

# Cablefax Daily™

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What the Industry Reads First

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## Cox & the Box: Trial Gets Underway in Set-top Tying Case

Jury selection was set to begin Tues in a class action lawsuit alleging that **Cox** used monopoly power to force Oklahoma City customers to rent its set-tops to access premium services, such as VOD. Similar suits were filed by residents in other states, including AZ and LA. An attempt to certify a nationwide class failed, with actions consolidated and transferred to the Western District of Oklahoma instead. The plaintiff, *Richard Healy*, is seeking nearly \$49m in damages on behalf of Oklahoma City subs who rented a box from Feb 1, 2005, through Jan 9, 2014. A Cox spokesperson said the MSO doesn't comment on current litigation. "Cox provides wide choices to its subscribers at reasonable prices, something we look forward to proving during trial," the spokesperson said. This is an antitrust case, initiated in 2009, that centers on tying—in this case tying the box to the premium video services. In July 2014, US District Judge *Robin Cauthron* declined to grant Cox's motion for summary judgment. Cox argued that there weren't other sellers of set-top boxes whose sales were thwarted by Cox's policies. "The facts presented by plaintiff demonstrate that defendant's conduct of requiring a consumer to rent a box from it in order to obtain the premium cable services precluded entry of any other competitor in the marketplace because defendant's conduct eliminated the existence of any market," the judge wrote. In June, the **10th Circuit** upheld the district court's decision to deny Cox's attempt to compel arbitration in Oklahoma, saying it was overly late and inconsistent with its conduct in litigating the case. This is an interesting lawsuit to watch because a victory for plaintiffs could bring similar litigation against other operators. It's also of note given the recent report from the **FCC's** Downloadable Security Technology Advisory Committee. While the report made no recommendations, some proponents of an AllVid approach are pushing the Commission for a tech mandate that they believe would encourage a retail environment for set-top devices.

**Petition to Deny:** Not everyone is OK with a **Charter-Time Warner Cable** merger. On Tues, **Public Knowledge**, **Common Cause**, **Consumers Union** and **Open Mic** asked the **FCC** to deny the deal. "An arms race where consolidation begets consolidation, where constant dealmaking increases the industry's debt-load, and where cost-cutting takes the place of innovation, is not likely to lead to lower prices, increased diversity of content, or new services for consumers," the consumer groups said in their petition. The groups also fought against a **Comcast-TWC** marriage.

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*What the Industry Reads First*

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PK and friends said Charter's broadband-related commitments don't go far enough to protect the public interest, and that the post-merger Charter would have incentive to discriminate against online video services that compete with its offerings. They argue that it also would have the leverage to require payments of Internet content companies that must interconnect with it and deliver their traffic over its last-mile connections. The groups even call into question possibly vertical integration concerns, citing shareholder *John Malone's* various business interests. Malone is on the board of **Lionsgate**, is the largest shareholder of **Starz** and controls 29% of **Discovery Comm's** voting rights. They want the Commission to examine the extent to which these interests create anticompetitive incentives that are similar to traditional vertical business arrangements, such as Comcast's ownership of **NBCU**. **The Alliance for Community Media** and **The Alliance for Communications Democracy** filed a joint petition to deny the merger on Tues. The groups claim Charter has systematically disregarded franchise obligations and abused its power in the treatment of PEG channels. They complain about PEG channel relocation and the channels rarely appearing on Charter's guide. The groups also claim Charter has refused to pay PEG fees and has discontinued providing free connections and cable services to public buildings and schools. Comments were still trickling in at our deadline. **NAB** filed its own petition Mon, asking the Commission to halt acting on the merger until it completes its reviews of broadcast ownership regulations (the 2010 and 2014 reviews have yet to be completed). While Charter has some opposition to its proposed transactions, it hasn't seen a backlash as intense as that of Comcast-TWC. In fact, some of the opponents of the Comcast-TWC deal, including **Netflix** and **Herring Broadcasting**, have thrown their support behind the deal.

**Ratings:** We're anxious to see what sort of lift **AMC's** "The Walking Dead" gets from DVR and VOD viewing on Fri when L+3 numbers are available. Sun night's Season 6 premiere, up against a close **NFL** game, drew 14.6mln viewers. That makes it the most-watched cable program of the week, though it's down considerably from the 17.3mln for Season 5's premiere. Season 4's premiere netted 16.1mln. It is, however, in-line with viewership averages for eps of Season 4. It's also still high enough to rank as the #10 most-watched scripted telecast in P2+ in cable history. Of those top 10 scripted telecasts, TWD occupies every slot except #2... That belongs to **Disney Channel's** "High School Musical 2." **ESPN's** MNF (Detroit-Seattle) was the 2nd most-watched cable program last week, averaging 14.4mln viewers. It was followed by MLB Wildcard games (8.3mln for **TBS's** coverage of Chicago-Pittsburgh and 7.6mln for ESPN's Houston-NY game). Rounding out the week's top 5 programs is **FX's** "American Horror Story" (5.8mln). ESPN won the week for cable in prime (4.2mln viewers), followed by TBS (3.3mln) and AMC (2.2mln). ESPN also had the most viewers in total day (1.3mln vs 1.2mln each for **Nick** and **Disney**). In non-sports news, **Hallmark Channel's** original movie "Harvest Moon" had nearly 3mln total viewers. In its 9-11pm time slot, it was the highest-rated and most-watched non-sports program across HHs, women 25-54, women 18-49 and total viewers.

**Comcast Beefs up X1:** Comcast is adding short-form online videos to its X1 platform as viewers increasingly watch videos online. The MSO has partnered with more than 30 broadcast and cable nets in a beta launch. Initial content will focus on news, sports and current events. Over time, the programming lineup will expand as nets integrate more extras, bonus and complimentary series. Content partners include: **A&E, ABC News, AMC, American Heroes, Animal Planet, BBC America, Big 10 Networks, CNBC, Cooking Channel, Destination America, Discovery, Discovery Life, DIY, E!, ESPN, Esquire Network, Food Network, Fox Business, Fox News, Fox Sports, FYI, HGTV, History, IFC, Investigation Discovery, Lifetime, LMN, MSNBC, Music Choice, NBC, NBC News, OWN, Science Channel, Sundance TV, TLC, Travel Channel, Velocity** and **WE tv**. The content will be featured in the Web section of Xfinity On Demand.

**Campaign 2016:** Just like with last month's GOP debate, **CNN** was slated to make Tues night's Democratic presidential debate available online to all—even those without a cable subscription. The live stream begins at 8pm ET on CNN.com and its mobile platforms. **Cox Business** is providing all the on-site telecom infrastructure that will power the debate. In the past 2 weeks, the MSO's commercial unit has put a ton of additional infrastructure into the Wynn Las Vegas. It's added a 2K user WiFi set-up. Additionally, there are three 100 Mg data circuits and 2 experienced Cox techs on site for the duration of the debate.

**Arris/Suddenlink Deal:** Arris scored a contract from **Suddenlink** to provide carrier-grade WiFi to its commercial customers throughout its 17-state area. The offering aims to provide seamless hand-offs between WiFi zones. It uses the Aptilo Service Management Platform, Benu Networks Mobile Edge Gateway, and Ruckus ZoneFlex access points and virtual

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SmartZone controller.

**NYC Council vs Verizon FiOS:** The NYC Council is set to have an oversight hearing on Wed on Verizon's progress in completing its FiOS roll-out throughout the 5 boroughs. The current dispute stems from details of the original franchise agreement between the telco and city. By 2014, the agreement stated that all of NYC should be wired for FiOS. According to the council, anecdotal customer complaints to the contrary spurred an audit of the franchise agreement that confirmed that the buildout has not been completed. Verizon, however, disputes this claim. Verizon plans to present to the city council a comprehensive view of how it has "revolutionized, modernized and dramatically upgraded the communications infrastructure for New York City, while providing residents with true choices for their video services," a spokesman said.

**Teed Up:** NBC Sports will take over US broadcasting rights of the British Open from ESPN one year early. **Golf Channel** and **NBC** coverage of The Open will commence a 12-week stretch of golf events that includes The Open (July 14-17), The Senior Open (July 21-24), the return of golf to the Olympics after more than 100 years, the finale of the PGA TOUR FedEx Cup Playoffs and a domestic Ryder Cup from Minnesota. In June, NBC Sports and The R&A announced a 12-year deal for the oldest major.

## Cablefax Daily Stockwatch

Company	10/13 Close	1-Day Ch	Company	10/13 Close	1-Day Ch
<b>BROADCASTERS/DBS/MMDS</b>					
DISH:	61.99	(0.41)	CONVERGYS:	24.92	(0.34)
ENTRAVISION:	8.08	0.28	CSG SYSTEMS:	31.92	(0.66)
GRAY TELEVISION:	14.34	0.23	ECHOSTAR:	45.10	(0.03)
MEDIA GENERAL:	14.26	(0.51)	GOOGLE:	652.30	5.63
NEXSTAR:	50.82	(0.55)	HARMONIC:	5.92	(0.05)
SINCLAIR:	28.68	0.17	INTEL:	32.04	(0.17)
TEGNA:	25.35	(0.18)	INTERACTIVE CORP:	72.26	0.82
<b>MSOS</b>					
CABLE ONE:	433.26	(5.02)	LEVEL 3:	45.38	0.17
CABLEVISION:	33.16	0.11	MICROSOFT:	46.89	(0.11)
CHARTER:	186.88	0.96	NETFLIX:	109.73	(3.72)
COMCAST:	60.16	(0.11)	NIELSEN:	46.94	(0.05)
COMCAST SPCL:	60.89	(0.07)	RENTRAK:	58.17	(1.87)
GCI:	17.68	UNCH	SEACHANGE:	7.08	0.10
LIBERTY BROADBAND:	55.21	(0.08)	SONY:	26.41	(0.3)
LIBERTY GLOBAL:	44.66	0.33	SPRINT NEXTEL:	4.39	(0.11)
SHAW COMM:	20.35	0.05	TIVO:	9.23	(0.08)
SHENTEL:	43.67	0.04	UNIVERSAL ELEC:	44.88	(0.73)
TIME WARNER CABLE:	187.92	1.25	VONAGE:	6.16	0.05
<b>PROGRAMMING</b>					
21ST CENTURY FOX:	28.70	0.03	YAHOO:	32.34	(0.52)
AMC NETWORKS:	74.27	(3.98)	<b>TELCOS</b>		
CBS:	42.34	(0.28)	AT&T:	33.22	(0.08)
CROWN:	5.66	UNCH	CENTURYLINK:	25.78	(0.08)
DISCOVERY:	28.83	(0.01)	FRONTIER :	5.15	0.04
DISNEY:	106.59	0.24	TDS:	26.37	(0.29)
GRUPO TELEVISIA:	26.56	(0.23)	VERIZON:	44.36	0.06
HSN:	59.09	(0.52)	<b>MARKET INDICES</b>		
LIONSGATE:	40.09	(0.05)	DOW:		(49.97)
MSG NETWORKS:	20.12	0.15	NASDAQ:	4796.61	(42.03)
SCRIPPS INT:	55.24	0.10	S&P 500:	2003.69	(13.77)
STARZ:	39.22	0.06			
TIME WARNER:	72.79	(0.39)			
VIACOM:	48.79	0.08			
WWE:	20.15	0.21			
<b>TECHNOLOGY</b>					
ADDVANTAGE:	2.24	0.01			
AMDOCS:	58.54	(0.42)			
AMPHENOL:	51.69	(0.34)			
APPLE:	111.79	0.19			
ARRIS GROUP:	28.09	(0.4)			
AVID TECH:	8.53	0.05			
BLNDER TONGUE:	0.72	0.02			
BROADCOM:	50.08	(0.85)			
CISCO:	27.85	(0.11)			
COMMSCOPE:	30.60	(0.47)			
CONCURRENT:	5.06	(0.01)			



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