

# CableFAX Daily™

Thursday — July 10, 2014

What the Industry Reads First

Volume 25 / No. 132

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## Retrans Ruckus: Is It Getting Hot in Here?

There haven't been any retrans rows this year in the same league as 2013's brutal **Time Warner Cable-CBS** brawl, but that isn't stopping the retrans rhetoric. Broadcaster group **TVfreedom** fired the latest salvo Wed, releasing an infographic that compared the number of pay TV/Internet service failures in 2014 to retrans blackouts in the same year. By its count, there have been 3050 service blackouts by the 5 largest providers based on **Downdetector.com** data, whereas TV blackouts caused by retrans disputes number just 5 this year. Of course, retrans reformers take umbrage with the calculations. Broadcasters have blacked out viewers 33 times in 2014, not 5, said the **American TV Alliance**, which counts multiple MVPDs as members. It's all in how you slice and dice it... TVfreedom didn't breakdown the blackouts by station, just owner, nor did it include blackouts that began last year and carried in to 2014 (like **Buckeye's** loss of **Sinclair NBC** Toledo affil, which has been dark on the system since Dec 15). ATVA also complained the service outages didn't distinguish between video and Internet and provided no info on the cause. Meanwhile, the **FCC's** docket on rules related to retransmission consent continues to gather responses. Just two weeks ago, **Cablevision** execs were at the Commission urging reform. Comments were due last month on the FCC's proposal to eliminate syndicated exclusivity and network non-duplication rules, which help broadcasters protect their exclusivity in a market. Reply comments are due July 24—which means there's plenty of time for all the parties to trade testy missives. All of this back-and-forth takes on a bit more significance with Sen **Claire McCaskill** asking consumers last month to "Submit Your Scam" and report unfair billing practices by pay TV companies. TVfreedom submitted its own letter to the senator, who heads Commerce's Consumer Protection subcmte, highlighting the service outages. "The average US consumer who pays upwards of \$130 per month for bundled pay-TV/broadband services must typically bear the brunt of this type of service degradation without explanation or remuneration," it wrote Wed. While TV Freedom and ATVA usually swap retorts, this one elicited a response from cable's largest lobbying group, **NCTA**. "Sadly, local broadcasters are back to their old tricks of ginning up spurious claims and pointing fingers at others instead of working constructively with Members of Congress on sensible reforms that would update a dated statute and yield actual consumer benefits," an NCTA spokesman said. "Instead of launching disingenuous attacks, local broadcasters should be forced [to] defend the substance of outdated rules—like why local stations who freely embrace 'market negotiations' for carriage terms

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insist on retaining government guaranteed channel placement that unnecessarily limits package flexibility and consumer choice." TVfreedom's spokesman came back with an argument for placement on cable's smallest package: "The basic service tier enables low-income households, those families who otherwise couldn't afford the hefty price tag of expanded basic or premium programming packages, to get their cable TV service and access to valuable local broadcast TV stations at affordable prices, totaling about \$22 per month, on average." **ACA** piled on (natch), with pres/CEO *Matt Polka* declaring that the "broadcast lobby is doing everything within its power to avoid a debate about reforming our communications laws in a way that prevents consumers from suffering through a record number of signal blackouts."

**DISH Dissing Merger:** Anyone who listened to **DISH's** 4Q earnings call a few months back was probably far from shocked to see the satcaster has been making rounds at the **FCC** speaking out against a **Comcast-Time Warner Cable** merger. CEO *Charlie Ergen* and other **DISH** execs met with FCC chmn *Tom Wheeler* and other commissioners on Mon to talk about several issues, from **DISH's** plan to participate in the upcoming **AWS-3** auction to the cable merger. "There do not appear to be any conditions that would remedy the harms that would result from the merger," **DISH** said in a filing describing the meetings. "Among other things, the combined company would have an increased incentive and ability to leverage its control over the broadband pipe to undermine [OTT] services." **DISH** is readying its own OTT offering, inking a deal with **Disney** that includes some OTT carriage. The **DBS** provider said a **Comcast-TWC** combo would have 3 "choke points" in the broadband pipe where it could harm competing video services: the last mile public Internet channel to consumer, the interconnection point and any managed or specialized service channels. **DISH** also complained that the merged company would have the ability to restrict programmers from granting digital rights to competing pay TV and OTT providers. Like **ACA**, it's also worried that the company will be able to extract lower prices from programmers, who will use smaller providers like **DISH** to compensate for the lost revenue. During **DISH's** 4Q earnings in Feb, *Ergen* stopped short of saying the company would oppose the merger, but did offer plenty of criticism: "If you're in the video content or distribution or broadband business and your name isn't Comcast or Time Warner, the news is not positive."

**SEC Net Wins Cox:** When **ESPN's SEC Net** launches Aug 14, **Cox** will be among distributors carrying the channel. It will be available in all **Cox** markets, not just those in the Southeast. **DISH**, **AT&T U-verse** and **Google Fiber** also have deals for the conference net. "Cox is home to some of the biggest fans with 5 SEC schools in our markets. This is great news for alumni and fans across our footprint who will enjoy all the action and rivalries that have become synonymous with SEC sports," **Cox** COO *Jill Campbell* said in the announcement. Talks continue with others, including **Comcast** and **DirectTV**.

**M&A: Tribune** wants a bigger slice of the TV data pie. The company's tech and innovation arm **Tribune Digital Ventures** has acquired TV search and EPG data provider **What's-ON**. The move is expected to expand **Tribune's** TV listings and video metadata footprint to more than 50 countries in 30+ languages, reaching some 600mln pay-TV subs. The deal followed **Tribune's** acquisition of music and video tech and metadata firm **Gracenote** earlier this year, which would combine the firm's presence in EPG data in EU and **Tribune's** North America footprint.

**Ratings:** The shocking 7-1 Germany vs. Brazil World Cup match on **ESPN** Tues was the highest-rated and most-watched World Cup semifinal game on US TV. Averaging a 4.2 US HH rating and 6.64mln viewers, the game peaked in the final half hour of the match with a 4.6 rating and 7.5mln viewers. The previous top World Cup semifinal was a 3.4 rating for Germany-Italy on **ESPN** in 2006. -- The premiere of "Married at First Sight," the new original series on **FYI** averaged 270K total viewers Tues night, when **BIO** officially rebranded to **FYI**. That was a 64% increase compared to **BIO's** primetime average.

**On the Hill:** More E-Rate Drama. **FCC** chmn *Tom Wheeler's* effort to expand WiFi through the program faces more push-back. Concerned that the initiative could compromise funding for basic broadband, a pair of Senate Commerce Democrats called on *Wheeler* to raise E-Rate's permanent funding cap. Commerce chmn *Jay Rockefeller* (WV) and committee member *Ed Markey* (MA) worried in a letter Wed that *Wheeler's* proposal to create a per student or square foot distribution mechanism for Wi-Fi support could harm the program's ability to support the needs of local schools and libraries. They urged the **FCC** to raise the funding cap, arguing the program hasn't been able to keep up with the needs of schools and libraries. "As the founders of the E-Rate program, we applaud your commitment to schools and libraries across the country. Nothing short of our international competitiveness and children's future are at stake with E-Rate modernization. That is why it is so important for you to take the time necessary to get this right," they wrote. The move followed Republican commish *Ajit Pai's* challenge of *Wheeler's* WiFi proposal due to concerns also related to program sustainability. -- The



**Senate Intelligence Committee** OKed the Cybersecurity Information Sharing Act Tues, which would allow increasing the sharing of classified and unclassified cyberthreat information with the private sector. It would also authorize companies to voluntarily share cyberthreat information with each other and the government for cybersecurity purposes only.

**Streaming Research:** More than 25% of US HHs will have a streaming media player by 2015, with new entries such as **Amazon** Fire TV driving expansion of the connected CE category, **Parks Associates** said in a report. **Roku** accounted for nearly half of streaming media players purchased in the US in 2013, while **Apple TV**, a distant 2nd, had logged in 26%. Roku was also the most-used streaming player: Among US broadband HHs with a streaming player, 44% use a Roku player the most in 2013, while 26% use Apple TV the most. That's a wider gap from 2012, when 37% streaming media users used Roku the most and 24% used Apple TV the most. Close association with Netflix, a large library of channel apps and the ability to offer different models has allowed Roku to outpace Apple TV in sales and usage, the research firm said.

**Discovery at TCA:** Discovery took pains to downplay the naked in "Naked and Afraid" (Sats, 10p), the survival series where 2 people exist for 21 days in the wild, without clothes. "This is a family show, families all over the country are watching it because it's not about nudity... it's about survival," said exec prod *David Garfinkle*. Yet Discovery also gladly showed clips of celebs like *Ellen DeGeneres* touting the series. In those cases the clothes-less aspect dominated. -- **American Heroes Channel** is moving beyond heroes, examining 6 legends of the Wild West who toggled between being good guys and villains with "Gunslingers" (July 20 premiere). As western historian *Bob Boze Bell* said, "To catch a bad man it takes a good man who's a bad man." As actor *Walt Willey* put it, *Jesse James* was "a bandit, a robber... but it was in a Robin Hood context." -- Now in its 6th season, **Animal Planet's** "Pitbulls & Parolees" continues to change lives—both canine and human. "I never thought in a million years I'd be sitting here answering your questions," said ex-parolee **Earl Moffett**, who just bought his 1st house. Villalobos Rescue Center founder **Tia Torres** said the show's success actually has a downside, now that shelter is overwhelmed with abandoned dogs. "That exposure has sort of backfired on us," she said. -- In **Destination America's** "Hillbilly Blood" (premieres Aug '14), *Spencer "Two Dogs" Bolejack* and *Eugene Runkis* are looking to break hillbilly stereotypes. "A lot of the hillbillies I know are really intelligent people," said Runkis. Some purify their own water and even create their own electricity, he said. "There's a lot of wisdom in the hills," Bolejack said. "Mountain folks are smart. They got a lot of wit and a lot of grit." -- In **ID's** miniseries "Heartbreakers" (premieres Q3 '14), hunky Hollywood actors from the '80s and '90s reenact true stories of real-life heartthrobs who turn out to be disasters—even criminal. Exec prod *Pamela Deutsch* recounted the fun of "casting against type," with long-time "Hercules" star *Kevin Sorbo* playing an anti-hero in one story.

**Nat Geo at TCA: National Geographic Channels** took pains at summer TCA to highlight the diversity of the stories it tells. The breadth of its slate was apparent with its initial panels for 2 films: "American War Generals" (premieres Sept 14) and "Sleepless in America" (Nov premiere). The first film allows 11 generals, including notables like *Colin Powell*, *Wes Clark*, *Barry McCaffrey*, *Stanley McChrystal* and *David Petraeus*, to sound off about Iraq, Afghanistan, Desert Storm, Vietnam and the Cold War. Attacking another serious topic, the Sleepless film employs medical experts to decry Americans' lack of sleep, which, they say, is leading to increased risk for heart disease, diabetes, Alzheimer's and obesity. As sleep expert *Dr. Matthew Walker* told TV critics, for Americans who sleep less than 7 hours/night "if you don't snooze, you lose." -- **Nat Geo Wild's** "Urban Jungle" (premieres Aug 3 and simulcast on **Nat Geo Channel**) will introduce viewers to urban-dwelling wild animals—from sloths in Rio to 14-foot pythons living in downtown Bangkok. Executive producer *Geoff Luck* said "part of what we are trying to do is to educate people about it so that you can make good choices and learn how to properly interact with animals." While being entertaining, of course. -- *Dr. Susan Kelleher*, aka "Dr. K" of Nat Geo Wild's "Dr. K and the Exotics" (premieres Oct), owns an exotic animal care practice in South Florida. Like "Urban Jungle," one of the show's goals is to inform the public. "Our job is to educate these people about these animals who have wild needs," she said, which ultimately allows her to make their lives—lived in captivity—better for the animals. -- Not just another food show, "Eat: The Story of Food" (premieres Nov) will delve into the history and attitudes about food—with a sustainability message interwoven throughout, said exec producer *Nicole Rittenmeyer*. "It draws connections for you and makes you question... your consuming, your buying practices, the choices that you make in your home," she said. "That's not the point of it, but you kind of can't help but do that once your eyes have been opened to like how vast and rich the backstory is behind what you're eating." Also premiering in Nov is "*Eric Greenspan is Hungry*" following the owner of several L.A. restaurants looking for the "meatiest" recipes nationwide. Greenspan told critics he quickly understood the diversity of the American palate as he traveled. "Each one of these people had a different identity built with the kind of food that they cooked," he said.

**WGN America at TCA:** Following up its 1st original scripted series, "Salem," **WGN America's** next foray is "Manhattan" (July 27 premiere), a 13-part series examining the great minds—and everyone else—who were holed up in a classified town in N.M., inventing the atomic bomb. Clips mixed momentous scenes in labs and military installations with the quotidian.

# BUSINESS & FINANCE

**Programming:** EPIX announced "To Love With Russia," a look at the lives and careers of LGBT athletes from the 2014 Sochi games and legendary Olympic LGBT athletes (premieres October 22 at 8PM ET). -- From the producers of "Downton Abbey" comes **BBC America's** new drama "The Last Kingdom." Capturing medieval warfare and adapted from *Bernard Cornwell's* best-selling "The Saxon Stories," the series will air this fall.

**People:** Big boost for *Lenny Daniels*, who was named pres, **Turner Sports** Wed. He has served as evp, COO since 2009. In his new role, he'll oversee all aspects of Turner Sports' day-to-day mgmt. He reports to Turner pres *David Levy*. -- *Lauren Zalaznick* sighting... The former **NBCU** exec is serving as a strategic adviser to **Refinery29**, a fashion and styled-focused website aimed at millennial women. Last year, the company raised \$20mln in Series C funding led by **Stripes Group**. Ramping up video was one of the priorities behind the funding. Zalaznick's background is a good fit, given her time leading **Bravo** and NBCU's digital networks. -- **Discovery** promoted *Rick Holzman* to gm, evp of **Animal Planet**. Previously, Holzman served as evp, programming and scheduling for Animal Planet and **Science**. -- Former MD chief deputy atty gen *Katherine Winfree* has joined the **FCC's** Enforcement Bureau as chief of staff.

## CableFAX Daily Stockwatch

Company	07/09 Close	1-Day Ch	Company	07/09 Close	1-Day Ch
<b>BROADCASTERS/DBS/MMDS</b>					
DIRECTV:	86.00	0.37	CONVERGYS:	21.04	(0.18)
DISH:	65.96	0.80	CSG SYSTEMS:	26.65	0.10
ENTRAVISION:	6.09	0.12	ECHOSTAR:	51.29	(0.27)
GRAY TELEVISION:	12.97	0.22	GOOGLE:	576.08	4.99
MEDIA GENERAL:	22.19	1.01	HARMONIC:	7.33	(0.03)
NEXSTAR:	50.63	0.11	INTEL:	30.89	0.10
SINCLAIR:	34.98	0.49	INTERACTIVE CORP:	65.87	(0.34)
<b>MSOS</b>					
CABLEVISION:	17.86	0.19	JDSU:	12.15	(0.06)
CHARTER:	162.15	3.53	LEVEL 3:	44.57	0.89
COMCAST:	54.73	1.42	MICROSOFT:	41.67	(0.11)
COMCAST SPCL:	54.27	1.28	NIELSEN:	48.87	0.14
GCI:	11.07	(0.14)	RENTRAK:	53.04	0.81
GRAHAM HOLDING:	736.40	14.71	SEACHANGE:	8.11	(0.02)
LIBERTY GLOBAL:	44.09	0.27	SONY:	16.79	0.02
LIBERTY INT:	28.94	0.04	SPRINT NEXTEL:	8.41	0.09
SHAW COMM:	26.19	0.22	TIVO:	12.77	(0.02)
TIME WARNER CABLE:	149.77	4.05	UNIVERSAL ELEC:	49.52	0.97
<b>PROGRAMMING</b>					
21ST CENTURY FOX:	35.91	0.81	VONAGE:	3.62	(0.12)
AMC NETWORKS:	60.73	0.71	YAHOO:	34.85	0.32
CBS:	63.93	0.54	<b>TELCOS</b>		
CROWN:	3.62	UNCH	AT&T:	35.65	0.09
DISCOVERY:	78.71	2.86	CENTURYLINK:	36.59	0.09
DISNEY:	87.22	1.36	TDS:	25.18	(0.23)
GRUPO TELEVISA:	34.36	(0.09)	VERIZON:	48.90	0.14
HSN:	57.62	(0.6)	<b>MARKET INDICES</b>		
LIONSGATE:	28.28	0.11	DOW:	16985.61	78.99
MADISON SQUARE GARDEN:	62.24	0.82	NASDAQ:	4419.03	27.57
SCRIPPS INT:	80.85	0.58	S&P 500:	1972.83	9.12
STARZ:	29.05	(0.28)			
TIME WARNER:	72.41	1.66			
VALUEVISION:	4.70	(0.04)			
VIACOM:	86.58	(0.03)			
WWE:	11.58	(0.02)			
<b>TECHNOLOGY</b>					
ADVANTAGE:	2.61	0.02			
ALCATEL LUCENT:	3.62	0.05			
AMDOCS:	47.21	0.06			
AMPHENOL:	97.28	(0.4)			
AOL:	40.52	0.33			
APPLE:	95.39	0.04			
ARRIS GROUP:	31.61	0.05			
AVID TECH:	7.77	0.02			
BROADCOM:	38.16	0.54			
CISCO:	25.44	0.37			
CONCURRENT:	7.32	(0.03)			



## Think about that for a minute...

### Follow Up

#### Commentary by Steve Effros

Every once in a while I like to follow up on some of the columns I've written and the comments and emails I've received regarding them. Sometimes it's because someone has come up with a novel angle on what was said, or provided new information (I encourage you all to email me with ideas like that, it always helps!) and sometimes it's because additional things have occurred that I think simply need some sort of response, or the new information could really be appreciated. So herewith, some follow-up.

In last week's column on the Aereo Supreme Court decision, and Justice Antonin Scalia's acidic dissent, I mentioned that the Justice is well known for his preference for the theory of "textualism," that is, attempting to adhere as closely as possible only to the actual text of a written law. Intent is not what the Justice seems to care about, or believe the Court should consider, only the words and how they all must be applied. The Majority based its decision on what it considered the clear intent of the law, and the clear intent of Aereo to circumvent the law.

For those of you who care about these legal niceties—and apparently there are quite a few of you based on the feedback I got—I would recommend to you a very short column by a copyright law expert that takes Scalia on with his own theories. It's really quite something. He points out that there are other words in the statute that would make no sense at all, and would be essentially nullified and ignored (a cardinal sin for "textualists") if Scalia's interpretation was correct! It's really a good read. Check it out [here](#).

I'm also constantly amused or maybe bemused by the appeals sent out by the so-called "public interest" lobbyists. In this case, Public Knowledge. They just sent one out on Aereo complaining that the decision was likely



to stifle "innovative" technology even though Aereo did not use any, and they also, amazingly, said that, and I'm quoting here: "With Aereo, no one was losing out. These broadcast signals were already available to Aereo users. Companies who make the programs were still getting paid by the broadcasters. And broadcasters were still getting paid by the advertisers."

Now you might notice that there is a little fact left out of that analysis. It says nothing about copyright or retransmission consent fees! The screed then goes on to blast the broadcasters for imposing their will on consumers and asks all who read the broadside to send "tweets" supporting Aereo. This is the quality of the information folks are getting to "support" comments being filed at the FCC and with members of Congress. With "public knowledge" at that level, the comments should simply be ignored.

While I'm no fan of the broadcasters (I have long said the spectrum should be taken back) and I don't like copyright and retrans fees either, here's another fact that Public Knowledge left out: the current head of the organization, when he was in charge of lobbying for another "public interest" group, the Consumer Federation (Consumers Union), was the principal advocate of the adoption of "pro consumer" legislation that gave the broadcasters retransmission consent rights in the first place! Ads placed by the "consumer group" were paid for by the NAB. Now, they're evil. Why should anyone listen to these folks when they provide such selective information and seemingly have amnesia about their own past arguments allegedly in favor of consumers?

*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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