an internal memo. "Here I learned the meaning and value of leadership. It provided me the opportunity to be responsible for building a best-in-class research group for TV and beyond. And the company gave me a platform to influence our industry." Said Turner evp *Kelly Regal*: "What Jack says matters." Turner will conduct a search to fill the position.

**At the Portals:** Comcast officially filed its opposition to **Tennis Channel's** request for the **FCC** to further examine its carriage complaint against the MSO. Comcast said the DC Circuit's decision found no evidence in the record that Tennis' proposal would have afforded Comcast any benefit, thus dooming Tennis' claim. The net argues that the court examined the case through different tests than the FCC, so it feels it's appropriate for the FCC to look again through that lens.

**Upfronts:** After "Killing Lincoln" and "Killing Kennedy," **Nat Geo** is gearing up for "Killing Jesus," a 4-hour miniseries next year based on *Bill O'Reilly's* book. Fresh off its most-watched year in network history, NGC's upfront presentation in NYC Wed

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highlighted 10 returning series, including the top-rated "Brain Games." The net has 6 new series, including "Crowd Control," hidden cameras tests theories such as whether more people would climb stairs that look like pianos, "You Can't Lick Your Elbow," a Brain Games for the body and "The Primitives," about communities living the old-fashioned way. Sibling **Nat Geo Wild** will bring back "The Incredible Dr Pol" and has 2 new series on tap: "Dr K: Exotic Pet Vet" (wt) and "Pond Stars," transforming backyards and public spaces into ponds and natural habitats for local critters. The net will again host "Big Cat Week," but is also going to the dogs, devoting an entire weekend to man's best friend.

**People:** **Fox Nets** promoted *Jessica Fang* to svp, distribution of national accounts and *David Espinosa* to svp, distribution, strategic analysis. Both report to Fox Nets distribution pres *Michael Biard*. -- **AMC Nets** upped *Cliff Bail* to svp and deputy gen counsel and elevated *Aileen Brophy* to svp, legal and business affairs. -- *Pete Vlastelica* was promoted to evp, digital for **Fox Sports**. -- **A&E** vet *Mark Apter* was named svp, program planning & acquisitions. -- Former **Fox Nets** CEO *Tony Vinciquerra* joined **Machinima's** board. -- **Comcast** upped *Karen Dougherty Buchholz* to svp of administration and former FCCer *Rebecca Arbogast* to svp, global public policy, both reporting to *David Cohen*, evp.

## CableFAX Daily Stockwatch

Company	03/19 Close	1-Day Ch	Company	03/19 Close	1-Day Ch
<b>BROADCASTERS/DBS/MMDS</b>					
21ST CENTURY FOX:	33.00	(0.06)	GOOGLE:	1199.25	(12.01)
DIRECTV:	75.39	(0.78)	HARMONIC:	6.67	0.04
DISH:	61.94	(0.14)	INTEL:	25.02	0.20
DISNEY:	80.52	(1.47)	JDSU:	14.42	(0.08)
GE:	25.28	(0.37)	LEVEL 3:	38.60	(0.01)
<b>MSOS</b>					
CABLEVISION:	16.60	(0.1)	MICROSOFT:	39.27	(0.28)
CHARTER:	126.47	0.48	NIELSEN:	44.24	(0.34)
COMCAST:	49.88	(0.34)	RENTRAK:	63.61	(0.44)
COMCAST SPCL:	48.49	(0.4)	SEACHANGE:	10.47	0.16
GCI:	11.21	(0.34)	SONY:	17.15	UNCH
LIBERTY GLOBAL:	42.00	(0.42)	SPRINT NEXTEL:	8.72	0.04
LIBERTY INT:	29.11	(0.15)	TIVO:	13.32	(0.06)
SHAW COMM:	23.21	(0.12)	UNIVERSAL ELEC:	41.13	(0.32)
TIME WARNER CABLE:	136.46	(0.13)	VONAGE:	4.48	(0.05)
<b>PROGRAMMING</b>					
AMC NETWORKS:	75.18	(1.51)	YAHOO:	38.61	(0.84)
CBS:	65.94	(0.36)	<b>TELCOS</b>		
CROWN:	3.71	(0.09)	AT&T:	32.96	(0.02)
DISCOVERY:	83.70	UNCH	VERIZON:	46.36	(0.34)
GRUPO TELEVISA:	31.46	(0.17)	<b>MARKET INDICES</b>		
HSN:	60.75	(0.82)	DOW:	16222.17	(114.02)
INTERACTIVE CORP:	74.67	(1.34)	NASDAQ:	4307.60	(25.71)
LIONSGATE:	29.14	(1.6)	S&P 500:	1860.77	(11.48)
MADISON SQUARE GARDEN:	59.08	0.32			
SCRIPPS INT:	78.43	(1.27)			
STARZ:	32.22	(0.2)			
TIME WARNER:	67.08	(0.12)			
VALUEVISION:	5.49	(0.09)			
VIACOM:	87.90	(0.51)			
WWE:	31.14	0.24			
<b>TECHNOLOGY</b>					
ADVANTAGE:	3.14	0.02			
ALCATEL LUCENT:	3.87	(0.09)			
AMDOCS:	45.81	(0.34)			
AMPHENOL:	91.14	(0.61)			
AOL:	43.15	0.16			
APPLE:	531.26	(0.14)			
ARRIS GROUP:	29.01	(0.09)			
AVID TECH:	6.50	(0.03)			
BLNDER TONGUE:	0.97	(0.03)			
BROADCOM:	30.86	0.04			
CISCO:	21.63	UNCH			
CONCURRENT:	8.47	0.13			
CONVERGYS:	21.14	(0.15)			
CSG SYSTEMS:	26.96	(0.76)			
ECHOSTAR:	49.67	(0.41)			

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## Think about that for a minute...

### A'Courting We Should Go

Commentary by Steve Effros

What's become totally clear is that neither the FCC nor Congress is about to make significant changes in the rules applying to cable television, even though everyone debating the various issues starts their sentence with "...of course the telecommunications marketplace has massively changed since these rules were written!"



Gee, you think so? Of course it has. We all know it. Satellite became a major competitor to cable, the telcos joined the fray and competition is now fierce, especially in both rural markets (from the DBS folks) and in urban markets (from competitive wireline and wireless systems). The new focus on broadband as opposed to cable services does not change the picture. Broadband competition is getting just as active, and there are those who argue that entirely wireless broadband service—either with WiFi, "Super WiFi" or some new service enabled by new spectrum being made available—is coming and can easily compete for the average user. As I mentioned in a column a while ago, watch out for satellite broadband as well. They are putting up new birds that resolve both bandwidth and latency problems for most applications.

So we are stuck with an old law that applied to "cable" in a new world where "cable" serves barely more than half of the customers. But the FCC, while acknowledging those realities, still can't un-do rules, such as the "integration ban" for set-top-boxes, that now apply only to "traditional" cable operators, not to satellite providers, telco providers, broadband "OTT" services and the like. This makes no sense.

Congress is now looking at a bill that would change some of that as part of consideration of the "must pass" bill to allow DBS to continue to carry broadcast signals. But those with other economic interests, such as the broadcasters,

in the case of blocking a proposal that would eliminate the "must buy" provisions of the current law that forces cable subscribers to buy broadcast signals before they can get anything else on cable, or the broadcaster agreements allowing them to jointly negotiate retrans in local markets, are already in political jeopardy. Or they have been cut from the draft bill before any serious consideration. The "public interest" groups are fighting the integration ban elimination, not because it would hurt anyone who wants to use a CableCard. Those rules would stay. They want the current costly rules intact as leverage to force a new set of rules for "AllVid," yet another effort at industrial standardization policy. And so it goes.

It's time to go back to court. We're not going to get anywhere with Congress or the FCC in the current environment. We took "must carry" to court many years ago, and won. Most folks forget that. The FCC then dropped the rules, but Congress put them back at the behest of the broadcasters. We lost that one on a 5-4 vote in the Supreme Court because at the time "cable" was deemed a "monopoly." Well, no longer. Let's go back to court and challenge the "must buy" rules under the First and Fifth Amendments. The Government mandates the purchase of speech, but not for our competitors. That can't be justified any more as "protecting local broadcasting" since we represent only 50 percent of the delivery and it doesn't apply to DBS or Telco TV.

Another interesting suit would challenge the arbitrariness of not applying the antitrust laws to the clear "combination in restraint of trade" by local broadcasters when they negotiate retrans. It's time to go "a'courtin'."

*Steve*

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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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