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What the Industry Reads First

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DOJ's Swing: Justice Says MVPDs Shared Info on Dodgers RSN

Looking at the DOJ's suit against AT&T-DirecTV, one gets the impression that there are a few baseball lovers working in the Antitrust Division. "For almost 60 years, the Los Angeles Dodgers have been a beloved professional sports team in L.A. During this time, L.A. Dodgers fans have seen their team win five World Series championships, closely followed the Hall of Fame careers of baseball greats such as *Sandy Koufax* and *Tommy Lasorda*, and listened to play-by-play calls of broadcast legend *Vin Scully*," begins the 57-page complaint. The suit goes on to outline how a significant number of fans haven't been able to watch the games in recent years, with the DOJ accusing DirecTV of unlawfully exchanging strategic info with **Cox**, **Charter** and AT&T (then a separate company) during their negotiations for Dodgers RSN **SportsNet LA**. DirecTV parent AT&T said it sees the facts differently. "The reason why no other major TV provider chose to carry this content was that no one wanted to force all of their customers to pay the inflated prices that **Time Warner Cable** was demanding for a channel devoted solely to L.A. Dodgers baseball. We make our carriage decisions independently, legally and only after thorough negotiations with the content owner. We look forward to presenting these facts in court." Time Warner Cable, which manages the network, is now owned by Charter, which opted to launch the Dodgers channel before DOJ and the FCC approved the TWC acquisition in May of this year. AT&T, DirecTV and Cox still do not carry the channel. "We are gratified that we were not named as a defendant. We continue to be committed to making independent decisions on program content," Cox said Wed. Charter declined to comment. Why aren't the other MVPDs named as defendants? DOJ likely went with where it thought it could make the strongest case, with several citations of exchanges by DirecTV chief content officer *Dan York*. That doesn't mean the other MVPDs couldn't be named as defendants at some point—there are references of several conversations between York and other MVPD execs, including Cox and Charter's svps of programming. "DIRECTV and each of Cox, Charter, and AT&T, respectively, agreed to share forward-looking strategic information about the Dodgers Channel, and did share that information," according to the complaint. DOJ contends York exchanged non-public info with counterparts at Cox, Charter and AT&T—including within days of each company receiving TWC's initial offer—about carriage plans for the channel that were intended to reduce fears that competitors would carry the RSN. And yes, DirecTV CEO *Mike White's* comments at a 2014 **MoffettNathanson** conference about distribu-



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tors standing together, “like most of us having been doing in Los Angeles”... , were also referenced in the complaint.

Inside DOJ's Suit: It's worth reading through the DOJ's complaint against DirecTV, which offers an inside baseball glimpse of negotiations. Among DOJ's claims is that **Time Warner Cable's** Lakers Channel served as a catalyst for DirecTV digging in its heels on the Dodgers net. For the Lakers channel, TWC sought to put the pressure on DirecTV by giving the smaller MVPDs a time-sensitive offer granting them an MFN that would give them the same price for the net as a larger distributor like DirecTV, DOJ said. It worked. “DirecTV agreed to pay almost 50% more than its internal financial analysis suggested. Moreover, TWC was able to point to the size-insensitive MFNs in the small distributor carriage agreements as a reason not to offer DirecTV a lower per subscriber fee for the Lakers channel,” the complaint said. “Having been burned by this experience, DirecTV approached the Dodgers Channel negotiations determined not to allow TWC to successfully employ such a strategy again.” Other nuggets of interest include DirecTV's blackout of **The Weather Channel**. During the nearly 3 month blackout, the net sought to run ads on Charter attacking DirecTV. In a voicemail, Charter's svp of programming “assured [DirecTV's Dan] York that he would stop The Weather Channel from running such an ad over Charter's service, calling the favor ‘my little bit for the planet earth.’” The suit does not name the Charter exec, but *Allan Singer* held that role until shortly after the TWC deal was complete. The Charter exec also left York several voicemails concerning Charter's negotiations with “the co-owner of **Hulu** about Hulu's online subscription video service, letting him know that Charter was not inclined to allow its video subscribers to access Hulu's service using their Charter accounts, and asking if DirecTV planned to reach a deal concerning Hulu,” according to the complaint. The suit says **AT&T's** pres of content referred to carriage offers as pitches, texting York that “we got a [redacted] mph pitch yesterday.” Again, no names, but presumably this is *Aaron Slator*, who was named to the post in June 2013. Slator was fired in 2015 after he became the subject of a \$100mln discrimination lawsuit for reportedly using his work phone to send racially offensive images. **Cox's** svp of content acquisition (a position *Andy Albert* has held since 2013) testified that he and York discussed their companies' Dodgers channel carriage plans several times, with DOJ saying that the 2 agreed to give one another a heads-up before launching the net.

Time Warner Talk: Does **AT&T's** proposed **Time Warner** purchase need **FCC** review? Time Warner's chief legal officer *Paul Cappuccio* said on the company's 3Q earnings call that Time Warner has 1 broadcast license for an independent local TV station managed by a third-party, as well as several operational licenses. The company is reviewing which, if any, of these licenses will need to be transferred to AT&T in connection with the merger, he said. While the transaction requires **DOJ** approval, a full-scale FCC review might not be necessary depending on the licenses needed to be transferred. “There aren't material licenses that are the bedrock of our business that AT&T would need,” Cappuccio said. Meanwhile, Time Warner head *Jeff Bewkes* reiterated that post-merger, “I am not going anywhere” and that he will stay for “quite a period of transition.” In addition, chief execs from Time Warner's HBO and Turner units are expected to remain following the close of the deal, he said. How will the merger affect Time Warner's 10% stake in **Hulu**? Bewkes said he “I don't think the merger changes anything.” Financially, 3Q revenues increased 9% YOY to \$7.2bln as operating income grew 10% YOY to \$2bln.

Fox 1Q: **21st Century Fox** posted income of \$827mln in 1Q, versus \$678mln from a year ago. Total revenue came in at \$6.51bln, up 7% YOY thanks to higher affil and ad revenues from the company's cable nets and higher content revenues at the film unit. While the cable network programming unit saw its operating income increase 6% YOY, it also posted a 12% increase in expenses. The higher spending was driven by higher international sports programming costs in Latin America and India due to the broadcast of the Rio Olympics, higher **MLB** sports rights costs at RSNs and higher entertainment programming costs at **FX Networks**. The cable segment's quarter results also included revenue and costs of around \$85mln related to Nat Geo non-channels business, which were acquired in Nov 2015. Domestic affil revenue increased 8% reflecting continued contractual rate increases led by the RSNs, **FX Networks**, **FS1** and **Fox News**. Domestic ad revenue grew 6% YOY thanks to higher ratings and pricing at Fox News.

CTHRA Notebook: Constant connectivity and social media is starting to take its toll on the cable and TV workforce, **NCTA** pres/CEO *Michael Powell* told HR execs gathered in Philly for **CTHRA's** 2016 Symposium on Wed. “People live in the web, and they get lost there,” he said. “Messages travel too fast without context, without depth, without judgment... People have become impatient, and sometimes hard problems require patience.” Powell said access to so much info can actually make it hard for senior execs to be decisive, but that leaders also must listen to the rank and file. “There's a certi-

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tude going on in society that's problematic," he said. "A good leader... is a person of humility." Powell also lauded cable's efforts to hire veterans, noting that they are "self sacrificing, they're mission oriented. That's a special human being. Don't you want that kind of ethic in your organization?"

Cable HoF: Congrats to the newest class of **The Cable Center's** Hall of Fame, which will celebrate its 20th celebration next year. The Center is inducting a class of 6: **NBCU** CEO *Steve Burke*, **Cox** evp/COO *Jill Campbell*, **Liberty Global** CEO *Michael Fries*, **Scripps Nets Interactive** pres/CEO *Ken Lowe*; **HBO's** "The Sopranos" and **Discovery Comm** pres/CEO *David Zaslav*. This is the first time the Center has inducted a TV show into the Hall of Fame, with creator *David Chase* to be acknowledged for the impact the program had on the entire cable community.

People: **Ovation TV** named *Sol Doten* as vp, content distribution marketing. He will report to *John Malkin*, evp of content distribution. Doten was previously vp of communications at Fox Networks Group. -- **Crown Media Family Networks** upped *Erin McIlvain* to evp, content strategy & distribution. *Laura Lee*, evp, distribution, will report to McIlvain and continue to play a key role in affil sales. -- **Bravo** named *Erica Forstadt* vp, current production. She will report to *Kathleen French*, svp of current production. Forstadt had been vp, programming & dev at **OWN**.



Cablefax Daily Stockwatch

Company	11/02 Close	1-Day Ch	Company	11/02 Close	1-Day Ch
BROADCASTERS/DBS/MMDS					
DISH:	55.10	(2.09)	INTEL:	34.60	0.08
ENTRAVISION:	6.40	(0.2)	INTERACTIVE CORP:	61.97	(2.9)
GRAY TELEVISION:	8.15	(0.45)	LEVEL 3:	53.05	(1.21)
MEDIA GENERAL:	16.69	(0.1)	MICROSOFT:	59.43	(0.37)
NEXSTAR:	47.70	(0.41)	NETFLIX:	122.34	(0.96)
SINCLAIR:	24.85	(0.17)	NIELSEN:	44.68	(0.62)
TEGNA:	18.46	(1.44)	SEACHANGE:	2.55	(0.08)
MSOS					
CABLE ONE:	575.74	(2.82)	SONY:	31.37	0.64
CHARTER:	252.91	3.34	SPRINT NEXTEL:	5.95	(0.22)
COMCAST:	61.47	0.02	SYNACOR:	2.75	0.05
GCI:	15.18	(0.21)	UNIVERSAL ELEC:	69.00	(0.5)
LIBERTY BROADBAND:	64.24	0.36	VONAGE:	6.26	(0.27)
LIBERTY GLOBAL:	31.87	(0.39)	YAHOO:	40.68	(0.65)
SHAW COMM:	19.62	UNCH	TELCOS		
SHENTEL:	24.10	(1.3)	AT&T:	36.37	(0.19)
PROGRAMMING					
21ST CENTURY FOX:	25.83	(0.36)	CENTURYLINK:	24.18	(0.79)
AMC NETWORKS:	49.40	0.81	FRONTIER:	3.39	(0.54)
CBS:	55.15	(0.68)	TDS:	25.04	(0.63)
DISCOVERY:	25.20	(0.59)	VERIZON:	46.94	(0.72)
DISNEY:	91.91	(0.48)	MARKET INDICES		
GRUPO TELEVISA:	24.02	(0.31)	DOW:	17959.64	(77.46)
HSN:	36.75	(0.05)	NASDAQ:	5105.57	(48.01)
LIONSGATE:	19.78	(0.37)	S&P 500:	2097.94	(13.78)
MSG NETWORKS:	18.80	(0.25)			
SCRIPPS INT:	63.54	(0.45)			
STARZ:	30.96	(0.44)			
TIME WARNER:	87.28	(0.97)			
VIACOM:	42.35	(0.15)			
WWE:	17.36	(0.34)			
TECHNOLOGY					
ADDVANTAGE:	1.72	(0.11)			
AMDOCS:	59.18	0.26			
AMPHENOL:	65.11	(0.91)			
APPLE:	111.59	0.10			
ARRIS GROUP:	26.60	(0.66)			
AVID TECH:	6.38	(0.17)			
BLNDER TONGUE:	0.55	(0.02)			
CISCO:	30.39	(0.09)			
COMMSCOPE:	30.26	(0.02)			
CONCURRENT:	5.95	(0.12)			
CONVERGYS:	27.85	(0.38)			
CSG SYSTEMS:	36.59	(0.65)			
ECHOSTAR:	45.27	(0.58)			
GOOGLE:	768.70	(14.91)			
HARMONIC:	4.75	(0.25)			



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Think about that for a minute...

An Overview - Clearing the Fog

Commentary by Steve Effros

Telecom policy debates have become too heated. Everyone is speaking in code, the real issues aren't the ones being debated. Here's my short primer on what I think is really happening.



The battles over "net neutrality," "retail sale of set top boxes," "privacy," and merger reviews like the proposed ATT-TW deal are all really proxies for far more fundamental policy debates. They are real, legitimate debates, but the proxy battles do a major injustice to the concept that we are seriously exploring fundamental issues.

So what are the issues? Well, the first one is what is the concept of "copyright" all about? The battles over set top box disaggregation, for instance, relate to who has the right to control what once a "copyrighted work" has been "bought" by a consumer. That's a good question. It was easy when we talked about books. Once the book was bought, the buyer could share it, resell it or whatever... at least as to that one individual book, without question. But technology has changed all that. Can a "buyer" redistribute an electronic version? Who "owns" it? Does the buyer have the right to unlimited use or can the seller limit that use by time, or type of use, or any other new limitation, like method of delivery? All good questions if you want to really explore the nature of copyright.

Clearly there are some folks, the "consumer lobby," who believe that a sale is a sale and anything the consumer wants to do after that is fair use. However, creators see a new world where they need to protect and find new revenue streams. Creation and distribution are far more expensive today. They want to maintain and extend control. OK, a great debate. Should it take place within the fog of an alleged battle over the price of set top boxes? No.

Yet another major debate is over the various ways companies create new revenue streams associated with what they sell. The FCC basically just blocked the ability of ISPs to efficiently collect and sell data on how their customers use their product for advertising purposes. But "edge suppliers" like Google and Facebook, which accumulate, use and sell even more of that very same data and collect far more personalized data than the ISPs do, are exempt from the stringent "privacy" rules the Commission adopted. Why? Because the FCC regulates one group and the FTC the other. The FCC doesn't believe these data/ad based businesses are giving consumers sufficient transparency and choice over their "private" data. Again, a good debate. Should it be done in the context of two federal Commissions leveraging their beliefs against each other? Again, no.

Creators and infrastructure businesses are clearly looking for new revenue sources. That's nothing new. The "free TV" folks couldn't survive on ad revenue alone once competition arrived, so they had to get the government to not only give them the free spectrum, but add "retransmission consent" rules as well. A dual revenue stream. Cable already has that dual stream, but broadband doesn't, and it's not a surprise that it's going to need it. But "big is bad" creates the fog allowing for regulations that block those new streams. Is that a good idea? I think we should be talking about, and debating, and legislating the real, substantive issues, not using proxy battles. All they do is create a lot of heat without developing much light. I'm just trying to clear out some of the fog.

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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