

Cablefax Daily™

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What the Industry Reads First

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Robocall Review: Court Overturns FCC on Autodialing, Reassigned Numbers

Friday's DC Circuit ruling on robocalls should provide some much sought after relief for cable and other industries hit by an increased number of lawsuits following the FCC's 2015 ruling on the issue. The court ruled that the FCC's definition of an automatic telephone dialing system was overly broad. While this impacts many industries—for cable it primarily involved calls that were made manually on a dialing platform. While the calls were being made manually, the platform was classified as an automatic dialing system since it could be modified to make automatic calls. Under such a definition, any call from a smartphone could also be classified as an automatic dialing system since they can be modified with software for auto dialing. The DC Circuit unanimously ruled that the FCC's capacious understanding of a device's capacity lies well beyond the agency's zone of delegated authority. The opinion said the FCC ruling failed to offer clarity on which functions qualify a device as an autodialer. For example, the FCC said the "basic function" of an autodialer is to dial numbers without human intervention, but a device might still qualify as an autodialer even if it cannot dial numbers without human intervention. "Those side-by-side propositions are difficult to square," the court said. The court also waded into the issue of reassigned phone numbers that are receiving calls they haven't given consent for, vacating the FCC's ruling as arbitrary and capricious. The FCC ruling said calls that went to that number based on the mistaken belief that the owner of the receiving number has given consent violate the statutory bar against making autodialer calls without prior consent. Examples here could include a reassigned number where the previous owner gave consent for auto-dialed calls reminding them to pay their bill. What happens next? Defendants will go to the courts and argue the ruling justifies throwing out some of the lawsuits. The FCC will almost definitely revisit Telephone Consumer Protection Act regulations, including the definition of an autodialer and other issues. A further appeal of the ruling seems unlikely with the three-judge panel hearing the case all Democratic appointees (prevailing thought is Republican judges would be even more skeptical of the prior FCC's approach). At the FCC, Pai and his Republican colleagues applauded the decision, decrying the 2015 order as an overreach. Democratic commish Jessica Rosenworcel, who voted for the 2015 order, said that robocalls will continue to increase unless the FCC does something about it. "That means that the same agency that had the audacity to take away your net neutrality rights is now on the hook for protecting you from the invasion of annoying robocalls. It's past time for



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Final Deadline: March 23

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the American public to get a serious response from the FCC—and a reprieve from the unrelenting nuisance these calls have become for so many of us,” she said. Pai said that the ruling doesn't impact FCC efforts to pursue consumer-friendly policies or the \$200mln+ fines proposed last year against scammers and spoofers. The DC Circuit upheld the FCC's approach to revocation of consent, which allows a party to revoke consent through any reasonable means, including expressing a desire to receive no further message from the caller.

Univision Changes, Part 2: After recent layoffs at **Univision Communications** (UCI) that included the departure of **Fusion Media Group** CEO *Felipe Holguin*, the company has tapped UCI Digital evp *Sameer Deen* to oversee the entire digital portfolio. He reports to outgoing CEO *Randy Falco*. Deen's oversight includes **Gizmodo Media Group**, **Onion** and UCI Digital. The current plan is to maintain independent digital editorial groups. UCI chief revenue officer *Tonia O'Connor* will oversee the **Fusion** cable net going forward, with pres/chief content officer *Daniel Eilemberg* also was part of the 20-person layoffs. O'Connor is already acquainted with the net through distribution negotiations. In 2016, **ABC** exited its partnership with Univision for the millennial-focused Fusion. The cable net, launched in 2013, has been unable to gain carriage with **Comcast**. It did score a victory in December when Univision reached a new pact with **Charter** that included carriage of Fusion in former **Time Warner Cable** and **Bright House** systems for the first time. Other Fusion Media Group changes have **Onion** CEO *Mike McAvoy* and the sales/rev group reporting to O'Connor. *Camila Jimenez Villa*, who leads content development venture **Story House**, will report to UCI Nets pres/COO and UCI CMO *Jessica Rodriguez*.

DOJ vs AT&T: The DOJ's antitrust case against **AT&T's** planned **Time Warner** acquisition comes to a federal courtroom Monday. The case is slated to begin Monday at 10am in the courtroom of Judge *Richard Leon*, who was nominated to the court in 2001 by *George W Bush*. He is the same judge who gave final approval for the **Comcast-NBCU** deal in 2011. Other high profile cases under Leon included the **NSA's** collection of phone records from Americans and an obscenity case against adult film producer *John Stagliano*, which he threw out for lack of evidence.

DirecTV Now Dealing: Some of the latest **DirecTV Now** offers include a free **Apple TV 4K** for customers who prepay for 3 months of the vMVPD service. Those who prepay for one month can get a free **Amazon FireTV**. Other deals include \$50 off a **Polk MagniFi Mini Soundbar** for new DirecTV Now customers.

Synacor Earnings: **Synacor's** 4Q revenue climbed 32% YOY to \$46mln, making it the highest revenue quarter in company history. It came even as key customer **AT&T** has chosen to prioritize consumer experience and engagement. Given that focus, in the last three quarters of 2017, the company generated approximately \$25mln in revenue from the telco. That's below the \$100mln per year anticipated when the deal was announced in 2016. AT&T's mindset is reflect-

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ed in 2018 guidance, which anticipates Synacor revenue in the range of \$150-\$155mln, growth of 7-11% over 2017. CEO *Himesh Bhise* said in the company earnings call that AT&T is still an important customer, providing desktop scale and broadening Synacor's offerings in the mobile market. The company also announced an expanded relationship with **HBO** that makes Synacor the authentication/authorization provider for HBO Now in addition to HBO Go.

Partner in Creative: DISH chose **The Richards Group** as its creative agency of record after a comprehensive review. The branding agency will be charged with combating low customer satisfaction towards the pay-TV world.

Lights, Camera, Action: FandangoNOW is the latest digital retailer to hit **Disney's Movies Anywhere**, bringing its total library to 7500 films. Movies Anywhere allows consumers to access their digital movies in one place when purchased through participating retailers, such as **Amazon Prime Video** and **iTunes**.

To the Printer: **Hallmark Publishing** is set to release books in print starting Tuesday. The novels, all based on a **Hallmark Channel** or **Hallmark Movies & Mysteries** original movies, will be made available in paperback formats through **Amazon**. E-book versions of the novels can be purchased through iTunes, BarnesAndNoble.com, Kobo.com and Amazon.

Cablefax Dashboard

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Up Ahead

March 19: DOJ vs AT&T trial begins

March 19: Cablefax Top Lawyers Awards Dinner - Washington, DC

March 20-22: The ACA Summit, ACA's 25th Anniversary Celebration

March 21: T. Howard Foundation's annual Diversity Awards Dinner

March 22: FCC March Open Meeting (9:30am ET start)

March 23: Final deadline for FAXIES entries.

Research

> About 86% of the share of time spent on media platforms for adults was with ad-supported content in 2017. That number has remained relatively flat over the past decade with 2002 having the share of ad-supported content at 89%.

> 62% of US homes have an SVOD service, surpassing the penetration level for DVRs (55%).

> The amount of time consumers are allocating toward media is expanding, increasing by more than 25 hours between 2002 and 2017.

(Source: Nielsen Research)

Quotable

"Look, it was inappropriate for the president of ESPN and an officer of The Walt Disney Co. to be associated in any way with any of this. I do want to make it clear, however, that anything I did in this regard, and anything else resulting from this, was a personal problem. My drug use never had any professional repercussions, but I still have profound regret. I accept that the consequences of my actions are my responsibility and have been appropriate. I also have to accept that I used very poor judgment."

- Ex ESPN chief John Skipper in **The Hollywood Reporter** on his exit and cocaine extortion plot



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