

Cablefax Daily™

Wednesday — August 26, 2015

What the Industry Reads First

Volume 26 / No. 164

Franchise Fracas: From Class Action to Back Pay, Towns Want More

A pair of recent lawsuits highlights an old industry adage—MVPDs and municipalities will never see eye-to-eye on franchise fees. Last week, the PA towns of West Bradford, Monroeville and East Brandywine filed suit against **Verizon**, claiming the telco has shorted them on cable franchise fees by under reporting gross revenues. They are seeking class action status. At issue is what happens when customers pay late payment fees. Under the franchise agreements, Verizon must pay the franchising authorities 5% of gross revenues, with late payment fees included in the agreements' definition of gross revenues, the towns said. However, the towns told the court that Verizon systematically underreports the late payment fees from subs, thus underpaying the fees due. Verizon declined to comment. The 3 municipalities claim that Verizon has failed to account for late payment fees nationwide and has underreported revenue for many years, thus they're seeking to have the case class action certified. Verizon has cable franchises in at least 12 states and DC. Last Wed, the town of Fairfield, ME, filed a motion for summary judgment in US District Court, claiming **Time Warner Cable** is not paying it the 5% of gross revenue it is required to pay under franchise agreements. It's seeking some \$353K, for the period not covered by the statute of limitations. The town filed suit back in Oct, alleging that TWC should be paying 5% on all gross revenue, not just that attributable to limited basic service. It said that **Adelphia**, which served the area before Time Warner Cable bought the system, was notified in Oct 2005 that the Town Council passed a resolution to increase the franchise fee agreement to 5% of all gross revenues. According to court documents, the company increased its payment from 3% of gross rev for limited basic to 5% of all gross revenue from Aug 2006-Dec 2006. "In January 2007, the franchise fee payments were for unknown reasons reduced to 5% of gross revenues for limited basic cable only, where they have remained to this day," Fairfield told the court. TWC called the claims "baseless" because they're not in the agreement or town minutes. What's more, it contends the town has rejected its offer to raise the fees to 5% of all gross revenues because the MSO can pass that increase on to customers. "The Town Council's concerns about being responsible for rate increases on cable subscriber bills, however, apparently does not apply to seeking the same money retroactively as a lump-sum. That is because the members of the Town Council have stated that they do not believe that TWC will risk alienating customers by passing through to customers the large lump-sum payment the

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CABLEFAX DAILY (ISSN 1069-6644) is published daily by Access Intelligence, LLC ● www.cablefax.com ● 301.354.2101 ● Editorial Director: Amy Maclean, 301.354.1760, amaclean@accessintel.com ● Associate Publisher: Michael Grebb, 323.380.6263, mgrebb@accessintel.com ● Editor: Joyce Wang, 301.354.1828, jwang@accessintel.com ● Cablefax/Screenster Editor: Kaylee Hultgren, 212.621.4200, khultgren@accessintel.com ● Advisor: Seth Arenstein ● Dir. of Business Dev.: Rich Hauptner, 203.899.8460, rhauptner@accessintel.com ● Jr. Acct. Exec: Olivia Murray, 301.354.2010, omurray@accessintel.com ● Dir of Market Dev: Laurie Hofmann, 301.354.1796, lhofmann@accessintel.com ● Production: Joann Fato, jfato@accessintel.com ● Diane Schwartz, SVP Media Comms Group, dschwartz@accessintel.com ● Group Subs: Laurie Hofmann, 301.354.1796, lhofmann@accessintel.com ● Sub Questions, Client Services: 301.354.2101, clientservices@accessintel.com ● Annual subscription price: \$1,649/year ● Access Intelligence, LLC, 4 Choke Cherry Road, 2nd Floor, Rockville, MD 20850

Town seeks in this litigation,” TWC said in its request for summary judgment. Look for even more franchise news as several towns consider the transfer of Time Warner Cable and **Bright House** franchises to Charter per the proposed mergers. Next month, Maui County, HI, will hold a series of hearings on transferring TWC’s franchise to Charter.

Cablevision/CBS: As part of a broad multi-year carriage deal, **Cablevision** became the 1st **CBS** distributor to offer the standalone streaming CBS All Access service and **Showtime’s** OTT offering. Pricing plans, timing and other particulars will be announced later. The renewal covers retrans for CBS-owned stations and the continued carriage of Showtime, **CBS Sports Net** and **Smithsonian Channel**. “As the first distributor to agree to provide CBS’ new Internet services, Cablevision continues to expand its portfolio of next-generation offerings, connecting customers to the programming they value when and where they want it,” evp of programming *Tom Montemagno* said in a statement. The MSO has been actively adding premium streaming options. It was the 1st pay-TV provider to offer HBO’s standalone service HBO to broadband subs.

NAB on Retrans: The back-and-forth on retrans between broadcasters and MVPDs never stops. In a recent teleconference with **FCC** Republican commish *Ajit Pai*, **NAB** evp/general counsel *Rick Kaplan* proposed including a “bad actor factor” in the agency’s evaluation of a good faith complaint. The factor would compel the FCC to consider circumstances in which an MVPD created “an impasse merely or primarily for advocacy purposes and at the expense of consumers,” according to NAB’s ex parte filing on the teleconference. “Such an approach would hopefully dissuade certain MVPDs from continuing the apparent practice of manufacturing disputes that harm consumers merely to gain an advocacy foothold at the Commission or in Congress.” Calling **Mediacom** “the pay TV poster child for self-serving behavior,” NAB’s filing noted the MSO has petitioned the FCC for a retrans rulemaking and has recently been in retrans disputes with **Granite Broadcasting** and **Media General**. “They [Mediacom] even built a website to publicize the dispute and to transparently link the impasse with their petition for rulemaking,” NAB said. Mediacom said it rarely files petitions for rulemaking, “and when we do, it is with the sincere belief that the issue is important for consumers, that our proposal is in the public interest and, based on the advice of our outside legal counsel, that the rules requested are within the scope of the Commission’s authority,” *Tom Larsen*, svp of government and media relations, wrote in a response to NAB’s filing. He said the only publicly filed opposition to Mediacom’s petition came from NAB and the 5 broadcast station owners “collectively responsible for over 170 blackouts...” Larsen requested a list of citations to sources where the Mediacom petition has been ridiculed by commentators outside the broadcast industry.

Ratings: How hot was the premiere of **AMC’s** “Fear the Walking Dead” Sun? It had double the audience of the #2 cable program of the week. **TNT’s** “Rizzoli & Isles” averaged 4.5mln total viewers compared the zombie series’ 10.1mln. The new show’s viewership propelled AMC to 3rd place for the week in terms of P2+ delivery in prime (1.68mln). **Fox News** had the highest P2+ prime delivery last week, averaging nearly 2mln, with **Disney** (1.7mln) taking 2nd place.

Brag Book: **NBCSN’s** NASCAR Sprint Cup coverage Sun was the most-watched sports coverage on cable for the week, averaging 3.6mln viewers. -- **VH1’s** “Love & Hip Hop Atlanta” was the most-watched reality series for the week (3.3mln viewers), followed by **A&E’s** “Duck Dynasty” (3.26mln) and **OWN’s** “Haves and the Have Nots” (3mln). -- **IN-SP’s** primetime rating is up 37% in prime YOY, averaging 403K viewers last week. That puts the net in good company, as it joins nearly 2 dozen other cable nets (including **OWN**, **Nat Geo** and **FXX**) in averaging a 0.2 prime rating for the week. INSP has cracked **Nielsen’s** top 35 primetime basic cable rankings list for 3 weeks in a row.

Comcast Extends Fiber: **Comcast Business** has expanded its fiber network to the Meyers Business Park in Chico, CA. The ISP installed more than 3.5 miles of fiber from its existing lines to the business parks and its 166 businesses. The network is expected to offer speeds up to 10 Gbps.

Charter Merger: **Block & Leviton**, a Boston-based law firm representing investors nationwide, has filed a lawsuit over **Charter’s** proposed acquisition of **Time Warner Cable** and **Bright House**. The suit claims it unfairly favors **Liberty Broadband**, which owns approx 26% of Charter’s outstanding stock. The suit claims share issuances to Liberty are unfairly priced, and it has a beef with Liberty’s irrevocable 5-year voting proxy that will bring its voting power to 25%. TWC stockholders are slated to vote on the deal Sept 21.

Programming: New **VH1** series “VH1 Family Therapy with Dr. Jenn” premieres in early 2016, featuring 5 celebrity families seeking therapy. -- **E!’s** fall original programming lineup includes 2 new series premieres and several returning franchises.

BUSINESS & FINANCE

Kicking off at the end of summer is "Fashion Police" on Mon at 8pm, followed by "House of DVF" Season 2 on Sept 13. The *Kardashian* sisters return on Sept 20, followed by spinoff series "Dash Dolls." Later this fall, *Christina Milian* comes back for a 2nd season of "Christina Milian Turned Up" on Nov 3, followed by drama series "The Royals" 2nd season premiere on Nov 15. -- **Lifetime, A&E and History** will air "War and Peace," based on *Leo Tolstoy's* novel. The limited series event will simulcast in the US on the 3 nets in Jan. -- **Discovery Channel** premieres "Rusted Development" on Sept 7 for a 2nd season.

People: *Michael Hawkey*, head of **EchoStar's Sling Media**, left the division to join **Rovi** as its svp/gm. He will report to evp/COO *John Burke*. -- Multiplatform TV search and recommendation firm **ThinkAnalytics** tapped *Rick Schiavinato* as vp of sales and business development for Latin America. He was previously vp of operations, customer service and inside sales at **Arris** (for 11 years). -- **Sony Pictures Worldwide Nets** pres *Andy Kaplan* was elected **NATPE** chmn. He succeeds *Jordan Levin*, who served as board chair for 4 years. -- **Robert Gold**, a 21-year **Discovery Comm** vet, will join **Poker Central** in mid-September as svp, distribution. The poker channel is set to launch on Oct 1. Gold served as vp, domestic distribution national accounts at Discovery.

Cablefax Daily Stockwatch

Company	08/25 Close	1-Day Ch	Company	08/25 Close	1-Day Ch
BROADCASTERS/DBS/MMDS					
DISH:	57.83	(0.4)	CONVERGYS:	21.33	0.16
ENTRAVISION:	7.37	0.02	CSG SYSTEMS:	30.00	(0.4)
GRAY TELEVISION:	10.86	0.27	ECHOSTAR:	42.01	0.01
MEDIA GENERAL:	11.07	(0.23)	GOOGLE:	582.06	(7.55)
NEXSTAR:	43.95	(0.68)	HARMONIC:	5.49	0.02
SINCLAIR:	25.18	(0.88)	INTEL:	25.87	(0.38)
TEGNA:	22.42	(0.93)	INTERACTIVE CORP:	67.24	(0.02)
MSOS					
CABLE ONE:	413.23	3.24	LEVEL 3:	43.15	(1.27)
CABLEVISION:	22.59	(0.07)	MICROSOFT:	40.53	(1.15)
CHARTER:	171.29	(0.21)	NETFLIX:	101.53	4.65
COMCAST:	53.85	(0.56)	NIELSEN:	42.80	(0.57)
COMCAST SPCL:	54.54	(0.73)	RENTRAK:	43.55	(0.82)
GCI:	16.31	0.16	SEACHANGE:	5.81	(0.08)
LIBERTY BROADBAND:	52.52	0.78	SEACHANGE:	5.81	(0.08)
LIBERTY GLOBAL:	46.43	(0.24)	SONY:	23.79	0.54
SHAW COMM:	19.34	(0.17)	SPRINT NEXTEL:	4.60	(0.01)
SHENTEL:	37.43	(0.67)	TIVO:	8.64	(0.09)
TIME WARNER CABLE:	180.72	1.55	UNIVERSAL ELEC:	43.95	0.22
PROGRAMMING					
21ST CENTURY FOX:	26.76	0.10	VONAGE:	5.73	(0.03)
AMC NETWORKS:	69.26	3.64	YAHOO:	31.74	0.43
CBS:	43.27	(0.68)	TELCOS		
CROWN:	4.48	(0.02)	AT&T:	31.80	(0.57)
DISCOVERY:	25.83	(0.22)	CENTURYLINK:	25.17	(0.69)
DISNEY:	95.89	0.53	FRONTIER COMMUNICATIONS:	4.93	0.02
GRUPO TELEVISIA:	28.90	0.10	TDS:	26.93	(0.63)
HSN:	60.20	2.49	VERIZON:	43.50	(1.24)
LIONSGATE:	35.89	0.42	MARKET INDICES		
MSG:	70.69	1.85	DOW:	15666.44	(204.91)
SCRIPPS INT:	51.38	(0.34)	NASDAQ:	4506.49	(19.76)
STARZ:	35.99	0.33	S&P 500:	1867.62	(25.59)
TIME WARNER:	69.69	(0.12)			
VIACOM:	40.37	0.20			
WWE:	19.34	0.23			
TECHNOLOGY					
ADDVANTAGE:	2.32	0.05			
AMDOCS:	55.40	(0.09)			
AMPHENOL:	49.59	0.53			
APPLE:	103.74	0.62			
ARRIS GROUP:	24.99	(0.33)			
AVID TECH:	7.91	0.29			
BLNDER TONGUE:	0.55	0.09			
BROADCOM:	47.19	(0.31)			
CISCO:	24.62	(0.57)			
COMMSCOPE:	25.83	0.18			
CONCURRENT:	5.09	(0.03)			

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