

Cablefax Daily™

Tuesday — November 28, 2017

What the Industry Reads First

Volume 28 / No. 226

FCC Fracas: Countdown to Open Internet Vote

The Thanksgiving holiday did nothing to slow down the fury over the **FCC's** planned vote to dismantle the 2015 Open Internet order at its Dec 16 open meeting. Tens of thousands of comments were published just on Monday in the FCC's electronic filing system, less than a week after the agency posted a draft version of the order. FCC chmn *Ajit Pai* appeared on *Fox News* to say protesters outside his home with signs directed at his children crossed a line. Even the shopping bonanza known as "Cyber Monday" was thrown into the melee, with more than 200 companies—including **Airbnb**, **etsy**, **Github** and **Reddit**—signing a letter to Pai that fretted the rollback could impact the busiest online shopping day of the year. As we settle in for another round of fighting, it could be useful to look to analysis submitted last week from the **National Hispanic Media Coalition**. It will likely be used as ammunition by Title II supporters, and objectors will poke holes in it. It's based on informal open internet consumer complaints and related documents (such as responses from ISPs to complaints) that were gleaned from Freedom of Information Act requests. **NCTA**, **USTelecom** and **AT&T** all argued at the FCC against a **NHMC** request to incorporate consumer complaints into the record for the FCC to consider or to initiate a new pleading cycle to give other parties the opportunity to comment on the documents—reasoning that the complaints have all been made public and **NHMC** could file them in the record itself if they showed anything relevant, and if they demonstrated any meaningful violation, they would have been acted on by the FCC. **NHMC's** rebuttal is that the informal complaint process isn't designed to assess the merits of complaints but to facilitate communications with a service provider. Given that it was commissioned by net neutrality advocate **NHMC**, it's probably not surprising that the report rejects the notion that the 2015 Open Internet order was heavy handed or a regulatory burden for ISPs. Key highlights: Of the 50K informal complaints reviewed, the sample was narrowed to about 20K by removing data cap complaints and privacy complaints as both may not be related to the issue at hand. The report, authored by *Reza Rajabiun*, a research fellow at Ryerson University in Toronto, concluded the quantitative content analysis shows consumer complaints are primarily driven by less-than-expected "speeds" operators deliver (and remember, that's with data cap complaints removed). "In response to these complaints, the carriers tend to initially attribute the problem to customers' 'modem,' 'WiFi,' or other 'equipment,'" the report said. "Nevertheless, they tend to go on to explain that the speed of their services 'vary' due to

OVERACHIEVERS
UNDER 30 PRESENTED BY
Cablefax

Celebrate the industry's rising talent!

Wednesday, December 6 | 12:00 - 2:00PM

Upper Story by Charlie Palmer | NYC

Register Link: www.cablefax.com/event/overachievers-under-30-2017

31471

17th Holiday
ROCK & ROLL
Bash

SAVE THE DATE
DECEMBER 13, 2017

AT **TAO**
DOWNTOWN

For more information call 914-579-1000 or
email holidaybash@buckleyhallevnts.com.

Featuring a special DJ set from **Swizz Beatz**
and a performance by the **Rockettes**.

A BENEFIT FOR THE LUSTGARTEN FOUNDATION FOR PANCREATIC CANCER RESEARCH

PRESENTED BY



THE
MADISON SQUARE GARDEN
COMPANY

AMC
NETWORKS

MEDIA
PARTNERS



Cablefax

Cynopsis
MEDIA

Multichannel

Thanks to private funding, 100% of every dollar donated to The Lustgarten Foundation
goes directly to pancreatic cancer research. Learn more at lustgarten.org

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 ● Associate Editor: Sara Winegardner, 301.354.1701, swinegardner@accessintel.com ● Community Editor: Alex Silverman, 212.621.4951, asilverman@accessintel.com ● Acct. Exec: Olivia Murray, 301.354.2010, omurray@accessintel.com ● VP Marketing: Amy Jefferies, 301.354.1699, ajefferies@accessintel.com ● Marketing Manager: Charlotte Clay, 301.354.1710, cclay@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

'network' 'congestion' necessitating their reliance on traffic [management] practices that restrict actual speeds consumers receive compared to what they were expecting." Advertisers' internet speeds have been a hot-button issue with lawmakers for years, so expect the speed talk to ratchet up a notch—especially noteworthy if Congress gets involved (as many expect) in setting up some net neutrality rules of the road. Meanwhile, Pai will make the case for the draft order at an event Tuesday organized by free market think tank **R Street** and tech public policy group **Lincoln Network**.

Set-Top Box Order, Anyone?: What a difference a year makes... A little more than a year ago, the cable industry was sweating a set-top box proposal at the **FCC** that was an attempt to "unlock" the boxes to third parties. It was pulled from a September FCC meeting vote, with *Jessica Rosenworcel* expressing concerns about licensing arrangements. Then, the administration changed, and *Ajit Pai* took it off circulation in one of his first actions as chairman. This month, Pai responded to several lawmakers, including Sens *Bill Nelson* (D-FL) and *Claire McCaskill* (D-MO), on queries following up on a GAO report from September that said the FCC should conduct additional analysis on the need for such regulation. "The Commission will utilize the annual video competition report proceedings to gather data and solicit comment on issues relevant to whether there is a need for further regulations to ensure the commercial availability of devices to access MVPD programming," Pai wrote. "We will include an analysis of these data and comments in our future annual video competition reports." This fits with GAO's recommendation that the Commission conduct a comprehensive analysis of how recent industry changes impact consumer choice for devices to access video services.

License Please: The **International Trade Commission** determined that **Comcast's** X1 set-top boxes infringe on two patents held by **TiVo** and ruled to prohibit the operator from importing or selling boxes equipped with software related to those patents. The decision, made last week, is subject to presidential review, which could take up to 60 days. Two manufacturers also named as respondents in the case—**Arris** and **Technicolor**—would also be barred from importing devices for Comcast. The decision is a significant legal victory for TiVo, which has sought a license agreement with Comcast for its use of the technology. During the company's October earnings call, then-CEO *Thomas Carson* said, "Bringing Comcast under license remains one of our top priorities." He also expressed hope at the time that the ITC would prevent Comcast "from importing infringing products." *Enrique Rodriguez* has since replaced Carson as CEO. Following the ruling, **Rovi Corporation**, which merged with TiVo last year, issued a statement, saying, "Rovi is pleased the International Trade Commission issued its final ruling in our favor and found that two Rovi patents are valid and infringed by Comcast's X1 products, and issued an exclusion order that bans Comcast from importing and selling X1 devices that infringe our valuable intellectual property. Today's Commission

Cablefax is **THE** Place to Advertise

Launching a new product? Send a targeted eblast!

Premiering a new show? Advertise in our Daily newsletter!

Want to be a thought leader? Promote your content to our audience!

The Cablefax brand reaches the top executives in corporate management, business development, programming, content acquisition, technology and policy.

Deliver your message with impact and influence the industry's elite.

Work with Cablefax Today!

Rates & More Information: Olivia Murray at omurray@accessintel.com or 301-354-2010

Opinion reinforces the need for Comcast to take the necessary licenses to our IP.” Comcast in its own statement said, “We respectfully disagree with the ITC’s decision in this matter. In fact, Rovi has never disputed that Comcast or its predecessors independently developed our X1 platform and our cloud- and app-based technology. While we believe the ITC reached the wrong decision, we will remove this feature from those offered to our subscribers while we pursue an appeal.”

Quite the Entrance: Comcast’s entry into the wireless business is having a greater-than-anticipated effect on the overall mobile market, according to **MoffettNathanson** analyst *Craig Moffett*. Comcast gained 250K **Xfinity Mobile** subs in its first quarter of operation, which represented 18% of the wireless industry’s 1.4mln net additions in that period. “Comcast appears to have landed on a potentially significant unmet market need, and as such, their offering could turn out to be rather disruptive,” *Moffett* wrote, referring to users who prefer a non-unlimited plan. He added that the market for this “could turn out to be quite large” when you factor in family plans in which at least one member would prefer a non-unlimited plan. Comcast MVNO provider **Verizon** will gain wholesale revenue that will “roughly offset any negative impact from retail subscriber losses and ARPU pressures.” For **Sprint**, **T-Mobile** and **AT&T**, however, Comcast is “simply an unadulterated negative.” *Moffett* also asserted that the dissolution of merger talks between T-Mobile and Sprint was a positive for both Comcast and MVNO partner **Charter**, whose wireless offering will hit the market in 2018, due to “improved competitive dynamics with respect to their MVNO agreement with Verizon.”

Retrans Round-Up: **CBS** and **DISH** weren’t the only companies to sign on the dotted line last week. **AT&T** and **Capitol Broadcasting** reached a new multi-year agreement that brought **WRAL-NBC** and **WRAZ-Fox** in Raleigh, NC, and **WILM** in Wilmington, NC back to **U-verse** customers. The deal also returned WRAL to **DirecTV Now’s** lineup. The stations returned very late Nov 20, having been dark since Sept 13.

Gaming for Good: **ESPN** is partnering with **Twitch** on a 24-hour live streaming event to kick off the **V Foundation’s** V Week. Starting at noon PT Tuesday, “Don’t Ever Give Up Day” brings together esports and gaming personalities, ESPN talent and Twitch influencers to share how cancer has affected them. Twitch will provide on-screen calls to action and live tracking of donations, as well as game giveaways, viewer interaction and unauthenticated global access to the stream.

Programming: Beginning in January, **CNN** political commentator *Van Jones* will head a one-hour primetime program on the net, set to air bimonthly. “The Van Jones Show” will act as a continuation of Jones’ string of 2017 town halls (“The Messy Truth”), tackling policy and culture wars across America. CNN also greenlit another Jones-led original series in conjunction with production company **Citizen Jones**, centered on redemption in the criminal justice system. -- **Amazon** is premiering all six episodes of “The Last Post” on Prime Video in the US on Dec 22. The drama from *Peter Moffat* explores the social and political unrest in Aden, Yemen during the mid-sixties, following a unit of Royal Military Police officers and their families. -- A new season of “Intervention” is coming to **A&E** which will, for the first time in series history, follow the interconnected stories of addicts and their families as a part of the national opioid crisis. Families living within “The Heroin Triangle” of Atlanta will offer their testimonies on the need for support and help nationwide. The two-hour season premiere airs on Jan 2 at 9pm.

People: Former **Hulu** exec *Noah Heller* is launching early stage venture fund **3Rodeo**, granting entrepreneurs the dollars and advice necessary to get startups off the ground, according to *Variety*. Heller serves as managing partner while **RYOT Studio** co-founder *Molly DeWolf Swenson* and former **Picasa** CEO *Lars Perkins* will act as venture partners. Heller wants to invest in a variety of fields, including media, computer vision and financial technology. -- Mobile technology company **Penthera** bolstered its team following an investment from **Liberty Global**. *Daniel Hurwitz* will become chief revenue officer, bringing his experience from companies like **SiriusXM** and **NBCU**. His business development partner *Will Chapman* has also come to the company to serve as vp, sales. Chapman previously served as chief revenue officer of **BrightLine** and was vp of sales at **AudienceScience**. -- **LBI Media** appointed *Jason Hall* as svp, national sales, giving him responsibility for leading and organizing national sales efforts, as well as recruitment and direct management of offices in NY, LA, Miami, Chicago, Dallas, Atlanta and Mexico. Hall garnered 17 years of senior sales experience at **Univision Communications**, most recently serving as vp, ad sales. -- Well-known **Cinnamon Mueller** partner *Barbara Esbin* has left private practice to return to the **FCC** as deputy chief of the Consumer and Governmental Affairs Bureau. She will focus on overseeing the Bureau’s Office of Native Affairs and Policy and its Office of Intergovernmental Affairs, concentrating on productive engagement with Native Nations and with state and local governments. Esbin has more than 14 years experience at the agency and 15 years in private practice.



No Deal for CBS on Sling TV

DISH and **CBS** reached a new retransmission consent deal last Thursday evening after a three-day blackout cost DISH customers a Thanksgiving football game. While the new pact restored CBS-owned broadcast stations and cable channels to the satellite provider's system, it failed to address the broadcaster's absence from DISH-owned **Sling TV**.

Sling is positioned as the least expensive virtual MVPD (with sports and locals, sorry **Philo**) on the market, with its Orange package starting at just \$20/month. DISH has kept its costs for Sling down by limiting local broadcast offerings. While higher-priced competitors like **Hulu**, **YouTube TV**, **PlayStation Vue** and **DirecTV** have rushed to sign as many local stations as possible (Hulu leads the way at our last check with 373), Sling has limited its broadcast carriage to O&Os.

ABC, for instance, is only available as part of a Sling Orange add-on tier in the eight markets where the broadcaster owns and operates stations. Similarly, local **NBC** and **Fox** stations are only available via Sling Blue in the broadcasters' O&O markets. Sling users outside those markets only have on-demand access to the broadcasters' national programming.

For CBS, Sling's unwillingness to take on affiliate stations in addition to O&Os was a deal-breaker, just as it was when the broadcaster last negotiated with DISH in 2014. Its deals with other virtual MVPDs allow affiliate stations to opt in, something the network feels is important for its national ad sales model.

The lack of Sling distribution is a blow for both parties. By taking the all-or-nothing position with Sling—which for now means nothing—CBS remains undistributed by the most popular vMVPD service, which research firm **MoffettNathanson** estimated had 1.69mln subs at the end of last quarter. CBS CEO *Leslie Moonves* has embraced cord-cutting, saying vMVPD subs are worth twice as much to

the net as traditional pay-TV subs. The upside, of course, is contingent on cord-cutters remaining CBS customers, which those who switch to Sling will not.

On the other side, the lack of a CBS deal leaves Sling with a significant hole in its lineup. For sports fans, a package that doesn't offer a full Sunday **NFL** slate (not to mention March Madness and **SEC** football) is out of the question. Add fans of popular shows like "The Big Bang Theory" to that list of non-customers, and Sling remains at a considerable disadvantage.

Like its parent company, Sling has sought to combat retransmission fees by encouraging customers to access their local stations over the air. Its AirTV Player, just \$50 with a three-month commitment to Sling, offers antenna access to locals alongside the vMVPD's pay-TV content. It's unclear how many Sling customers are accessing locals over the air, but antennas are in vogue among cord-cutters.

Sling wasn't the only OTT issue that emerged during the CBS-DISH dispute. As **Cablefax** reported last week, DISH expressed frustration regarding CBS' direct-to-consumer offering, **All Access**, which the broadcaster sells for \$5.99/month, allows users to watch all of its most popular scripted and unscripted content on demand, plus live NFL games, college sports and local news programming. In other words, it has everything DISH pays to carry. As if that's not enough, CBS is also loading up All Access with exclusive content that DISH customers don't have access to at all.

"You have your direct-to-consumer [product], you can sell it a la carte. Meanwhile, we're stuck carrying you across the country and have no access to the good stuff," DISH evp, marketing, programming and media sales *Warren Schlichting* said last week.

DISH proposed a resale arrangement that would allow the satellite operator to offer All Access to its customers, but CBS shot that down. We'll be keeping an eye on how direct-to-consumer options impact retrans going forward.



SCREENSTER Reach Your Key Audience!

SCREENSTER IS:

- The Convergence of Online Content and Traditional Media
- Community Building and Audience Aggregation
- Social and Digital Communication
- Monetization Efforts Across Multiple Sectors
- ...And Much More!

www.cablefax.com/screenster | Special Advertising Packages Available!

For more information contact: Olivia Murray: omurray@accessintel.com or 301-354-2010