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

Cablefax Daily™

Tuesday — December 5, 2017 | What the Industry Reads First | Volume 28 / No. 231

Contract Spat: Turner, DISH Battling Over CNN Contract Terms

Most programmers will tell you that **DISH** isn't afraid to take a contract disagreement to court. Ask **Disney**, who spent years tied up in litigation with the pay-TV provider. This time, though, it is **Turner** who brought forth a legal challenge, telling a federal court that the satellite provider has only made partial payments for **CNN** over the past several months. The heavily redacted complaint points to a 2015 agreement between Turner and DISH. That agreement came after a month-long blackout in 2014 of CNN, **Cartoon**, **Adult Swim** and other Turner nets—save **TBS** and **TNT**. DISH eventually agreed to return the nets, and the two negotiated for more than four months before the 2015 deal was announced. Turner filed its most recent suit in October, telling the court that it believes it has suffered more than $30mln in damages from DISH's underpayment for CNN. DISH disputes the claims, telling the court it overpaid license fees from the beginning of 2015 to Feb 21, 2017. Last week, DISH filed a counterclaim, alleging that Turner has failed to provide it with a set number of minutes under the 2015 agreement for its own commercial avails (for its products or third parties). DISH pegs its damages at no less than $12mln. The two companies engaged in informal settlement discussions on Nov 17, but don't believe a settlement is likely at this time, according to court documents. DISH also has litigation pending against **Univision**. The satellite provider sued in July, alleging that the Spanish-language broadcaster violated its affiliate agreement by streaming 46 matches of the past **Liga MX** soccer season on **Facebook** Live. Those webcasts were in English, which Univision argues is different than the Spanish-language broadcasts that DISH receives through Univision Deportes.

Barc at the Moon: The bears ran wild at **Barclays** on Monday, as the research firm downgraded both the cable sector as a whole and, more specifically, **Charter**. Barclays knocked cable down to a "neutral" rating, pointing to "growing competitive pressure in video, slowdown in broadband growth, levered balance sheets, M&A permutations becoming more uncertain in terms of pay offs, optimistic estimates and valuation." The firm also expressed concern that the "growing lack of visibility could result in further downside surprises in the coming quarters." Barclays also downgraded Charter to "underweight," citing a gap between the company's own EBITDA projection for 2017 and where it is actually trending (Barclays' estimate has Charter $675mln short). "This gap is likely to grow in outer years as the degree of operating leverage being attributed to Charter could be difficult to achieve given double digit programming cost growth,

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

wireless launch costs and reluctance to raise broadband prices," analyst *Kannan Venkateshwar* wrote. Charter chmn/CEO *Tom Rutledge*, who spoke Monday at the **UBS** investor conference, said the company is in a position to both grow video and outpace the industry's overall broadband growth. On the video front, Rutledge said the company can capture new subs at the expense of satellite providers. He added that the new Spectrum Guide, which gives fans access to more than 100K VOD titles, has generated increased usage among legacy Charter customers who have it already. In the broadband market, Rutledge said the company simply has "a better product than our competitors" due to the proficiency of Charter's network. "We think that we can use the relative advantage of our infrastructure to take our speeds up and have the same relative value to other broadband providers that we've had in the past," he said. He noted the company is virtually done with the infrastructure aspect of its DOCSIS 3.1 rollout and will be able to launch Gigabit service in almost its entire footprint next year. **Wells Fargo Securities**' *Marci Ryvicker* also noted Rutledge believes competition from fiber to the home has "moderated."

Discovery Increases OWNership: **Discovery Communications** paid $70mln to **Harpo** to take on a majority stake in **OWN: Oprah Winfrey Network**. Previously a 50-50 jv between Discovery and Harpo, Discovery's purchase of a 24.5% stake brings its ownership to more than 70%. Winfrey remains CEO, with her exclusive relationship extended through 2025. It took time after the net launched in 2011 to get its footing, but ratings have been solid for originals "Queen Sugar" and "Greenleaf." Once its proposed **Scripps Networks** acquisition closes, Discovery will be home to five of the top pay-TV nets for women. Discovery was advised by **Allen & Company** and **Grubman Shire Meiselas & Sacks, P.C**. Harpo was advised by **Moelis & Company** and **Loeb & Loeb**. Discovery shares closed up 7% Monday following the news.

TDS' Shopping Spree: **TDS** keeps building up its cable biz, recently purchasing **Crestview Cable** in OR and **K2 Communications** in October. Last month, TDS announced plans to buy WI-based **Merrimac Communications**, which provides cable, Internet, phone and security in Sauk, Columbia and Dane counties. "We believe in those area purchased we can have the best connection into the home," TDS CEO *LeRoy Carlson* said during **UBS**' investor conference Monday. It's clear TDS has the appetite for cable acquisitions, but Carlson cautioned that there is high demand for cable systems. "The prices are high right now and we're a disciplined buyer," he said. "We want places that haven't been overbuilt significantly by fiber. And we have to take into account whether there is going to a meaningful cost in upgrading them." TDS did a major rebuild of **Baja Broadband**, which it acquired in 2013 for $267.5mln. Churn has come down since the rebuild, with Carlson predicting that it will come down more. "We are growing households in our cable properties about 2.5-3%."

Creative Control: **Netflix** has historically stayed on the M&A sidelines, but it seems the SVOD powerhouse could be-come more active. Speaking at a **UBS** investor conference Monday, Netflix chief content officer *Ted Sarandos* said the company's acquisition of comic book firm **Millarworld** in August is a model for the type of deals the company will look to make going forward. "There's something very freeing about owning the IP and being able to be much more creative about how you exploit it—is this a movie, is this a TV show—and that's determined by us as opposed to the seller, in this case," he said. Netflix already has made clear that its ratio of original content to licensed programming will continue to shift toward the former. Sarandos said the streaming company will produce a whopping 60 original series for global audiences next year and another 30 local-language series for various international markets. Netflix will also add 80 new original films, some of which it is producing in-house. Sarandos expressed hope that the addition of more exclusive movies will extend users' engagement time. Netflix is also exerting control over its content by entering into co-production agreements that give it debut exclusivity in markets outside North America (Sarandos cited **CBS All Access'** "Star Trek: Discovery" as an example). As for how to monetize all of its IP, the company seems committed to using it as a subscriber acquisition and retention tool. "We think it's a better way of monetizing than carriage fees or advertising or tickets or DVD sales. We think it's a more dependable form of monetization, and it's a plenty big one," Sarandos said. "There are opportunities around license of merchandise, and we dabbled a little bit in it this year for 'Stranger Things,' so there's some opportunity down the road, but relative to the big prize, it's pretty small." -- The newsiest Netflix nugget from Sarandos was that production on the sixth and final season of "House of Cards" will resume early next year. *Kevin Spacey* won't be part of the series' eight-ep conclusion in the wake of sexual assault allegations against him. Instead, co-star *Robin Wright* will serve as the leading lady. Sarandos expressed excitement about the opportunity to provide longtime fans of the show with closure despite Spacey's absence.

More from UBS: **Comcast** CFO *Michael Cavanagh* wasn't asked about rumors involving **Comcast, Disney** and **Fox**, but he did reiterate that the company really likes the collection of businesses it has. "We're quite optimistic about the portfolio we have, and we don't see a strategic gap that would require us to go fix a strategic deficit in any way," he said. "By the same token, it's our job to evaluate and consider and see if despite the fact that there is not a strategic necessity, are there things out there that we could do that would create value for shareholders." The exec offered some upbeat news for 4Q, reiterating that the company is expected to exceed 1mln net adds for high speed data this year. "Actually, it looks like we'll be well ahead of 1.1mln net adds, which means the 4Q net adds for high speed data will be well ahead of what consensus expectations are as we speak, which is again consistent with the optimism we've had… and sets us up well as we look into 2018," he said. Cavanagh predicted a long runway for broadband. "We're 45% penetrated in our footprint. In the country, there's about 80% of homes that have some form of internet service, so we think there's opportunity for just deeper penetration of the existing national footprint and particularly in our footprint," he said, adding that new home formation should also help Comcast continue to hit that 1mln+ benchmark. On video, he said competition is no worse and that the company should come in on expectations or within expectations. Last quarter, it posted a 125K sub loss. During 3Q earnings, Comcast said **Xfinity Mobile** had 250K lines added. The CFO said it has "continued on a good pace" since.

At the Portals: We're less than two weeks from the **FCC's** December meeting, when a divided Commission is expected vote 3-2 in favor of chmn *Ajit Pai's* Restoring Internet Freedom proposal. Democrats' ongoing assault on the plan continued with commish *Jessica Rosenworcel* declaring Monday that the process has lacked integrity. Her list of complaints included the absence of public hearings and ECFS problems, such as a denial of service attack that the **GAO** is investigating and nearly half a million comments filed from Russian email addresses. "Distressingly, the FCC has been unwilling to assist a law enforcement investigation into some of these problems," she said, arguing that there should be no vote until an investigation takes place. Colleague *Mignon Clyburn* took to **Twitter** to complain that the FCC hasn't turned over nearly 18K responses from ISPs to consumer complaints seven months after they were requested by the **National Hispanic Media Coalition**. As for the 50K documents turned over to NHMC, she noted they weren't in the official record. "What is the @FCC majority trying to hide?" she tweeted.

People: **Shentel** tapped *James Woodward* as svp, finance and CFO. He replaces *Adele Skolis*, who resigned Nov 7 to join **Buckeye Broadband** as CFO. Woodward has 34 years of financial, accounting and operational experience, most recently serving as CFO at Media General. -- **TBS** promoted *Thom Hinkle* to evp, original programming and *Jeniffer Kim* to svp, original programming. They'll continue to report to evp, programming *Brett Weitz*. The trio will lead TBS' expansion into original shows on all platforms. -- TV vet *Dan Russell* is joining **New Dominion Pictures** as svp of content development. The newly created role sees him chairing New Dominion's development committee, identifying and collaborating with TV channel and online streaming service partners. Russell most recently served as svp, programming at **Poker Central**. -- **FCC** commish *Mignon Clyburn* appointed *April Jones* as policy analyst and special assistant. Jones was previously an attorney at antitrust firm **Hausfeld LLP** and, before that, a clerk at the **Office of the US Trade Representative**.