www.cablefaxdaily.com, Published by Access Intelligence, LLC, Tel: 301-354-2101

Cablefax Daily™

Monday — July 10, 2017 | What the Industry Reads First | Volume 28 / No. 129

DC Circuit: FCC Effective Competition Order Stands

Now that the DC Circuit has finally weighed in and rejected a challenge of the **FCC's** 2015 effective competition order, does it change anything for cable? Probably not. The rules already have been in place, with only three local franchise authorities challenging effective competition status (one was thrown out, while two areas in Hawaii and 118 franchise areas in Massachusetts were deemed not to have effective competition). **NATOA** and **NAB** filed the legal petition for review of the FCC rule, which presumes cable systems nationally are subject to effective competition—meaning MVPD competitors, such as satellite, have at least 15% of the local pay TV market. Cable supported the FCC order because local franchise authorities can't regulate basic cable rates and equipment charges unless they can show proof that the cable operator doesn't face effective competition in their jurisdiction. There is some buzz over whether the effective competition designation could allow cable systems to offer broadcast signals somewhere besides the minimum basic tier. But that doesn't sound like an easy road. The FCC specifically said in its order that such a move would be a "statutory interpretation issue that we do not address here." And it dismissed concerns from NAB and others that such re-tiering of PEG channels and retrans stations would take place by noting it hasn't happened in the thousands of communities where effective competition was already declared before the 2015 order took effect. Throwing more water on the idea is that broadcasters who elect retrans would be unlikely to agree with carriage of their signals on an optional tier. And for must-carry stations, broadcasters would likely argue that the obligation for carriage on basic tiers arises from must-carry rules apart from the rate-regulation rules. NAB declined comment on the DC Circuit's effective competition opinion, which was released Friday. The court upheld the FCC rule based on "the strength of [the FCC's] nationwide data and the opportunity it gave each franchising authority to support the opposite conclusion," Judge *Douglas Ginsburg* wrote in the opinion for the three-judge panel. In a statement, **NATOA** exec dir *Steve Traylor* expressed disappointment, but added "today's outcome will not deter us from raising our voice in protest when we see the Commission taking action that conflicts with a recommendation from the Commission's own Intergovernmental Advisory Committee, provides no clear benefits to consumers, and goes beyond specific Congressional direction." **NCTA** and **ACA**, both intervenors in the case, applauded the news. "This decision further affirms that consumers are enjoying the benefits of

CABLEFAX DAILY (ISSN 1069-6644) is published daily by Access Intelligence, LLC ● www.cablefax.com ● 301.354.2101 ● Editorial Director: Amy Maclean, 301.354.1760, amaclean@accessintel.com ● Publisher: Michael Grebb, 323.380.6263, mgrebb@accessintel.com ● Community Editor: Alex Silverman, 212.621.4951, asilverman@accessintel.com ● Dir. of Bus Dev.: Rich Hauptner, 203.899.8460, rhauptner@accessintel.com ● Acct. Exec: Olivia Murray, 301.354.2010, omurray@accessintel.com ● VP Marketing: Amy Jefferies, 301.354.1699, ajefferies@accessintel.com ● Marketing Manager: Alex Virden, 301.354.1619, avirden@accessintel.com ● Production Manager: Joann Fato, jfato@accessintel.com ● Diane Schwartz, SVP Media Comms Group, dschwartz@accessintel.com ● Group Subs or Subscription Questions, Client Services: 301.354.2101, clientservices@accessintel.com ● Annual subscription price: $1,699.97/year ● Access Intelligence, LLC, 9211 Corporate Blvd., 4th Floor, Rockville, MD 20850

a hyper-competitive video marketplace and that consumer interests are best served by relying on competition rather than outdated regulations built for a world that no longer exists," NCTA said. ACA piled on: "In today's market, consumers have at least three choices for traditional pay-television service and can elect to subscribe to many online video services, like **Netflix** and **Hulu**. There is no longer any good reason that cable operators should remain subject to burdensome rate regulation."

AT&T-Time Warner Merger Getting Political: Sen *Amy Klobuchar* (D-MN) railed against potential action by the Trump administration to derail the pending **AT&T-Time Warner** merger in a letter to Attorney General *Jeff Sessions*. She wrote it in response to an earlier *NY Times* story that suggested *President Trump* could threaten the transaction as part of his vendetta against Time Warner-owned **CNN**. "Any political interference in antitrust enforcement is unacceptable," she said. "Even more concerning, in this instance, is that it appears that some advisers to the President may believe that it is appropriate for the government to use its law enforcement authority to alter or censor the press." She subsequently asked Sessions to answer a number of questions, including whether any member of the administration has had any contact with the Department of Justice regarding the merger. Klobuchar in February expressed antitrust concerns about the AT&T-Time Warner merger.

Vue Raises Prices: **PlayStation Vue** on Thursday did away with its "slim" packages, its lower-priced plans for customers in markets outside its initial launch cities, many of which did not have access to local broadcast affiliates. The slim packages were $10 cheaper per month than their standard counterparts. As of Thursday, the least expensive offering for new customers nationwide is the $39.99/month Access plan. Customers who had previously subscribed to a slim package will keep their current pricing for three billing cycles. The change corresponds with a push by **Sony** to acquire more local broadcast affiliate rights. The company in a statement said, "The transition to standard pricing for all markets was always part of our roadmap since we launched PlayStation Vue nationwide and began rolling out local broadcast affiliates in markets with Slim plans."

Serving DISH: Analysts on Friday responded to a number of reports about a possible wireless partnership between **DISH** and **Amazon**. **Macquarie Research** wrote such an arrangement would offer DISH "a way to meet its spectrum requirements and is a path towards monetization." The firm also noted working with DISH to create a new wireless network would allow Amazon to offer an additional benefit to its Prime customers, improve the capabilities of its IoT-based products (i.e. Alexa) and even expedite the implementation of a drone delivery system. Macquarie also noted Amazon could either build a network in conjunction with DISH or simply purchase the operator outright for its sub base and spectrum. **Telsey Advisory Group** asserted that Amazon has the stronger negotiating position, as DISH must build out a network for its spectrum—70% by 2020—in order to comply with **FCC** regulations. That, of course, is an expensive endeavor that Telsey wrote could "more than double DISH's net debt/EBITDA ratio." Talks between DISH and Amazon seem to be preliminary and, as Macquarie notes, Amazon has other avenues if it intends to make a foray in to wireless. "An MVNO agreement with traditional players is still an optimal outcome," the firm writes.

Splinter Sell: **Fusion Media Group**, whose holdings include cable nets **Fusion** and **El Rey,** is rebranding its eponymous digital publication as **Splinter**, effective July 24. The site will continue to be associated with Fusion Media-owned **Gizmodo Media** Group, which currently hosts the publication at Fusion.Kinja.com. Splinter will focus more on news and politics for a diverse audience, and the company has hired a new reporting team. The Fusion TV net, which will retain its current branding, is in the process of broadening its programming focus to include content from other Fusion Meida-owned brands like **The Onion** and **A.V. Club**.

People: **Turner** hired *Gary Frenkel* to fill a newly created role at **TNT** and **TBS**. As head of digital products and operations, he will oversee the nets' product development strategies and manage TV Everywhere platforms. Frenkel has consulted on the nets' recent mobile and digital upgrades for the past several months. Frenkel previously served as svp, digital products and technology at **Participant Media**. -- **Estrella TV** promoted news veteran *Pedro Ferriz Hijar* to vp, national news, effective immediately. In addition to continuing to anchor "Cierre de Edición," he will oversee strategic planning for the news division, managing all news-related content and production.