

# Cablefax Daily™

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What the Industry Reads First

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## Difference of Opinion: FCC Overturns ALJ's GSN-Cablevision Decision

The FCC voted 2-1 Thursday to overturn an administrative law judge's decision from November that found **Cablevision** discriminated against **GSN** by moving it to a sports and entertainment tier. The new decision, written by the Office of the General Counsel, raises questions about the overall ALJ process. "I have difficulty understanding the process in this case and why it took nearly six years to resolve a program carriage complaint. That's not acceptable under any circumstances," Commissioner *Mike O'Rielly* said, adding that it appears the ALJ method "may no longer be the most efficient means to complete our work." GSN filed the complaint with the FCC in October 2011, alleging that Cablevision favored networks that were affiliated with it at the time (**WE tv** and the now-defunct **Wedding Central**). Cablevision kept those nets on more broadly distributed tiers while moving GSN to a \$6.95/month tier. The FCC's Enforcement Bureau issued an opinion in 2015 that it felt GSN failed to produce any direct evidence of unlawful affiliation based on discrimination, nor did it show that GSN was similarly situated to **WE tv** and **Wedding Central**. However, ALJ *Richard Sippel* issued a different decision last fall, fining Cablevision (now **Altice USA**) the maximum \$400K allowed and telling it to move GSN. That channel relocation never happened, with Altice USA filing an objection to the ruling. As O'Rielly pointed out, even when there is an ALJ ruling, the Commission has to rule on the ALJ decision. "It's adding another unnecessary layer to the overall process," the GOP commish said. Commissioner *Mignon Clyburn*, the order's lone no vote, argued that the process was set up because the agency isn't structured to undertake such an extensive examination of a case. She called the move to overrule the ALJ a "dangerous precedent." "The process can take years, and it should come as no surprise that reversing an ALJ decision is quite infrequent," she said, noting that her staff found only a few examples in the 1980s and 1990s involving broadcast applications. The FCC did reverse the ALJ's decision on **Tennis Channel's** carriage complaint against **Comcast**, but it came only after a DC Circuit decision prompted the action. In fact, the GSN-Cablevision case was delayed several times over the years to see if it would be impacted by developments in the Tennis Channel complaint. FCC chmn *Ajit Pai* didn't offer any opinion on whether he'd like to see the ALJ process eliminated or revamped at this time. GSN declined comment Thursday, while Altice USA declared the order is "consistent with legal precedent and affirms our business decision to carry GSN on the appropriate tier for our Optimum customers." **Independent Programmers:** Clyburn



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had successfully pushed the previous FCC chairman to launch an NPRM to prohibit the inclusion of “unconditional” most favored nation (MFN) provisions and unreasonable alternative distribution method (ADM) provisions in program carriage agreements between MVPDs and independent video programming vendors. There hasn’t been any movement with that proceeding since Pai took over the agency. She used the vote to renew her call for action. “While GSN may have owners with deep pockets, this case demonstrates the inherent challenges facing programmers who are not vertically integrated with a paid TV distributor,” she said. “This is why I believe the time is now for us to move on a final order that ensures independent and diverse voices that they have a place in this vibrant media landscape.”

**Emmys - It's not TV. It's Netflix:** Less than four years after **Netflix** became the first company to win Emmy statuettes for online-only shows, it’s established itself as a serious contender in the space. Thursday’s Primetime Emmy nomination announcement illustrates just how far its focus on originals has come, with Netflix earning 91 nominations. That’s within spitting distance of Emmy powerhouse **HBO’s** 110 nominations and a dramatic rise from its 54 nominations last year. All of this comes one day after an **SRG** survey found the streaming SVOD service as **the No. 4 “must-keep” video brand behind only ABC, CBS and NBC**. While traditional networks continue to keep an eye on the online behemoth, cable did find plenty to celebrate. **Nat Geo’s** first scripted series, “Genius,” is in the running for best limited series, competing in a category that only includes cable programs. HBO’s “Big Little Lies” and “The Night Of” are also in the category, along with **FX’s** “Feud: Bette and Joan” and “ Fargo.” Nat Geo’s nod is a feather in CEO *Courteney Monroe’s* cap, as she has spent the past year positioning the network as a place for premium content. HBO can brag that freshman series “Westworld” tied **NBC’s** long-running “SNL” for the most nominations for a single program, with each receiving 22. Netflix’s “Stranger Things” and FX’s “Feud: Bette and Joan” tied for second place, with 18 nods apiece. FX can boast that “Atlanta” is the only first-time nominee in the best comedy category. Of the seven series up for best drama, five are first-timers —Netflix’s “The Crown” and “Stranger Things;” **Hulu’s** *The Handmaid’s Tale*,” NBC’s “This is Us” and “Westworld.” They join **AMC’s** “Better Call Saul” and Netflix’s “House of Cards.” Other brag-worthy notes include **BBC America’s** record 10 nominations for “Planet Earth II,” besting the original Planet Earth series and marking the most nods ever for the network. FX’s 55 nominations is the most among basic cable nets for the fourth consecutive year.

**i24News Launch:** **Mediacom** inked a deal to carry international news channel **i24News**. It’s the second US operator to carry the network behind **Altice USA**. The network was launched by **Altice** founder *Patrick Drahi* in 2013 and debuted in the US in February. Information on package and channel location will be announced locally on a market-by-market basis as the network is launched.

**Pedal to the Medal:** The **Olympic Channel**—a joint venture between the **IOC**, **USOC** and **NBCU**—launches in 35mln US homes this Saturday. NBC Olympics president *Gary Zenkel* said Thursday he expects to grow distribution to more than 40 million homes in the coming months. [See more on plans for the net at Cablefax.com](#).

**Cloud DVR for DirecTV Now:** **AT&T** is gearing up to launch a cloud-based DVR this fall for **DirecTV Now** and the **DirecTV** companion app. It’s part of the company’s efforts to roll out a next-generation platform with a unified interface. Beta testing for the platform begins this summer for invited DirecTV Now customers. Additional features, including live TV pausing and parental controls, are slated for availability once the new platform exits beta testing later this year. Other features, such as user profiles, download-and-go and 4K HDR are planned for 2018. AT&T said customers of its other video services will have access to the platform in the coming years.

**Liberty Global at Cable-Tec Expo:** **Liberty Global** CEO *Mike Fries* will join **Charter** CEO *Tom Rutledge* as a keynote speaker at the **SCTE-ISBE Cable-Tec Expo** on Oct 18. Fries will discuss how pay-TV providers are benefitting from the convergence of wireline and wireless at the Denver-based convention.

**Up Next at the FCC:** The themed months continue at the **FCC**, with August deemed Rural Broadband Month. The Aug. 3 agenda includes several items focused on narrowing the digital divide, including a notice to initiate the process for the Connect America Fund Phase II auction. It will award up to \$2bln over the next decade to broadband providers that commit to offer voice and broadband to fixed locations in unserved high-cost areas of the US. Also on tap is a proposed order related to the Mobility Fund. It would establish a process to challenge whether an area should be eligible for subsidies.

# PROGRAMMER'S PAGE

## Preacher Feature...

Email has become a hot button issue in the political world, but who knew that **AMC** chief *Charlie Collier* faces his own challenges? No, he's not under investigation (yet)—but we can only hope someone someday subpoenas the emails between Collier and *Seth Rogen* as they debate standards and practices for the network's over-the-top series "Preacher," which Rogen co-produces. Collier joked about the email exchanges at the show's Season 2 premiere in downtown L.A. last month, acknowledging what fans already know: this series' absurdly plentiful violence pushes the limits of what you can get away with on ad-supported cable. And its almost gleeful rejection of all that is good and "holy" fuels a comical dissection of humanity's darker tendencies. It also asks an intriguing question: What would happen if God just went AWOL? Apparently, plenty of mayhem that includes everything from run-of-the-mill homicide to an angel in human form letting himself get sawed in half, regenerating himself a new body and then going on a two-day drug binge before a demonic cowboy puts him out of his misery. And that was just one episode. As Collier noted during the premiere, *Preacher* is "outrageously special." And despite the over-the-top violence and darkly comic silliness, it's also a strangely poignant character study that keeps audiences guessing—something we should have realized last season after one character plunged a butcher knife into his own chest and offered his still-beating ticker to his mother. Love it or hate it, you have to admit this show's got heart. — *Michael Grebb*

**Reviews:** "I'm Sorry," 10pm, Wednesday, **truTV**. Watching the first eps of this delightful comedy about a 30-ish, married, L.A. couple with a young daughter you realize how much TV comedy owes to *Larry David*, whose "Curb Your Enthusiasm" returns on **HBO** Oct 1 after a six-year hiatus. In "Sorry" series creator *Andrea Savage* plays the Larry character. Like Larry, Andrea has awful luck and any little thing that can go wrong does. In addition, a la David, Andrea digs a deeper and deeper hole when she opens her mouth. No doubt Savage is playing in a crowded sandbox as so many other TV comedies have adopted the David formula. Still, if you're in search of laughs about nothing, this series delivers. Besides witty writing and fast-paced dialogue, credit an excellent cast including *Judy Greer*, the wonderful *Jason Mantzoukas*, *Tom Everett Scott* as Andrea's husband and, in ep 1, hilarious cameos from *Judith Light* and 87-years-young *June Squibb*. -- "Will," 9pm, Monday, **TNT**. We'll admit a bias toward *Shakespeare* and ill will (pun intended) toward a rock interpretation of the Bard's seven years, before he emerged as an actor and playwright in London in 1592. As long as viewers don't confuse "Will" with an accurate biography, there's plenty of fun to be had, a few tidbits to learn and a good cast. — *Seth Arenstein*

Basic Cable Rankings (7/3/17-7/9/17)			
Mon-Sun Prime			
1	FOXN	0.9	2000
2	HGTV	0.6	1506
2	HIST	0.6	1426
2	USA	0.6	1417
2	MSNB	0.6	1260
6	FX	0.5	1184
6	TBSC	0.5	1173
8	DISC	0.4	946
8	ID	0.4	938
8	DSNY	0.4	913
8	A&E	0.4	887
8	HMM	0.4	646
13	FOOD	0.3	812
13	ESPN	0.3	773
13	AMC	0.3	770
13	TLC	0.3	756
13	CNN	0.3	747
13	TVLD	0.3	681
13	ADSM	0.3	672
13	NAN	0.3	665
13	HALL	0.3	644
13	SYFY	0.3	608
13	TNT	0.3	607
13	FRFM	0.3	593
13	LIFE	0.3	583
13	INSP	0.3	546
13	NBCS	0.3	544
13	DSJR	0.3	536
13	LMN	0.3	489
13	NKJR	0.3	478
13	DSE	0.3	72
32	NGC	0.2	542
32	VH1	0.2	507
32	SPK	0.2	506
32	BRAV	0.2	505
32	APL	0.2	479
32	TRAV	0.2	459
32	WETV	0.2	450
32	EN	0.2	449
32	OWN	0.2	438
32	BET	0.2	416
32	WGNA	0.2	405
32	MTV	0.2	403
32	FXX	0.2	387

\*Nielsen data, supplied by ABC/Disney, is based on coverage area of individual networks



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