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More Time: GSN-Cablevision Beef Still Going at FCC

This might be one for the record books. **GSN's** program carriage complaint against **Cablevision**, filed with the **FCC** in October 2011, still hasn't been wrapped up. On Wednesday, FCC General Counsel (and perhaps soon-to-be Commissioner) *Brendan Carr* filed an order saying that additional time will be required to resolve the case. The dispute started after Cablevision (now **Optimum**) moved **GSN** to a $6.95/month sports & entertainment tier, with the programmer claiming that it was favoring its own affiliated networks—**WE tv** and the now-defunct **Wedding Central**—by offering them on broader distributed packages. Since the complaint's filing, WE tv parent **AMC Networks** was spun off as a separate company, and **Altice USA** purchased Cablevision. In late November, more than a year after a hearing on the dispute, an FCC administrative law judge ruled that Cablevision discriminated against GSN. "GSN proved that Cablevision, in its retiering decision, considered retiering only non-affiliated networks having expired or expiring contracts. Yet no consideration was given by Cablevision to retiering any of its affiliated networks, including those that also had expired or expiring carriage agreements," ALJ *Richard Sippel* wrote, going against an Enforcement Bureau recommendation that he dismiss the complaint. Cablevision took exception to Sippel's ruling, asking the Commission to reverse the decision and cancel a proposed forfeiture penalty of $400K, the maximum allowed. That brings us to the FCC's Office of General Counsel, which on June 1 circulated a draft decision on Cablevision's exceptions to the decision. The problem is that it's now July and the Commission hasn't voted on the matter. FCC rules require an order indicating that additional time will be needed to resolve a case if the Commission doesn't adopt a decision within five months of the last responsive pleading, which in this case was GSN's Feb 2 opposition to Cablevision. Neither company could be reached at deadline. Optimum's website shows GSN as still part of the 25-channel sports & entertainment package.

Patent Penning: **The Kudelski Group** has reached a patent cross-license agreement with **AT&T** that provides the telco company with access to Kudelski's portfolio covering end-to-end video distribution. The group last week announced a similar deal with **Turner**. Financial terms of the AT&T deal were not disclosed. Kudelski and its **OpenTV** subsidiary have filed a number of lawsuits this year regarding its intellectual property. The group in January sued the

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NFL and has since gone after **Comcast** and licensee **Shaw** regarding the X1 platform.

Horowitz Out at Fox Sports: **Fox Sports** on Monday fired national networks pres *Jamie Horowitz* in connection with a sexual harassment probe that began a week earlier. *SportsBusiness Journal* first reported the firing, with the *L.A. Times* later revealing the investigation. Horowitz's ouster comes just a week after he fired a number of editorial personnel as part of a restructuring of the division's digital strategy. Horowitz has reportedly hired attorney *Patricia Glaser* to rep him, while Fox has retained *Daniel Petrocelli*. **21st Century Fox** has dealt with a number of sexual harassment claims in the past year at **Fox News**, including those against the net's now-deceased founder *Roger Ailes* and former commentator *Bill O'Reilly*. Horowitz's brief tenure at **FS1**, which began last May, included the hiring of high-priced talent for debate-style programming on the net.

Ratings: **ESPN's** telecast of Saturday's "Battle of Brisbane," in which *Jeff Horn* defeated *Manny Pacquiao* via a controversial decision, was the highest-rated and most-watched boxing telecast since a 2006 event on **HBO**. The bout aired from 10pm-1am ET, averaging a 1.6 HH rating and 2.8mln viewers on ESPN, plus an additional 206K on E**SPN Deportes**. Horn-Pacquiao was ESPN's highest-rated boxing telecast since 1995. ESPN is touting a **Nielsen**-reported total live audience of 3.1mln live viewers for the event across both cable nets and its **WatchESPN** streaming platform.

Start Your Engine: **Nuvyyo**, the manufacturer of **Tablo** over-the-air DVRs, is rolling an Android TV-based DVR app that lets cord cutters watch, control and record live TV from broadcast nets. The Tablo Engine app is initially available for the **Nvidia** Shield, but the company plans to support other Android TV devices going forward. Use of the app requires a Tablo Tuner OTA USB adapter that connects a TV antenna to the Shield. The Engine lets users pause, rewind and fast-forward live TV and features a **Netflix**-style program guide. Full functionality of the app costs $39.99 per year after a 30-day trial, while the tuner costs $69.99.

Programming: **History** will debut two-hour special, "Amelia Earhart: The Lost Evidence," this Sunday at 9pm ET/PT. The program will unveil documents that suggest the pilot actually survived her final flight and ultimately died in the custody of the Japanese military. -- **Science Channel** has acquired off-network cable rights for 16 episodes of **ABC's** "BattleBots." The show will make its Science Channel debut next Wednesday at 10pm ET/PT. -- **ESPN** recently re-signed anchor and reporter *Hannah Storm*, who will kick off her new deal by co-anchoring coverage of the Warrior Games on Friday. Former "Daily Show" host *Jon Stewart* will broadcast the event alongside Storm. The Warrior Games is a multi-sport event for wounded, injured or ill military service personnel and veterans.

People: **Charter** named *Andrew Ip* svp, emerging technology and innovation. He will report to evp, engineering and IT *Jim Blackley* and be based out of Charter's regional offices in Denver. Ip most recently served as svp and managing director at **Madison Square Garden Ventures**. Prior to his work there, he spent nearly five years at **Cablevision** in a number of roles. -- **FCC** chmn *Ajit Pai* appointed *Jerry Ellig* as chief economist. Ellig will assist the FCC with the creation of the previously announced Office of Economics and Data. Ellig currently serves as a senior research fellow at George Mason Univ.'s Mercatus Center. He has previously worked for the **FTC** and Congress' **Joint Economic Committee**. -- **Nickelodeon** promoted senior director of ad project management *Jamie Edelstein* to vp, creative operations and ad project management. The net also upped senior director *Cheryl Konieczko* to vp, franchise creative project management.

Think about that for a minute...

Sound and Fury

Commentary by Steve Effros

Things are going to start out with a “bang” next week, but fear not, when it comes to regulating our industry we will continue the long, slow slog we have all been used to. The “bang,” which I am sure will be highlighted by many in the media by mid-week next week is the organized day of protest when the likes of Netflix and Amazon and I am sure a whole lot of others importune their customers or users to inundate the FCC with “comments” to either “protect” or “save” the Internet from imminent demise in the form of the FCC’s proposal to do away with Title II regulation of broadband.

Note that doesn’t say get rid of regulation of broadband, it doesn’t mean “blocking” or “throttling” will be allowed, it means they are looking at a different, less intrusive way of accomplishing those things. But that level of nuance is going to be lost in the noise, and the objective, as I pointed out in a column recently (“Numerology” 06/01/17) is just going to be to rack up “numbers” at the FCC. There will be plenty of comments, that’s for sure. There are already about five million! That’s not to say most of them are terribly helpful to the Commission and its staff. Most are just “yea” or “nay” on what the filers think is going on. Almost none of them have actually read the rulemaking. Virtually none are going to add any significant information to the proceeding. But boy, will there by headlines!

This, of course, goes to the point that many people mistakenly believe that rulemaking or policy development in general on very complicated issues is driven by “majority rule.” It’s not, or at least hopefully it’s not. Both the last Chairman of the FCC, Tom Wheeler, and this one, Ajit Pai, have said they wanted to operate based on research and facts. It didn’t work out so well in the Wheeler administration. We’ll see how Mr. Pai does. I’m hopeful.

In the meantime we’re going to see battling press releases and claims about blocked email servers, “fake” filings on both sides by “bots” generating lots of noise signifying nothing, and all sorts of other nonsense. I wouldn’t put too much energy behind any of it.

The reality is we have an administration, at the FCC and on Capitol Hill and at the White House at the moment, which is not enamored of prophylactic rate regulation. That is really what this fight is all about. So even if there is an avalanche of comment and loads of press, you are not going to see the FCC, even assuming they keep “Title II” for now, rate regulating broadband. This is true for quite some time to come. Even if one or both houses of Congress change over in two years (a long shot) or the White House changes who resides there (another long shot) we are going to have four years of a Republican Presidency, thus a Republican FCC Chairman and a reluctance to rate regulate no matter what.

So be prepared for the noise, expect court challenges to whatever is done, and win or lose, expect that we are going to be in roughly the same situation four years from now as we are today with regard to additional rate regulation of broadband! It may not fit the definition of “certainty,” which any business would prefer, but it’s not likely to be very chaotic either, even though it may sound that way.

Steve

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