

Cablefax Daily™

Thursday — October 22, 2015

What the Industry Reads First

Volume 26 / No. 204

Top Secret: Confidential Contracts Still at Heart of Merger Review

The issue of how the **FCC** handles confidential information in merger review proceedings continues to be a hot potato. The agency held off on starting the official review clock on **Charter-Time Warner Cable-Bright House** until it released a new order for handling the highly sensitive info in Sept. Now programmers and **Comcast-NBCU** are asking the Commission to reconsider those rules. Comcast claims the Sept order substantially changed the FCC's rules and created new approaches under which sensitive info could be disclosed under a protective order and publicly in response to Freedom of Information requests. Programmers, including **CBS, Disney** and **Univision**, filed a similar petition for reconsideration, arguing that the new order contravenes a court ruling that the FCC show a necessity must be made before sensitive info may be disclosed. "The Commission should reconsider and vacate the order, establish a separate docket where these important confidentiality issues can be fairly addressed through notice-and-comment rulemaking, and allow this merger review docket to proceed without delay," Comcast said. It stressed this could be done without delaying the Charter transactions. This issue first blew up during the FCC's review of the now scuttled Comcast-TWC merger and since approved **AT&T-DirectTV** deal. Comcast supported the FCC's authority to order the disclosure of confidential info, such as programming contracts, to authorized 3rd parties who sign a protective order. However, programmers successfully challenged the FCC's plan, with the DC Circuit siding with the networks. The FCC attempted to address the court's concerns in its Sept order, but Comcast and the programmers believe it went too far and potentially makes the sensitive info available to the public without any protective order safeguards. "The new approach guts the fundamental protection the Commission long afforded sensitive information, which its rules provide shall not be made 'routinely available for public inspection,'" the content companies said. The programmers and Comcast argue that the FCC has unnecessarily created this situation by attempting to use a merger docket to decide critically important confidentiality issues that have an industry-wide significance. GOP commissioners *Ajit Pai* and *Michael O'Rielly* have voiced similar concerns that the FCC circumvented the notice process in changing the rules.

ESPN Layoffs: Those rumored layoffs at **ESPN** became official Wed, with a spokesperson saying that approx 300 people will be impacted, or about 4% of its workforce. The cuts are across the board, though primarily in the US. In a memo to employees, ESPN chief *John Skipper* said the organization changes are to better support future goals—including integrating emerging tech into all aspects of the business. The memo made no mention of cord-cutting or decreased live sports viewing, instead focusing on the changing landscape. Changes include better integration of the distribution division so that it's less bifurcated—(ie, no dividing things up by traditional MVPDs, new players, digital, etc). Skipper said employees impacted will receive a minimum notice of 60 days, outplacement benefits and a severance package "reflective of their years of service." "I realize this process will be difficult—for everyone—but we believe the steps we are taking will ultimately create important competitive advantages for our business over the long term," Skipper wrote.



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YouTube Goes Subscription: YouTube officially entered the SVOD business Wed with YouTube Red, a \$9.99 a month subscription service that allows subs to access video without ads, save videos to watch offline across platforms and play videos in the background. IOS users pay \$12.99 a month for the service, which YouTube chalked up to the 30% take **Apple** has on in-app purchases. In a blog post, the **Google** unit said the membership extends across devices and anywhere users sign into YouTube, including the recently launched Gaming app and the upcoming YouTube Music app announced Wed. YouTube Music was designed to enable easier music discovery, watching and listening. In addition, YouTube Red works with Google Play Music so subscribing to one service automatically gets access to the other. Next year, YouTube Red is expected to feature original shows and movies. *WSJ* reported Mon that several programmers, including **NBCU** and **Fox Sports**, have agreed to provide ad-free content for the service. As for the free, ad-supported version of YouTube, it's not going away. "You'll still be able to enjoy YouTube, along with the YouTube Kids, Gaming and Music apps free of charge," YouTube said. Google is offering a 1-month free trial of the premium offering beginning Oct 28. YouTube started an initiative last year to invest in its creators. As part of the YouTube Red launch, it announced some of the original series and movies, including "Scare PewDiePie," a reality-adventure series from the creator/exec producers of **AMC's** "The Walking Dead"; "Sing It!," a scripted comedy; and "Lazer Team," a feature-length action comedy.

Arris/Pace: Arris shareholders approved the **Pace** acquisition at a shareholder meeting Wed. Pace, as required by law, is scheduled hold a court-ordered meeting and a general meeting on Thurs to approve the transaction. Stockholder approvals are conditioned on the merger's closing. Arris proposed the \$2.1bn deal in April. It's expected to close at year-end.

DirecTV's Hotel Deal: AT&T inked a deal with **Starwood Hotels & Resorts Worldwide**, making **DirecTV** the preferred video and audio provider in the US. The contract enables Starwood's guests to access DirecTV's NFL Sunday Ticket, nearly 100 HD channels and programming for the 4 major sports leagues. Starting Wed, Starwood brand **Sheraton** will begin upgrading its HDTV service and launching new channels to its US hotels. Also as part of the contract, Starwood properties will gain access to DirecTV's 2nd-generation head-end platform and DirecTV Residential Experience, which features nearly 100 HD channels, sports programming, an interactive program guide and DVR capabilities.

TiVo Eyes Free Rating: **TiVo Research**, the company's research and analytics unit, will provide free TV ratings starting in 1Q. Why free? "We don't think anyone should have to pay for the most basic data we provide—demographic TV ratings... We do this with anonymized individual household-level viewing data from more than two million homes, directly matched to online exposure and purchase data," TiVo said on its Website. Everyone's wanting a piece of **Nielsen** action...

FCC Confirmation: **Sen Commerce** will hold a confirmation hearing for the reappointment of **FCC** Democratic commish *Jessica Rosenworcel* on Oct 28 at 10am. Her first term expired in June, but she may remain in her current role until the end of 2016 while awaiting Senate confirmation. Rosenworcel will testify.

Ratings: The 2015 National League Championship Series Game 3 between **Chicago Cubs** and **NY Mets** on **TBS** Tues night averaged 9.2m total viewers and scored a 5.8 US HH rating, making it the net's most-viewed LCS Game 3 ever and its most-watched NLCS game of all time. This year's NLCS Game 3 is up 92% in total viewers and 87% in US HH over the comparable NLCS coverage in 2013.

Programming: **Discovery Channel** canceled its longest running series "Mythbusters" after 248 eps, 2950 experiments,



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1050 myths and 900 explosions. The final season with host *Adam Savage* and *Jamie Hyneman* will air Jan 9. The Mythbusters library will move to Discovery's sister network **Science** in 2016.

Beta Research: In terms of subs' favorite digital basic nets, **Fox Movie Channel** scored the #1 seat, with 20% of digital cable subs choosing it as their favorite net, according to the 2015 **Beta Research** Digital Cable Subscriber Study. That was followed by **Cooking Channel** at 19%, and **BBC America, ID, Nat Geo Wild** and **NFL Network**, all at 18%. **Fox Movie Channel** was also the most important basic net among potential cord-cutters, with 48% of them rating the net as important to enjoyment of cable service, followed by BBC America, **BBC World News, Discovery Family Channel** and **Disney XD** at 45%. In terms of average perceived value among viewers, **SEC Net** dominated at \$2.15, followed by **NFL Network** at \$2.14, **Fusion** at \$2.10 and **AXS TV** at \$2.08. In terms of viewer satisfaction, ID came out on top, with 56% viewers of the net saying they are very satisfied. Nat Geo Wild followed closely behind at 53%. Cooking Channel tied with NFL Net at 52%. BBC America, BBC World News and **Science Channel** all scored 51%. The study was conducted June online among a national sample of 1,841 digital cable subs (1,700 adults and 141 teens) from 32 cable systems.

Cablefax Daily Stockwatch

| Company | 10/21 Close | 1-Day Ch | Company | 10/21 Close | 1-Day Ch |
|------------------------------|-------------|----------|-----------------------|-------------|----------|
| BROADCASTERS/DBS/MMDS | | | | | |
| DISH: | 61.01 | (1.17) | CONVERGYS: | 24.62 | (0.9) |
| ENTRAVISION: | 8.34 | UNCH | CSG SYSTEMS: | 31.91 | (0.3) |
| GRAY TELEVISION: | 14.79 | 0.20 | ECHOSTAR: | 44.45 | (0.64) |
| MEDIA GENERAL: | 14.50 | (0.25) | GOOGLE: | 642.61 | (7.67) |
| NEXSTAR: | 50.71 | (1.45) | HARMONIC: | 5.89 | (0.21) |
| SINCLAIR: | 28.63 | (0.72) | INTEL: | 33.37 | (0.07) |
| TEGNA: | 24.99 | (0.05) | INTERACTIVE CORP: | 67.35 | (1.66) |
| MSOS | | | | | |
| CABLE ONE: | 425.09 | (9.88) | LEVEL 3: | 47.36 | (0.73) |
| CABLEVISION: | 32.77 | (0.17) | MICROSOFT: | 47.20 | (0.57) |
| CHARTER: | 175.35 | (10.23) | NETFLIX: | 97.96 | (1.03) |
| COMCAST: | 61.11 | (0.44) | NIELSEN: | 45.85 | (2.68) |
| COMCAST SPCL: | 61.57 | (0.68) | RENTRAK: | 51.20 | (2.41) |
| GCI: | 19.73 | 0.30 | SEACHANGE: | 6.77 | (0.17) |
| LIBERTY BROADBAND: | 52.60 | (1.88) | SONY: | 28.10 | 0.87 |
| LIBERTY GLOBAL: | 44.26 | (1.13) | SPRINT NEXTEL: | 4.34 | (0.02) |
| SHAW COMM: | 20.56 | (0.13) | TIVO: | 9.02 | (0.23) |
| SHENTEL: | 46.44 | (0.74) | UNIVERSAL ELEC: | 44.58 | (1.9) |
| TIME WARNER CABLE: | 180.44 | (6.87) | VONAGE: | 5.89 | (0.25) |
| PROGRAMMING | | | | | |
| 21ST CENTURY FOX: | 29.24 | (0.33) | YAHOO: | 31.12 | (1.71) |
| AMC NETWORKS: | 68.13 | (1.25) | TELCOS | | |
| CBS: | 43.18 | (0.77) | AT&T: | 33.60 | (0.15) |
| CROWN: | 5.59 | (0.14) | CENTURYLINK: | 27.20 | (0.05) |
| DISCOVERY: | 28.81 | (0.37) | FRONTIER: | 5.29 | (0.03) |
| DISNEY: | 110.09 | 0.25 | TDS: | 26.10 | (0.64) |
| GRUPO TELEVISIA: | 26.35 | (0.59) | VERIZON: | 44.86 | (0.38) |
| HSN: | 59.79 | (0.3) | MARKET INDICES | | |
| LIONSGATE: | 39.18 | (0.66) | DOW: | 17168.61 | (48.5) |
| MSG NETWORKS: | 20.05 | 0.06 | NASDAQ: | 4840.12 | (40.85) |
| SCRIPPS INT: | 56.02 | (0.54) | S&P 500: | 2018.94 | (11.83) |
| STARZ: | 37.94 | (0.54) | | | |
| TIME WARNER: | 71.13 | (0.6) | | | |
| VIACOM: | 50.46 | (0.78) | | | |
| WWE: | 18.95 | (1.36) | | | |
| TECHNOLOGY | | | | | |
| ADDVANTAGE: | 2.29 | 0.03 | | | |
| AMDOCS: | 58.87 | 0.15 | | | |
| AMPHENOL: | 50.43 | (2.98) | | | |
| APPLE: | 113.76 | (0.01) | | | |
| ARRIS GROUP: | 28.26 | (0.6) | | | |
| AVID TECH: | 8.28 | (0.36) | | | |
| BLNDER TONGUE: | 0.50 | (0.16) | | | |
| BROADCOM: | 51.56 | (0.12) | | | |
| CISCO: | 28.28 | (0.22) | | | |
| COMMSCOPE: | 31.34 | (0.51) | | | |
| CONCURRENT: | 5.03 | (0.01) | | | |

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Think about that for a minute...

The Network Paradox

Commentary by Steve Effros

In last week's column, I started to take a look at what a "network" actually is, and the problematic way we seem to be viewing, and considering regulating networks. I'd like to follow up this week with an example of how difficult this whole notion of networks and network regulation is becoming.

There's little dispute that there are a lot of different types of networks. Most, however, have similar attributes: there has to be some guiding principal, some overall control to make sure the network continues to operate, and above all, there has to be scale. The larger the network, especially in the context of telecommunications, the better it is for the user, the consumer.

The best example of this is the way the telephone network developed. Originally there were many small networks of telephones in local areas connected together by many different independent companies. But folks could only connect inside the network. If you were trying to contact someone in a different town, you might not be able to do so because that other person was not on the same network. So deals were cut to connect the networks, but many used different technologies. It didn't work terribly well. In order to make the national telephone system efficient and workable, ultimately the "Bell System" was created, AT&T, to link everything together. Yes, there were regulatory conditions, but the overriding fact was that for the network to supply the service everyone wanted, it needed scale and uniformity. Big, contrary to much current popular thinking, is sometimes better.

It's an irony, therefore, that when it comes to broadband, the argument seems to be that the technology will develop best if it is prevented from getting big, if the network is not unified. And indeed, now, legal conditions are being proposed to prevent the largest ISP network op-



erators from even working with each other to standardize technology. This at the same time the government is exploring ways to require standardized technology! We're running in opposite directions at the same time.

But there are examples of very big technology and product offerings made through networks that are very successful, and seem to be providing the newest and most sought after services and products. And no one is calling, at least yet, for those companies to be regulated or broken up. Apple is a great example. They sell a phone with proprietary technology that is one of the most dominant in the country. Their "App Store" provides a stringently controlled environment where Apple is in total control of the distribution of the "apps" to their phones, and the independent creators of those apps have to pay Apple a fee before they can sell their applications to Apple phone users.

Imagine an ISP charging anyone wanting to design and sell an application that could work on that ISP's network! Apple does it all the time on its network of Apple phones, computers and tablets. Similarly, the new Apple TV device that I discussed recently apparently has a unique capability to allow folks to back up the action on a movie and automatically get closed captioning to see what the actors had said. But again, it reportedly will only work on movies bought through Apple! The term "paid priority" comes to mind.

We don't need to regulate Apple. We need to understand that networks sometimes operate best when scale and control actually works in favor of consumers, not against them. Not always, but that network paradox certainly shouldn't be dismissed, prevented, or ignored.

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. His views do not necessarily reflect the views of Cablefax.)

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