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What the Industry Reads First

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Wave On: A Look at Just-Acquired Wave's RSN Complaint Against Comcast

With TPG completing its acquisition of Wave Broadband this week, what happens to the overbuilder's complaint against Comcast over its regional sports networks? It's a pretty interesting question because TPG-owned RCN entered into a renewal for NBC-branded RSNs (including the three at issue in the Wave case—NBC Sports Northwest, NBC Sports California and NBC Sports Bay Area) on Dec 29—10 days after Wave filed its petition for declaratory ruling at the FCC. TPG is combining Wave with RCN/Grande, and as such, Comcast argues that the petition becomes moot since Wave systems can carry the nets under RCN's terms. The FCC could still choose to look at the case, however, particularly since Wave is seeking more than \$2m in contractual damages. It's a case worth watching because it's a bit unusual in that it was not filed as a program access complaint. Wave couldn't file a program access complaint since regulation requires such action to happen within one year of a contract. In fact, its complaint came in the final month of its contract. Instead, Wave filed this as a violation of 47 U.S.C. 548(b), which says it's unlawful for a cable or satellite operator to engage in unfair methods of competition that hinder significantly or prevent another MVPD from providing programming. This week, Comcast filed its opposition at the FCC, but it addressed the issue as though Wave had filed a program access complaint and thus was time-barred. "The Commission has made clear that 'the one year statute of limitations . . . is applicable to all types of program access complaints.' It makes no difference that Wave styled its program access complaint as a 'petition for declaratory ruling'; that is form over substance," the MSO argued. Also noteworthy in this case is Wave's argument that Comcast bases penetration requirements on total subscribers, which Wave says is not industry standard. The norm, Wave argues, is for programmers to seek carriage on the most highly penetrated tier above Lifeline (aka broadcast basic), i.e., expanded basic, with penetration levels excluding those who take the Lifeline tier. In this case, Comcast counted Lifeline customers among total subscribers, with Wave complaining that cord shavers can take Lifeline and then subscribe to an OTT provider for RSN access (NBC Sports Northwest also has its own direct-to-consumer offering for select Portland Trail Blazers). In its response to the FCC, Comcast noted that there are carve-outs for broadcast basic customers but that they are "generally capped at a specified percentage of customers in order to ensure a minimum level of distribution of the RSN programming." Wave was hit with more



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than \$2mln in fees for not hitting subscriber minimums. Comcast claims Wave is seeking highly preferential terms that no other distributor has obtained. One other interesting note with this case... Wave has notified Comcast of its intent to invoke arbitration under the Comcast-NBCU order, with the parties currently in the required 10-15 business day cooling-off period. The Comcast-NBCU conditions expired on Jan 20, but it could still proceed under arbitration because Wave sent its notice of intent before the conditions expired. With the RCN deal in place, Comcast deems it “unlikely” that the case will move to arbitration, but frets that Wave’s declaratory filing could give it a leg up in the process.

Florida Fiber: **Atlantic Broadband** reached an agreement to purchase **FiberLight’s** entire South Florida fiber network, a deal the US’ ninth largest cable operator expects to close within six months. Atlantic will add 350 route miles as part of the deal, doubling its existing footprint in the region and accelerating its fiber-delivered business. The operator also purchased dark fiber capacity from FiberLight that it plans to use in business solutions almost immediately.

Testing Phase: **Charter** is testing 5G-enabled wireless broadband in at least six US markets: Orlando, FL; Reno, NV; Clarksville, TN; Columbus, OH; Bakersfield, CA; and Grand Rapids, MI. The operator announced last year that it was working with **Samsung** on 5G trials but did not offer specific locations. In a blog post earlier this week, the company wrote it will “rely increasingly on next generation technologies like 5G” to deliver ubiquitous connectivity to its customers across 41 states. Charter found small cell networks might not be suitable for rural areas due to low population density, but added fixed wireless access technologies at lower frequencies could potentially provide “wireline-like broadband connectivity and speeds.” As such, it is currently conducting trials in the 3.5 GHz band. Charter also called for “regulatory parity” from the FCC that doesn’t favor one technology over another.

M&A Metrics: Three major deals—**Disney’s** \$68.4bln purchase of **21st Century Fox** assets, **Discovery’s** \$11.8bln acquisition of **Scripps Networks** and **Crown Castle’s** \$7.1bln takeover of **Lightower Fiber Networks**—accounted for about 63% of all M&A value in media and telecommunications, according to **PwC’s** year-end review on the sector. There were 876 announced deals in the industry last year with a cumulative value of \$138bln, according to the report. On top of the three so-called “megadeals,” there were 15 other transactions valued between \$1-5bln in 2017 accounted for an additional 27% of total value. While deal volume was up 29% year-over-year, overall deal value actually declined 31%. Remember, 2016 also included some massive deals of its own, including **AT&T’s** \$109bln purchase of **Time Warner** (still pending, of course).

Next M&A Target: **Lionsgate** vice chmn *Michael Burns* said the company is talking about a possible merger with several parties, according to **CNBC**. “We’re very interested in the consolidation space,” Burns said. He declined to divulge any

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specific interlocutors. Reports have identified **Verizon**, **Comcast** and **Amazon** as the most likely suitors, with some also suggesting a three-way deal involving **CBS**, **Viacom** and Lionsgate. Burns said, "A lot of these companies, especially in the tech space, they have to ask themselves, do they want to build it, or do they want to buy it? And then the question is, how far ahead are others if they want to be in the streaming business, the subscription business in a bigger way? ... And if they believe they're pretty far ahead, my guess is the answer would be they'd buy it as opposed to build it."

Dark on DISH: DISH lost **Lockwood Broadcasting** stations in four markets Tuesday, including **NBC** affil **KTEN-TV** in Sherman-Ada, OK and ABC station **KAKE** in Wichita. Six stations are part of the impasse, including three CW affils and the ABC station in Sherman-Ada. DISH used the dispute to again call for FCC and Congressional action on blackouts.

Bee Aggressive: **Turner** and broadcaster **TEGNA** have each invested in **Vizbee**, a startup whose technology allows publishers' mobile apps to automatically detect TVs and cast directly to them with one tap. The technology also can be employed in direct response campaigns. Turner integrated Vizbee's technology into its **TBS** and **TNT** apps as part of a round of upgrades last May. Separately, **Epix** has also deployed Vizbee's technology. Former **NBCUniversal** CTO *Darren Feher* is a co-founder and CEO of Vizbee.

Blast From The Past: **WWE** CEO *Vince McMahon* plans to launch a new iteration of the **XFL** in 2020. Unlike the original league, the WWE won't be involved financially or promotionally. Instead, McMahon is self-funding the venture through a separate entity called **Alpha Entertainment**. WWE and **NBC** lost a combined \$70mln on the original XFL, according to **Wells Fargo** analyst *Eric Katz*. McMahon made clear the new XFL will not play up violence and sex like its predecessor. In fact, it'll be family friendly. The goal is to "reimagine" the on-field product (faster play, shorter games, fewer penalties) and fan experience. The timing of the announcement is interesting given the **NFL's** recent ratings declines and PR struggles (it's still, by far, the most-watched league in the US). When asked, McMahon indicated all XFL players will be expected to stand for the national anthem. Additional details about the new XFL are scarce, including specifics about a media distribution plan. The league will launch with eight teams, each of which will play 10 regular-season games starting in January. The postseason will include two semifinals and a title game. McMahon plans to hire people who "know what they're doing" to hammer out details over the next two years.

Globetrotting: **Roku** is powering in-home streaming overseas with the release of **Sky's Now TV** Smart Stick. Sky will be the first Roku licensee to launch a streaming stick with voice search and TV controls integrated into the remote. The device will be available in February for £14.99 (US\$21.20).

Stream Queen: **Hulu** and **IFC Films** are embarking on an expanded output agreement, giving the platform the exclusive subscription streaming rights to current and future non-doc films released by IFC and sister labels **Sundance Selects** and **IFC Midnight** following their theater runs. The addition of narrative films to the existing deal grants Hulu the largest SVOD collection of IFC Films.

Programming: **E!** on Thursday launched "What the Fashion" on **Snapchat Discover**, the latest series developed in the partnership between the two. The weekly show brings together network correspondents *Zuri Hall* and *Morgan Stewart* with comedian *Justin Martindale* to break down celebrity fashion. -- **ESPN's** first episodic digital show will make its debut on Jan 29 ahead of Super Bowl LII. "First Take: Your Take," streaming Mondays, Wednesdays and Fridays on **Facebook Watch**, takes content from the "First Take" television program and incorporates viewer interaction tailored to the platform. -- Season Two of "Sneaky Pete" will arrive for **Amazon Prime** customers on March 9. Created by *Bryan Cranston* and *David Shore*, the Prime Original was produced in collaboration with **Sony Pictures Television Studios**. -- **Lifetime** solidified its unscripted offerings by ordering two docuseries, "Laurieann Gibson: Beyond the Spotlight" (March 2, 10pm) and "Love at First Flight" (March 20, 10pm). -- **Up** announced "Morgan Family Strong," a docuseries following country singer *Craig Morgan* and his family as they launch family store Morgan Farms following the death of his son, *Jerry*. Produced by **Heart Bridge Media**, the series will premiere March 1 at 9:30pm.

People: **Disney** elevated *Jennifer Rogers Doyle* to svp, brand development and integrated planning, **Disney Channels Worldwide**. She will develop cross-department marketing strategies for **Disney Junior**, **Disney Channel** and **Disney XD** programming. She has been with Disney since 2004, previously serving as vp, franchise management. -- **Univision** named *Lisa Valentino* evp, revenue innovation. Valentino, who most recently served as CRO for industry and agency at *Condé Nast*, will work with digital, content and revenue teams to develop strategies for customer solutions reflecting sales and brand partnerships. -- *Brian Gottlock* departed **Viacom** for **Netflix**, where he now serves as director of business and legal affairs for original comedy. He held the same role at **Comedy Central** and before that spent 6 years at **AMC Networks**.

PROGRAMMER'S PAGE

Big Papi Goes to Work for Fusion

Remember “The Simple Life,” the early 2000s reality show where *Paris Hilton* and *Nicole Richie* tried their hand at various jobs? Well, this ain't that. **Fusion's** new series “Big Papi Needs a Job” does have baseball legend *David Ortiz* trying out different careers (premieres Wednesday at 8pm). But unlike the wealthy socialites, the athlete takes a swing at everything from manicurist to dog groomer in a respectful manner and with what appears to be genuine interest. “Some of these jobs aren't right for him, and some he's really curious about. He's a great character, and I think that's a piece of it as well,” said *George Lansbury*, svp, production and programming for Fusion. Not to mention Ortiz is an excellent ambassador for Fusion, a network that bills itself as a champion of young, diverse America. The Dominican American and three-time World Series Champ is as diverse as the channel's audience. “When a door opens and everyone sees him standing there, there's just a lot of love,” Lansbury said. “He's not the person you typically see on other commercial networks.” That's one of the things going for the show. Ortiz isn't a TV presenter—he has an accent, he lacks that media polish. All of which makes him feel more authentic. “We didn't coach him because he's reflective of our multicultural world. I think television spends a lot of time homogenizing talent and the folks who are presenting for shows, and I think we do the audience a disservice by not actually offering a reflection of reality in America,” Lansbury said. That's where “Big Papi Needs a Job” gets a bit meta. Like many retired pro-athletes, Ortiz actually could use a second career. Time will tell if television personality is where it's at, but the early innings are promising. — *Amy Maclean*

Reviews: “The Two Bills,” premiere, 9pm, Thursday, **ESPN**. This might be the most sports-laden “30 for 30.” For 44 minutes there's much football lingo tossed around, particularly when the excellent footage shows *Bill Parcells* and *Bill Belichick* conversing (that's a very polite way of putting it) on the sidelines. The non-football fan might lose interest during this first half, a charge we can't make against many other 30 for 30s. Perhaps this stems from the documentary being a co-production with **NFL Films**. Still, for those who stick around, this might be one of the most rewarding of the fine 30 for 30 series because it's really a relationship story. At the 46-minute mark Belichick's accession/non-accession to coach of the NY Jets is discussed. It's a fine re-telling of this unusual incident because filmmaker *Ken Rodgers* presents multiple viewpoints. In the end, you think you know what happened, but not really. Similarly, you think the two Bills love each other, but do they? -- “Girlfriends,” premiere, Monday, **Acorn TV**. It's about time TV put post-menopausal women at the heart of a series. And the excellent trio of *Phyllis Logan*, *Miranda Richardson* and *Zoë Wannamaker* are incredibly natural in this gritty British import that's loaded with pathos and smiles. And just when you think you know where things are headed, you don't. — *Seth Arenstein*

Basic Cable P2+ Prime Rankings*		
(1/15/18-1/21/18)		
Mon-Sun	MC	MC
	US	US AA
	AA%	(000)
FNC	0.871	2651
MSNBC	0.618	1881
USA	0.505	1537
HGTV	0.488	1487
TNT	0.484	1473
HIST	0.426	1298
ID	0.398	1211
DISC	0.390	1187
TBSC	0.373	1134
ESPN	0.345	1049
A&E	0.336	1022
CNN	0.332	1011
HALL	0.324	987
DSNY	0.313	952
FX	0.309	941
ADSM	0.305	929
TLC	0.304	926
FOOD	0.291	886
NICK	0.265	805
LIFE	0.264	805
BRAVO	0.263	800
TVL	0.222	676
NAN	0.220	669
CRN	0.208	633
AMC	0.199	607
INSP	0.194	591
DSJR	0.191	581
OWN	0.188	572
PARA	0.182	554
NATGEO	0.182	553
NKJR	0.181	552
FRFM	0.180	549
HMM	0.174	530
APL	0.170	518
MTV	0.165	502
VH1	0.162	494
VELOCITY	0.155	472
TRAVEL	0.150	456
HBO	0.146	445
E!	0.145	442
BET	0.137	418

*P2+ L+SD rankers are based on national Nielsen numbers, not coverage.

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