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FCC Fireworks: Sinclair-Tribune Front & Center at Commission Meeting

It hasn't quite reached the frenzy of net neutrality, but Thursday's **FCC** meeting is shaping up to be a doozy, and chmn *Ajit Pai is* in the crosshairs. The latest salvo came from a group of Democratic senators, led by *Maria Cantwell* (D-WA) and *Tom Udall* (D-WA), asking the FCC Inspector General to direct Pai to recuse himself from all actions related to the **Sinclair-Tribune** merger until the IG's office determines whether a permanent recusal is warranted. "This request is absurd on its face and nothing more than a last-ditch attempt by those desperate to block innovation in the broadcast industry and modernization of the FCC's outdated broadcast ownership rules," an FCC spokesperson said. Thursday's Open Meeting includes items that critics of the merger say are beneficial to Sinclair, including a relaxation of media ownership rules and the first step toward greenlighting the ATSC 3.0 standard, which Sinclair holds key patents for. The letter, signed by 15 senators, pointed to a timeline of events that they say raises alarms—from reports of a meeting President *Trump* had with Sinclair chmn and former CEO *David Smith* shortly after being elected, to a December report in *Politico* claiming *Jared Kushner* told business execs the campaign struck a deal with Sinclair to secure better media coverage. The senators also pointed to meetings Pai had with Sinclair reps that weren't initially disclosed, the reinstatement of the UHF discount and Thursday's meeting agenda. "Chairman Pai is expected to lead the FCC's party-line vote to eliminate decades-long rules that prevent TV stations in the same market from merging if the outcome leads to fewer than eight independent stations operating in that market, or if the merger is between two of the top four stations in a market," they wrote of the media ownership order, declaring that it would keep Sinclair from having to divest any of Tribune's stations. Earlier in the week, Democratic leadership on the House Energy & Commerce Committee asked the FCC IG to investigate whether Pai has taken improper actions to benefit Sinclair. An FCC spokesperson also dismissed that move as an apparent attempt to target a particular company because of perceived political views. The merger has its share of critics, including **ACA** and several independent programmers who claim it will have carriage and retrans repercussions; Sinclair would have 223 stations in 108 markets—including 39 of the top 50. **NCTC** joined the chorus of critics earlier this month, telling the FCC that it rarely comments on merger proceedings but felt the need to speak up after recently trying to negoti-

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ate a retrans deal with Sinclair. "We believe that Sinclair's approach is highly opportunistic—taking advantage of small operators in negotiations due to the enormous difference in size and the imbalance of power. If the proposed merger is approved, NCTC expects these tactics will become "even more magnified and significant," the co-op said. The last-minute actions before Thursday's vote included a debate and panel at Georgetown Law, supported by **The Benton Foundation**, that included *Rebecca Hanson* from Sinclair and Tribune gen counsel *Eddie Lazarus.* If you really want to dive into the debate before the vote, you can watch the whole thing around midnight ET on **C-SPAN 2**.

God Bless the USA: **Altice USA** CEO *Dexter Goei* made his first public appearance Wednesday since taking over as CEO of parent company **Altice NV**. His ascent to the dual role last week came in the wake of *Michel Combes* resignation amid concerns about the larger company's debt burden and overall performance in Europe. Altice CFO *Dennis Okhuijsen* did the heavy lifting in terms of addressing the company's debt load, saying the company plans to go "back to basics" and steer clear of M&A activity in the near future while deleveraging in France. He added that Altice USA is "rapidly deleveraging" due to both cash flow and EBITDA, with the region "underpinning the deleveraging of our group as a whole." Goei said Altice USA was mostly immune to the trend of steep video losses US competitors are experiencing. "We were surprised, like many of you in this room were surprised, in early September when **Comcast** came out with its comments and then published its results and **Charter** published its results, as well, because we were not seeing the same trends," Goei said. "If you really look about their quasi-national footprints, which touch all types of demographics and regions across the US, and ours where we're two-thirds in the Tri-State New York Area, which is a very different market relative to the rest of the country, more different than it is alike." Goei called the **Optimum** footprint "one of the best, if not the best, cable market in the US for video," noting 60-65% of new customers are signing up for a triple-play package, with 65-70% taking video. While Optimum has been a bright spot, Goei admitted **Suddenlink** has experienced similar issues to other US distributors. "You are seeing a slight acceleration [of losses] on the Suddenlink side of RGUs, which is more commensurate with what some of our peers are seeing, which is aggressiveness from some OTT players, which we don't see a lot of the effect of in the Tri-State Area because of the high cable penetration, and just fundamentally better products than some of the smaller cable operators, and Suddenlink is a smaller cable operator historically with not as good of content," he acknowledged. Still as many investors in the cable industry already know, Goei noted the broadband business is far more lucrative than video. While gross margins on internet are nearly 100%, video only generates margins of 30-40%, he said. Altice USA added 17K broadband customers in 3Q17 and lost 33K pay-TV subs.

Viacom-Charter Deal: **Charter** will move eight **Viacom** nets—including five of its "Flagship Six"—back to its most widely distributed Spectrum tier as part of the new distribution agreement between the two parties. **Nickelodeon**, **BET**, **MTV**, **Comedy Central**, **VH1**, **TV Land**, **CMT** and **Spike** (soon to be **Paramount Network**) will now be available on the Spectrum Select tier. Additional Viacom nets will continue to be available on Spectrum Silver and Gold tiers. **Nick Jr.** is the only one of the Flagship Six excluded from the Select tier, perhaps lending credence to the notion that parents are increasingly turning to SVOD services for children's programming. In the final months of their previous agreement, Charter relegated Viacom channels to a lesser tier. Charter and Viacom agreed to the new deal in principle on Oct 17, allowing them to avoid a blackout. The new agreement also calls for the co-production of original content that will premiere exclusively to Charter subs. Viacom will later be able to distribute the original content more broadly following the debut period on Charter. The deal also includes collaboration around advanced advertising, the use of anonymized viewership data and addressing unauthorized password sharing. **Wells Fargo Securities**' *Marci Ryvicker* called the co-production and advanced advertising initiatives "an incremental positive" for Viacom. The programmer is scheduled to report its 3Q earnings Thursday, which could provide additional insight into the deal.

Sprint Offering Hulu: **Sprint** will include access to **Hulu's** SVOD service with its Unlimited Freedom plan for new and existing customers. The wireless provider advertises the plan as providing unlimited voice, text and data for $25/month per line, with a fifth line free. The Hulu Limited Commercials plan typically costs $7.99/month. The offer is similar to recent move by **T-Mobile**, which began including **Netflix** with its ONE family plans.

You've Got Mail: **Comcast** launched RealTime Assist, a personalized service messaging platform delivering service information to Xfinity customers on their mobile phones, My Account app or to X1 screens. Over 4.5mln customers have received messages so far for technician appointments, equipment updates, notes on self-install kits, network upgrades and planned outages.

The Customer's Always Right: **WOW!** and **Synacor** have renewed and expanded their current partnership, launching a new portal for WOW! customers. They'll enjoy a simplified login experience across all devices, allowing them to sign in on all participating provider apps on TV or mobile devices at once. Other perks include improvements in email communications, security upgrades, upgraded access to video content and integration across devices. The agreement will continue to cover portal, advertising and email services.

Streaming Sports: **Sports Illustrated** will launch an OTT service Thursday through **Amazon Channels**. SI TV will launch with 130 hours of on-demand content, including original documentary series, weekly studio shows and acquired sports movies, documentaries and TV shows. The service costs $4.99/month after a 7-day free trial. SI TV is the second streaming service based around a **Time Inc.** brand, joining **People TV**, a free offering focused on pop culture content.

Taking a Hit: The biggest pay-TV providers in the US lost about 405K subscribers in 3Q 2017, up from a 250K loss in 3Q 2016, according to **Leichtman Research**. The top pay TV companies cover 92.2mln subs, or 95% of the total market, while the top six cable companies have 48.1mln video subscribers in comparison. Those six cable companies also experienced an increase in losses, seeing 290K video subs leave versus a 90K loss in 3Q 2016. Satellite wasn't immune either, despite seeing an actual 5K gain in 3Q16. About 475K subs left the services in 3Q 2017, with 251K of those coming from **DirecTV**. Only internet-delivered services like **Sling TV** and **DirecTV Now** had something to cheer about, seeing a growth in 535K subscribers compared to around 200K adds last year.

Union Support: The **Communications Workers of America** expressed its support for **AT&T's** proposed merger with **Time Warner**, calling for its prompt approval in a statement Tuesday. "This merger is about maintaining and creating good US jobs and developing new and innovative ways to deliver technology and content," union pres *Chris Shelton* said. "A merged AT&T-Time Warner would provide much-needed new competition to companies like **Google**, **Facebook** and **Amazon**, where working people don't have union representation."

Back in Time: **A+E Networks** is jumping into augmented reality for the first time, developing two companion games for "Knightfall," **History's** Templar-focused drama coming Dec 6. "Knightfall AR," also coming sometime in December, places you in the world of the show, working with The Knights Templar on their quest to defend the city of Acre and protect the Holy Grail. The second game, "Knightfall: Rivals," arrived on Nov 15 on iOS, Android and Steam platforms. It is a mobile card game, pitting players against each other in a power struggle that could destroy the entire order.

He Shoots, He Scores: Tuesday night's showdown between the **Boston Celtics** and the **Brooklyn Nets** finished as the highest-rated and most-viewed Nets telecast on **YES** in the past three years, averaging a 1.30 TV Household rating and 133K total viewers. This ranks as the most successful telecast since YES' airing of the teams' meeting on Dec 8, 2014, which held a 1.59 average rating and 179K Total Viewers.

Think about that for a minute...

Regulatory Epiphany

Commentary by Steve Effros

It really is amazing how these things work. You're an "outsider" and you're asked for a legal analysis of a proposed merger… say, oh, just for chuckles, the **AT&T-Time Warner** combination. Your opinion is very clear; there shouldn't be much of a problem; it's known as a "vertical" merger, meaning the two pieces being merged do not currently compete with each other. The **Department of Justice** tends to look at the antitrust law as written, it's a limited question of whether there is an untoward diminution of competition. Since the two parts don't compete, not a problem.

But then you are named to a high-ranking government position, say, head of the antitrust division of the DOJ. Now there are all sorts of other pressures and interests to consider. Suddenly, an epiphany: maybe this isn't as simple as it sounds! Maybe we should look at the potential impacts on consumers, or the concentration of power regardless of the limited "competition" issues. Suddenly, demands are suggested about divesting things like **CNN**. And the headlines scream.

Improper influence from the White House! Inappropriate pressure on what are "supposed to be" "impartial" decisions! Well, let's take a deep breath. Do I think the *Trump* White House is "telling" their antitrust chief at the DOJ what to do? No, not really. Did he seem to suddenly change course regarding the way he looks at the issues in front of him? Yes, it looks that way. Is this unusual?

Nope. Remember former **FCC** chmn *Tom Wheeler* making a sudden u-turn on Title I or Title II regulation of broadband? Remember that it happened just after a televised speech by then-President *Obama* on the very subject, and reportedly a several-hundred page memo from the White House to the Commission on regulating under Title II that somehow didn't get into the record? Did Tom have an epiphany too? I guess so.

Or maybe it's just that this is the way things work. Yes, it's true that DOJ usually just looks at the specific internal anti-competitive issues in a proposed merger. But are they foreclosed from looking at the other policy implications? Well, that may be something a court will ultimately decide. Was the "net neutrality" about-face a bald exercise in presidential arm-twisting or did the head of the FCC just suddenly decide he had been heading in the wrong direction all along?

I suspect in both cases there is a reality to governing that applies. It was told to me by a former chairman of the FCC when I asked him about the reversal on Title II. He said, paraphrasing, "...look, the President's the one who named you Chairman… you're expected to follow his lead otherwise you wouldn't be there. I'm just glad it didn't happen on my watch."

And so it goes. There are decent arguments on both sides of the AT&T-TWX merger debate. There is certainly an issue of accumulation of leverage in programming negotiations, but there's also an argument that there is a desperate need for scale to compete with the even newer and much bigger "edge providers." It comes as no surprise to me that the DOJ, and particularly the legacy lawyers there who have long been concerned about concentration in the media, would want to take a very close look at this one. It was never going to be a "slam dunk" despite what so many analysts said. Politics and policy were always going to be part of the mix. That shouldn't come as an epiphany to anyone.

Steve

T:202-630-2099
steve@effros.com

(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.)