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What the Industry Reads First

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FCC Loss: Appeals Court Rules States Can Limit Municipal Broadband

In a major win for broadband Internet providers, on Wed the Sixth Circuit Federal Appeals Court reversed the FCC's March 2015 order to preempt state laws preventing the expansion of municipal broadband in Wilson, NC, and Chattanooga, TN. The municipalities had sought to expand their networks beyond their territorial boundaries to nearby areas, but were up against state legislation forbidding such expansion. The FCC's order sought to pre-empt those state laws. "The FCC order essentially serves to re-allocate decision-making power between the states and their municipalities. This is shown by the fact that no federal statute or FCC regulation *requires* the municipalities to expand or otherwise to act in contravention of the preempted state statutory provisions," Judge *John Rogers* argued. "This preemption by the FCC of the allocation of power between a state and its subdivisions requires at least a clear statement in the authorizing federal legislation. The FCC relies upon section 706 of the Telecommunications Act of 1996 for the authority to preempt in this case, but that statute falls far short of such a clear statement." FCC commish *Mike O'Rielly*, who offered a dissent of the FCC order, said he was heartened by the decision. "The FCC clearly tried to invoke imaginary authority and finally was called out by a court for doing so... Unless Congress specifically authorizes FCC intervention, states rightly can limit government-operated broadband networks in order to protect their citizens' pocketbooks and good senses. Contrary to some beliefs, municipal networks are not panaceas to solving any lack of ubiquitous broadband, but instead unfairly distort the marketplace." Energy and commerce committee chmn *Fred Upton* (R-MI) and communications and technology subcmte chmn *Greg Walden* (R-OR) said in a joint statement that the court made the right call: "The FCC's regulatory overreach was not only ill-conceived but illegal, and this direct rebuke should serve as yet another wake up call for the commission to heed the limits of its authority. States have been and will continue to be best suited to determine whether municipalities should build out broadband networks using tax-payers' dollars." They urged the FCC focus on promoting private investment in broadband deployment instead. Meanwhile, FCC chmn *Tom Wheeler* responded to the decision in a statement, saying that the ruling will halt jobs, investment and opportunity in the municipalities. "In the end, I believe the Commission's decision to champion municipal efforts highlighted the benefits of competition and the need of communities to take their broadband futures in their own hands," he said. "The FCC's mandate is to make sure that Americans have

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access to the best possible broadband. We will consider all our legal and policy options to remove barriers to broadband deployment wherever they exist so that all Americans can have access to 21st Century communications.” Sen *Ed Markey* (D-MA) expressed his disappointment along with chmn Wheeler, but said that the movement by communities to build municipal broadband is only growing. “Congress intended to provide the FCC the tools needed to encourage deployment of advanced telecommunications networks, and when states impose barriers to that very deployment, the FCC should act. I will continue to fight to ensure that local communities have the power to decide for themselves how to invest in their own telecommunications infrastructure.” Also dismayed by the verdict was Commish *Mignon Clyburn*, who said local governments should be able to bring connectivity to their communities, especially when the private sector has failed at that task. “State laws like the ones upheld today are part of the reason why families on one street may have gigabit service, while those on the other have nothing. It is sad that those laws will still stand tall and act as a barrier to digital inclusion and universal opportunity for all,” she said. The FCC is still reviewing the decision, but if it decides to move forward it can appeal en banc, meaning to the full appeals court, or attempt Supreme Court review.

Cable’s Video Market Share: With Q2 results reported by major pay TV providers, cable has increased its video subscriber share, according to **Evercore ISI Media’s** 2Q ’16 subscriber update. “Cable’s market share increased to 54.1% in 2Q16, up from 53.7% in 2Q15, representing the largest quarterly share gain for the industry in years,” it said. Video subs (excluding **Sling TV** and OTT services) for MVPDs overall declined by 730K, 120K higher than 2Q ’15’s 610K. High-speed data subs for MVPDs increased by 370K, compared to last year’s 500K, and voice subs declined by 900K, versus -300K in 2Q ’15. Cable’s video sub declines were at 227K subs. DBS ops gained 13K subs, with gains to **AT&T’s DirecTV** offsetting **DISH’s** losses, and telcos lost 518K video subs, versus last year’s gain of 19K. Overall, telcos lost video market share by 40bps during the quarter. In terms of which operator improved the most regarding video subs, it was **Comcast**, which lost 4K video subs compared to 69K last year. Pro forma **Charter** lost 152K compared to 170K, and **Cablevision** lost 2K video subs, far better than 16K in 2Q ’15. Meanwhile, there were higher contributions to broadband subscribers from most cable operators compared to last year. Cable gained approximately 50bps of market share in 2Q and accounted for 190% of the industry’s broadband additions. And though wireline continues to decline industry-wide, cable is gaining market share, adding 241K voice subs in the quarter compared to 351K in 2Q ’15. Telco net adds were down 1.1mln.

Cox Ruling: A US District Judge upheld a verdict in favor of **BMG Rights Management** against **Cox Comm** and that requires the MSO to pay \$25mln in statutory damages for Internet customers’ illegal music downloads. Judge *Liam O’Grady* had previously ruled that ISPs aren’t protected by copyright laws from liability of illegal music downloads if they don’t enforce a repeat infringer policy. A jury found Cox liable for willful contributory infringement, but not vicarious infringement. In response, Cox moved for judgment as a matter of law or a new trial, and BMG sought judgment as a matter of law on its claim of vicarious infringement as well as permanent injunctive relief. Both post-trial motions were denied. “We are disappointed with the ruling and plan to appeal,” said a Cox spokesperson.

Netflix Speed Index: For **Netflix’s** July Speed Index, **Verizon FiOS** once again came out on top with 3.61 Mbps. **Bright House** followed at 3.59 Mbps, with **Optimum** and Cox both at 3.55 Mbps. Charter (3.51 Mbps), Comcast (3.47 Mbps), **Time Warner Cable** (3.46 Mbps), **Mediacom** (3.42 Mbps), **AT&T-U-verse** (3.36 Mbps) and **Suddenlink** (3.33 Mbps) closed out the top 10 list.

Programmatic: Programmatic TV platform **placemedia** announced a partnership with demand-side platform **Jam-Loop**, which aims to help brands and agencies reach TV and digital audiences by offering scale through aggregated video inventory across screens. The partnership is placemedia’s 14th DSP integration.

Cablevision Layoffs: **Altice USA**, the new owners of Cablevision operations, is laying off nearly 600 workers between an Optimum contact center in Shelton, CT, and a back office support facility in Stratford, CT. Contact centers will continue to be located in Long Island, New Jersey and the Bronx. Impacted employees will be offered severance and outplacement support, and can apply to open positions at the company. “Over the last few years, there have been investments and enhancements to our Optimum products and services, making them more reliable and providing more customer service touch points than ever before. As a result, we have seen a significant improvement in customer call volume and patterns. As we look to strengthen our operations in the nation’s most competitive market, we are aligning our contact center orga-

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nization to meet the current needs of our customers,” said the company in a statement.

Digital Ad Load: Freeform has joined forces with engagement advertising company true[X] to offer reduced ad loads for consumers on freeform.go.com, the Freeform iOS app and Hulu. true[X]’s tech aims to let viewers interact with ads during shorter, mid-episode commercial breaks for as little as 30 seconds. True[x] is an independently run subsidiary of 21st Century Fox and is also used by Viacom, ABC and Fox Networks.

Programming: CNBC’s new prime-time original series “Adventure Capitalists” will debut on Aug 22 at 10pm. In each of the 4 eps, entrepreneurs will pitch and test their outdoor recreation products in their respective environment—lake/mountain, desert, ocean and coastal forest—to investors. -- Fuse announced the premiere of the docu-series “Clash of the Corps” for Oct 5 at 11pm. Produced by Dwayne Johnson’s Seven Bucks Productions and 44 Blue Productions, the 8-part series exposes the competitive world of Drum Corps International. -- UPTV will premiere season 9 of “Heartland” for a limited time on Sept 7. The remaining 18 eps of season 9 will air every Wed from 8-11pm for 6 weeks before weekly eps air this fall on UP. Its on-demand offering UP Faith & Family will be the first service to air all 9 seasons of the series.

Cablefax Daily Stockwatch

Company	08/10 Close	1-Day Ch	Company	08/10 Close	1-Day Ch
BROADCASTERS/DBS/MMDS					
DISH:	50.87	(1.37)	INTEL:	34.52	(0.4)
ENTRAVISION:	7.72	0.07	INTERACTIVE CORP:	60.48	(0.16)
GRAY TELEVISION:	11.03	0.11	LEVEL 3:	50.25	0.10
MEDIA GENERAL:	17.42	(0.04)	MICROSOFT:	58.02	(0.18)
NEXSTAR:	50.52	(0.09)	NETFLIX:	93.93	(0.06)
SINCLAIR:	28.68	(0.2)	NIELSEN:	52.87	0.19
TEGNA:	20.93	(0.18)	SEACHANGE:	3.25	(0.04)
MSOS					
CABLE ONE:	523.18	1.61	SONY:	32.85	UNCH
CHARTER:	254.07	(1.69)	SPRINT NEXTEL:	6.16	(0.02)
COMCAST:	67.22	0.32	SYNACOR:	2.87	(0.04)
GCI:	13.35	(0.48)	TIVO:	10.57	0.02
LIBERTY BROADBAND:	65.23	(0.57)	UNIVERSAL ELEC:	76.97	0.59
LIBERTY GLOBAL:	31.28	(0.24)	VONAGE:	5.73	(0.05)
SHAW COMM:	20.26	0.12	YAHOO:	39.93	0.69
SHENTEL:	29.28	(0.94)	TELCOS		
PROGRAMMING					
21ST CENTURY FOX:	25.58	0.10	AT&T:	43.20	0.12
AMC NETWORKS:	53.75	(0.41)	CENTURYLINK:	30.34	0.19
CBS:	52.05	0.20	FRONTIER :	4.88	(0.07)
DISCOVERY:	25.76	0.11	TDS:	30.13	(0.26)
DISNEY:	97.86	1.19	VERIZON:	53.81	0.15
GRUPO TELEVISIA:	26.42	0.12	MARKET INDICES		
HSN:	44.62	(0.7)	DOW:	18495.66	(37.39)
LIONSGATE:	21.31	(0.26)	NASDAQ:	5204.58	(20.9)
MSG NETWORKS:	15.38	(0.08)	S&P 500:	2175.49	(6.25)
SCRIPPS INT:	62.11	0.64			
STARZ:	31.41	(0.06)			
TIME WARNER:	79.86	0.70			
VIACOM:	46.37	(0.7)			
WWE:	20.37	0.04			
TECHNOLOGY					
ADVANTAGE:	1.81	0.06			
AMDOCS:	58.31	0.50			
AMPHENOL:	60.11	(0.04)			
APPLE:	108.00	(0.81)			
ARRIS GROUP:	27.36	0.10			
AVID TECH:	8.34	(0.28)			
BLNDER TONGUE:	0.63	0.03			
CISCO:	30.85	(0.09)			
COMMSCOPE:	28.89	0.07			
CONCURRENT:	5.21	(0.18)			
CONVERGYS:	29.28	0.54			
CSG SYSTEMS:	40.86	0.12			
ECHOSTAR:	38.19	(1.04)			
GOOGLE:	784.68	0.42			
HARMONIC:	3.95	0.58			



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Think about that for a minute...

Bob Rosencrans

Commentary by Steve Effros

Bob Rosencrans died last week at the age of 89. He's going to be missed. Bob was one of the true pioneers of the cable industry, respected by virtually everyone who he came in contact with, and he was singularly important to the development and maturing of the business.



Bob knew what he wanted and was willing to go after it any way he could. That's a very good thing in this case, because Bob was not only one of the nicest guys in the industry, he was also a responsible, forward-looking visionary who recognized both the power and the promise of cable.

To be sure, he was a successful cable operator. He started Columbia Cable, which became UA-Columbia, and later founded Columbia International. Both were successful and well thought of cable MSOs. But that's far from the end of the story. Bob was a programming promoter before getting into the distribution side. He always pushed the idea that unique, exclusive product was the key to success. He was one of the moving forces behind the MSG (Madison Square Garden) channel, which evolved into the USA Network. He also provided key early support for BET, Black Entertainment Television.

But what Bob will probably always be best known for was his willingness to be first in line, and be ready to take out his checkbook and back up his beliefs when it came to new and challenging ideas for cable. In 1975, he did that by paying for a newfangled thing called a 10-meter satellite earth terminal to receive and show the famous first HBO satellite-transmitted championship boxing match, the "Thrilla From Manilla" with Muhammad Ali and Joe Frazier. That seemingly simple (today) decision was credited with launching the new era of satellite program distribution to cable. HBO may have

never made it without Bob's willingness to take a risk, and spend some money to make something he believed in, work.

His most famous check-writing decision, however, has long been described as seminal by C-SPAN's Brian Lamb. Brian had an idea for a non-profit public affairs network that would simply show Congress in action. Cameras on the floor of both the House and Senate. He wanted the cable industry to fund the plan, but only on a totally non-commercial basis. Bob Rosencrans pulled out his checkbook, according to Brian, and wrote him a check, the first one of any significance (for \$25,000) to help get the idea promoted to the industry. Ultimately he helped raise almost \$500,000 in seed money. Happily, it worked too. I have long dubbed C-SPAN the "crown jewel" of the cable industry. In a significant way, the industry and the country can thank Bob Rosencrans for his critical early support in making C-SPAN a reality.

Bob was on the first C-SPAN Board of Directors and was the founding Chairman. He has had a Board position ever since. He never wavered in his support and his willingness to pick up the phone or sit down at a meeting or meal and help "twist an arm" or two when it was needed to keep C-SPAN on the right track with sufficient backing to provide the public interest programming that he valued so highly.

It was always a pleasure to be around Bob Rosencrans. He liked to have fun, and was a very funny guy in his own right. I think the lasting image I will have of him was his almost never-ceasing smile. It told you the type of guy he was. He'll be missed.

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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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