

# Cablefax Daily™

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What the Industry Reads First

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## Net Neutrality: Judges Have Plenty of Questions for All

Predicting just what the DC Circuit may do on the **FCC's** Open Internet order is about as impossible as picking to-night's winning lottery numbers, but it won't stop people from trying. As expected, folks had lined up by 7am Fri for a seat inside the courtroom. Oral arguments got underway at 9:30am and went until about 12:30 in the packed courtroom, with only a short break (less than 10 minutes) during the proceedings. There were some possible positive signs for the challengers, but the FCC also seemed to score some points. Challengers of the FCC's decision to reclassify broadband under Title II were pleased to hear Judge *David Tatel* probing why the FCC reversed course and chose not to ground its Open Internet rules under Section 706. In response to the DC Circuit's **Verizon** decision that overturned the FCC's last Open Internet order, "the Commission seemed headed toward regulating under 706. The Commission even called it the 'blueprint offered by the DC Circuit'—the Commission's words, not mine. How do you describe the Commission's reasoning for abandoning that approach?" Tatel asked. FCC gen counsel *Jon Sallet* said that as the agency examined the record, it considered how the service had changed since the Commission had "really dug deep," which was its cable modem order that sparked the Brand X case. That didn't seem to satisfy the judge. Tatel kept probing, asking what happened after the Verizon decision that caused the FCC to abandon 706 as "it couldn't be a change of facts." One of the lengthiest debates was between Judge *Stephen Williams* and Sallet over edge providers and paid prioritization. "That the Commission chose not to reclassify service to edge providers seems totally anomalous to me," Williams said, questioning whether the paid prioritization ban could wipe out perfectly innocent relationships. The FCC looked good when Tatel challenged the ISP's argument that Brand X prevents the FCC from reclassifying Internet as an information service. Attorney *Peter Keisler* said that the Court never tried to argue that the Internet was not an information service, at least at some levels, and thus the FCC had to work with that. The 3-judge panel didn't seem too interested in an argument from **Alamo Broadband** that the Open Internet order infringes on First Amendment rights. That's because for the court to even consider the First Amendment argument, it would mean the court had ruled that broadband could be classified as a common carrier service. If ISPs are common carriers, they would not be making editorial choices about what they chose to carry on their networks, the judges reasoned. The court also seemed to

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mult whether there was proper detailed notice given on extending the rules to mobile broadband, with Sallet firing back that the agency didn't have to write a notice "for a 2nd grader." Now we wait, with a ruling possibly coming next quarter. And then we'll wait some more as whomever loses inevitably appeals to the Supreme Court. NCTA issued a statement after the arguments, repeating its stance that its appeal is not about the goal of an Open Internet but over the FCC's reclassification of broadband as a common carrier. "As today's argument made clear, because of the complexity and potential patchwork outcome of the legal process, the best solution is for Congress to enshrine important net neutrality protections into law and eliminate the negative consequences and continuing uncertainty caused by the FCC's decision to put the modern Internet under an antiquated regulatory regime," the trade group said. **Free Press** said it's confident the FCC's rules will be upheld: "The judges recognized right out of the gate that earlier court cases on this topic made that path clear. The Supreme Court 10 years ago gave the FCC broad leeway to interpret the statutes in play. In the current case the agency got it right."

**FTC's Take:** When it comes to privacy and data security, it's better that the **FCC** keeps its hands off them. That's the message from Republican **FTC** commish *Maureen Ohlhausen*. Following its Title II net neutrality order, the FCC is looking at potential rules for broadband privacy and security, which have been under FTC's jurisdiction. Speaking at the **Practising Law Institute's** telecom law seminar Fri, Ohlhausen said "having more enforcers isn't always better for consumers." For example, consumers could be worse off if "overlapping efforts unnecessarily divert resources from more pressing issues. When two cops are on one beat, another beat may be left vulnerable," she said. In addition, if enforcers fail to leverage their comparative advantages, consumers will be worse off, she said. While the FCC is still drafting its rulebook, it's apparent that its approach on privacy and data security differ from the FTC, she said, citing the FCC's recently enforcement action against **Cox** over a data breach, which involved information about 61 of Cox's more than 6m ln subs. Ohlhausen claimed the FCC's order offers no evidence of any resulting identify theft or any consumer harm, and yet the agency's settlement imposed a \$595K fine and extensive compliance measures. That approach differs significantly from the FTC's "reasonable security" approach, the commish said. "If we have to choose a rulebook for privacy and data security, it will probably come as no surprise to anyone here that I believe there are significant advantages to the FTC's tried and true approach," she said.

**Retrans:** **Tegna** and **AT&T's DirecTV** and **U-verse** units agreed to a 24-hour contract extension, following the expiration of their current pact covering 47 stations at midnight Thurs. Like most of retrans negotiations, the dispute stems from rates. Tegna's station **WFAA** explained the situation on its website: "Unfortunately, so far DirecTV/AT&T U-verse has refused to reach a fair, market-based agreement with us—even though the terms being offered are fundamentally the same as those that just allowed us to reach a deal with DISH... Unfortunately, in its recent merger with AT&T, DirecTV promised its Wall Street investors to cut \$2 billion from its investment in programming like ours. It is our sincere hope that DirecTV puts its customers ahead of Wall Street." AT&T's side of the story? Tegna is demanding significant rate increase.

**Comcast/Philly Deal:** **Comcast** reached a deal with a **Philly City Council** committee late Thurs on a new 15-year franchise agreement that includes expanding access the MSO's Internet Essentials program as well as the company's educational and public commitments to the city. The full city council is scheduled to vote on the agreement on Thurs. Philly-based Comcast agreed to commit \$20m ln in the next 15 years to support local PEG channels. It also agreed to expand its Internet Essentials program to seniors and to provide up to \$2.7m ln over the next 5 years to allow other low-income Philadelphians to participate in the program.

**Virtual Reality:** **Fusion** joined **Discovery Comm**, **Nat Geo** and **PBS** to strike a deal with Disney-backed virtual reality startup **Littlstar**. The companies will work on VR content across mobile platforms, and Littlstar's apps and global network. Fusion announced its entry into VR when it created a VR unit earlier this summer, which has since produced numerous 360-degree videos.

**People:** **AMC Networks** chief accounting officer *John Giraldo* is resigning from the company effective Jan 1 to assume a senior post at another company, according to an **SEC** filing. No info was provided on where he's headed. Until a replacement is named, CFO *Sean Sullivan* will assume his responsibilities.

## Cablefax Week in Review

Company	Ticker	12/04 Close	1-Week % Chg	YTD %Chg
<b>BROADCASTERS/DBS/MMDS</b>				
DISH:	DISH	61.52	(2.19%)	(15.6%)
ENTRAVISION:	EVC	8.63	1.53%	33.18%
GRAY TELEVISION:	GTN	16.81	(1.87%)	50.09%
MEDIA GENERAL:	MEG	15.30	(3.29%)	(8.55%)
NEXSTAR:	NXST	58.91	0.24%	13.75%
SINCLAIR:	SBGI	34.78	(2.5%)	27.12%
TEGNA:	TGNA	28.18	0.04%	0.00%

**MSOS**

CABLE ONE:	CABO	441.56	0.09%	0.00%
CABLEVISION:	CVC	29.97	(1.35%)	45.20%
CHARTER:	CHTR	184.53	(0.84%)	10.75%
COMCAST:	CMCSA	60.75	(1.06%)	4.72%
COMCAST SPCL:	CMCSK	60.82	(1.03%)	5.65%
GCI:	GNCMA	21.08	1.69%	53.31%
LIBERTY BROADBAND:	LBRDA	52.18	(1.25%)	4.17%
LIBERTY GLOBAL:	LBTYA	42.31	0.05%	(15.73%)
SHAW COMM:	SJR	20.70	0.98%	(23.3%)
SHENTEL:	SHEN	47.74	(3.42%)	52.77%
TIME WARNER CABLE:	TWC	185.19	0.76%	21.79%

**PROGRAMMING**

21ST CENTURY FOX:	FOXA	29.33	(1.91%)	(23.64%)
AMC NETWORKS:	AMCX	82.81	0.72%	29.86%
CBS:	CBS	50.01	(1.9%)	(9.63%)
CROWN:	CRWN	5.80	(1.02%)	63.84%
DISCOVERY:	DISCA	30.73	(1.25%)	(10.8%)
DISNEY:	DIS	114.24	(3.73%)	21.29%
GRUPO TELEvisa:	TV	28.86	(0.35%)	(15.27%)
HSN:	HSNI	51.02	0.73%	(32.87%)
LIONSGATE:	LGF	33.73	(3.55%)	5.34%
MSG NETWORKS:	MSGN	20.06	0.91%	0.00%
SCRIPPS INT:	SNI	59.02	1.81%	(21.59%)
STARZ:	STRZA	34.71	(2.17%)	16.87%
TIME WARNER:	TWX	70.61	0.44%	(17.34%)
VIACOM:	VIA	48.49	(10.07%)	(35.77%)
WWE:	WWE	17.18	0.47%	39.22%

**TECHNOLOGY**

ADVANTAGE:	AEY	2.28	(0.93%)	(6.61%)
AMDOCS:	DOX	57.19	0.90%	22.57%
AMPHENOL:	APH	54.79	0.05%	1.82%
APPLE:	AAPL	119.03	0.85%	7.84%
ARRIS GROUP:	ARRS	32.67	7.04%	8.21%
AVID TECH:	AVID	6.68	(3.33%)	(52.99%)
BLNDER TONGUE:	BDR	0.38	2.62%	(85.88%)
BROADCOM:	BRCM	57.52	6.34%	32.75%
CISCO:	CSCO	27.48	0.88%	(1.22%)
COMMScope:	COMM	27.51	(2.58%)	20.50%
CONCURRENT:	CCUR	4.90	(1.8%)	(30.89%)
CONVERGYS:	CVG	25.49	(0.82%)	25.14%
CSG SYSTEMS:	CSGS	35.51	(0.75%)	41.64%
ECHOSTAR:	SATS	38.44	(1.28%)	(26.78%)
GOOGLE:	GOOG	766.81	2.49%	45.67%
HARMONIC:	HLIT	5.34	(3.78%)	(23.82%)
INTEL:	INTC	34.94	1.41%	(3.73%)
INTERACTIVE CORP:	IACI	61.33	(2.94%)	0.89%

Company	Ticker	12/04 Close	1-Week % Chg	YTD %Chg
LEVEL 3:	LVL	51.79	1.87%	4.88%
MICROSOFT:	MSFT	55.91	4.13%	20.37%
NETFLIX:	NFLX	130.93	5.45%	(61.67%)
NIELSEN:	NLSN	46.89	0.28%	4.83%
RENTRAK:	RENT	51.66	5.80%	(29.06%)
SEACHANGE:	SEAC	6.77	4.96%	6.11%
SONY:	SNE	25.39	(4.22%)	24.04%
SPRINT NEXTEL:	S	3.53	(6.12%)	(14.94%)
TIVO:	TIVO	9.00	(7.88%)	(23.99%)
UNIVERSAL ELEC:	UEIC	51.80	(3.09%)	(20.34%)
VONAGE:	VG	6.31	(3.22%)	65.62%
YAHOO:	YHOO	34.91	5.28%	(30.88%)

**TELCOS**

AT&T:	T	34.11	1.97%	1.55%
CENTURYLINK:	CTL	26.71	(1%)	(32.52%)
FRONTIER:	FTR	5.10	4.08%	(20.31%)
TDS:	TDS	27.98	(1.44%)	10.81%
VERIZON:	VZ	45.71	1.76%	(2.29%)

**MARKET INDICES**

DOW:	DJI	17847.63	0.19%	0.14%
NASDAQ:	IXIC	5142.27	0.51%	8.58%
S&P 500:	GSPC	2091.69	0.14%	1.59%

## WINNERS &amp; LOSERS

**THIS WEEK'S STOCK PRICE WINNERS**

COMPANY	CLOSE	1-WK CH
1. ARRIS GROUP:	32.67	7.04%
2. BROADCOM:	57.52	6.34%
3. RENTRAK:	51.66	5.80%
4. NETFLIX:	130.93	5.45%
5. YAHOO:	34.91	5.28%

**THIS WEEK'S STOCK PRICE LOSERS**

COMPANY	CLOSE	1-WK CH
1. VIACOM:	48.49	(10.07%)
2. TIVO:	9.00	(7.88%)
3. SPRINT NEXTEL:	3.53	(6.12%)
4. SONY:	25.39	(4.22%)
5. HARMONIC:	5.34	(3.78%)



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