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What the Industry Reads First

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Familiar Face: Cable Has Plenty of Experience with SCOTUS Nominee

When President *Trump* announced Monday night that *Brett Kavanaugh* is his pick for the Supreme Court, many in the cable industry recognized a familiar name. As a federal judge on the DC Circuit, he's heard several pivotal cases over the years, including filing a dissent last year when the appeals court declined to rehear the case challenging the **FCC's** now vacated Open Internet order that established Title II as the law of the land. He argued that the 2015 FCC rules were unlawful because Congress didn't clearly authorize the agency to make such a move. In other words, if Kavanaugh is confirmed to the high court, we can expect him to be among those who believe the landmark 1984 *Chevron* case shouldn't give agencies (including the FCC) too much leeway. That's especially noteworthy if net neutrality ever makes it to SCOTUS. "Judge Kavanaugh has been the leading voice on appeals courts for limiting *Chevron* deference — meaning that courts would more scrutinize administrative agencies' interpretations of statutes," said **TechFreedom** pres *Berin Szóka*. Kavanaugh's name has been attached to several important industry decisions over the years. He was the lone dissenter in 2010 to the DC Circuit's decision to uphold FCC program access rules, declaring them discriminatory and in violation of the First Amendment. In 2013, Kavanaugh was part of the three-judge DC Circuit panel that issued a unanimous ruling in favor of **Comcast** after it challenged the FCC's attempt to force it to carry **Tennis Channel** in a manner equal to other sports channels. "In restricting the editorial discretion of video programming distributors, the FCC cannot continue to implement a regulatory model premised on a 1990s snapshot of the cable market," Kavanaugh wrote in his concurring opinion. That quote caught the attention of industry consultant and **Cablefax** columnist *Steve Effros*. "He sent some very strong messages that I think the FCC should heed," Effros said at the time. While telecommunications law hasn't caught up to OTT, vMVPDs and the like, Kavanaugh is on record recognizing that the marketplace had become much more competitive and even the largest MSO in the US didn't possess market power in the national video programming distribution market. **NewStreet Research** analyst *Blain Levin*—chief of staff to then-FCC chmn *Reed Hundt* and author of the agency's National Broadband Plan—has said that Kavanaugh's view of carriers' First Amendment rights "could, if taken to its logical conclusion, eviscerate many FCC regulations." That could embolden carriers over time to sue to bring about deregulation. "The legality of anything the FCC does that requires a carrier to carry some form of traffic will now face a much



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more significant risk of being overturned, essentially narrowing the zone of regulation and turning the Supreme Court, which has not been significantly relevant to the sector since the Brand X case, into something of a Supreme FCC,” Levin wrote in a research note Tuesday. As a reminder, Brand X was what allowed the FCC to classify cable modem service as an information service vs a telecommunications service. The **Communications Workers of America** is among the groups who have spoken out against Kavanaugh’s nomination, saying he “routinely rules against workers and their families and regularly sides with employers against employees seeking justice in the workplace, including CWA members.” The union cited his partial dissent last year in a case involving more than 300 unionized technicians at **CNN**, saying Kavanaugh concluded CNN wasn’t liable for any labor law violations and shouldn’t have to pay back wages. As for what some have billed as Trump’s SCOTUS reality show, **Fox News** was the most-watched network for coverage of his SCOTUS pick Monday night, besting broadcast and cable competition. Fox News delivered 6.6mln total viewers and 1.345mln in the 25-54 demo, ahead of **ABC** (5mln/1.497mln), **CBS** (3.4mln/783K), **CNN** (1.5mln/486K), **MSNBC** (2mln/370K), according to early **Nielsen** data.

Ready to Sell: It’s official. **Univision’s** on the market to sell **Gizmodo Media Group** as well as **The Onion**. The GMG digital portfolio includes **Gizmodo**, **Jezebel**, **Deadspin**, **Lifehacker**, **Splinter**, **The Root**, **Kotaku**, **Earther** and **Jalopnik** while The Onion portfolio includes the satire website, **Clickhole**, **The AV Club** and **The Takeout**. Not everything is up for grabs, as Univision is holding onto **Fusion TV** as well as **El Rey Network**. A report by the **WSJ** earlier in the week suggested the entire Fusion Media group, including the cable nets, were for sale.

Ready for Another Round: **Philo** raised more than \$40mln from existing investors in its Series C round of funding. Existing inventors **AMC**, **Discovery** and **Viacom** led the way in this round of funding. The company also announced that its skinny bundle arrived on **Amazon Fire TV** and **Apple TV**. Its introduction gives consumers access to 40 channels for \$16/month.

Security Upgrades: **AT&T** is bumping up the security by acquiring California-based **AlienVault**. AlienVault’s expertise lies in threat intelligence, a specialty that will boost AT&T’s cybersecurity offerings, like threat detection, prevention and response technologies and services. AT&T will continue investing in advanced threat detection and analysis while building out AlienVault’s Unified Security Management platform and Open Threat Exchange. The transaction, the terms of which were not disclosed, is expected to close in the third quarter of 2018.

Netflix’s Nielsen GLOW: Every so often, **Nielsen** pulls back the curtain on the murky world of **Netflix** viewership

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and offers stats from its SVOD Content Ratings solution. With Netflix not offering any such data, we'll take it... The latest Nielsen installment focuses on the newly released season of "GLOW!," which tells the story of misfit female wrestlers as they launch the Gorgeous Ladies of Wrestling. "The comedy achieved the highest concentration of key demo viewership among original streaming programs that we have analyzed to date," Nielsen said. Within the first three days of availability on Netflix (6/29-7/01), the second season received an average minute audience of over 700K P2+ US viewers, with 86% of that audience between 18-49. Other stats: during that same period, the show's first episode of Season 2 received an average minute audience of over 1.3mln US P2+ viewers (more than 80% of that in the 18-49 demo); the series' second season has the highest concentration of white-collar viewers, 67%, of all original streaming content Nielsen has analyzed; and the show had an audience with one of the highest median incomes of Netflix originals analyzed at \$80.2K, behind only "The Crown" (\$84.2K) and "House of Cards" (\$80.4K).

MSG Boost: BTIG Research is upping **MSG's** price target to \$385 following the board's approval to "explore a possible spin-off" of its sports assets. The approval came on June 27 to accomplish four major objectives: provide capital to fund the Spheres venues planned for Las Vegas and London, to allow MSG executive chairman/CEO *Jim Dolan* to pursue more sporting initiatives, to boost shareholder value and to align shareholder and management interests at the separate sports and entertainment companies. Since the approval came, MSG shares have risen 22%.

Hello Reese: AT&T teamed up with *Reese Witherspoon* to feature the actress' first unscripted series, "Shine On with Reese." The half-hour series will debut on July 17 exclusively on **DirectTV** and **U-Verse** platforms. It will air on **Hello Sunshine**, a VOD channel formed by Witherspoon's production company available only on the AT&T platforms. The first three episodes of the nine-part series will feature *Dolly Parton*, *Ava DuVernay* and *P!nk*. The channel will also premiere another female-driven series, **Home Edit's** "Master the Mess" on Sept 4.

Binge Time: Netflix continues to improve its features with the addition of "Smart Downloads." Now, when a viewer finishes watching a downloaded episode, Smart Downloads will automatically delete it and download the next episode. The function only turns on when connected to WiFi, and is available on **Android** phones and tablets running the latest version of the Netflix app.

Power Up: A global group of innovators submitted 20 entrants for **SCTE-ISBE's** Adaptive Power Challenge. The competition seeks ideas for helping cable operators manage energy use across broadband networks. The entrants submitted concepts in three areas: demand response, monitoring and measurement, and supply & control. Winners in two of the categories, established enterprises and breakthrough organizations, will collect prizes of \$10K. Six finalists will be announced on Sept 12, and then will compete by presenting their solutions on Oct 23 at **Cable-Tec Expo** in Atlanta.

Public Interest?: American TV Alliance, whose members include **DISH**, **Charter** and **Verizon**, filed comments on the proposed transfer of two broadcast stations from **Red River Broadcast** to **Gray Television**. ATVA stated that the **FCC** needs to consider whether the proposed "top four duopoly" is in the public interest. The FCC's rules generally prohibit this kind of duopoly, but the agency recently began allowing exceptions for broadcasters who demonstrate, based on specific circumstances in the local market, that an exception is in the public interest. ATVA said Gray hasn't proved the deal meets the standards. Gray does not address the impact of retransmission consent fees on consumers, nor does it demonstrate any benefits arising from the duopolies will outweigh the harms, ATVA's filing said. "Instead, they focus entirely on other issues, such as ratings and overall revenues in Sioux Falls," the filing reads. "Many of these purported benefits are simply claims that, if given a duopoly, Gray would be more likely to increase news coverage. Such claims are simply not cognizable under established Commission precedent."

Ratings: MTV's "Floribama Shore" returned for Season 2 with its most-watched episode yet. Nearly 1mln people tuned in to watch cast members wreak havoc in Panama City Beach, a 34% increase from last season's average. -- **Disney** scored a win with "Andi Mack" coming in as Monday's No 1 show for kids and tweens on cable. The telecast grew to new season highs, up 24% to 1.44mln total viewers over the prior week. It notched 555K kids 6-11 and 531K in the 9-14 demo.

Programming: Discovery will air a one-hour special chronicling the astounding rescue of the 12 young Thai soccer players and their coach from a cave complex near the Myanmar border. "Operation Thai Cave Rescue" will air Friday at 10pm on Discovery and Saturday at 10pm on **Science**.

People: AGC Studios hired former **Univision** entertainment pres *Lourdes Diaz* as head of television. Diaz will oversee scripted, non-scripted, and non-fiction and digital content. -- *Ian Greenblatt* joined **J.D. Power** to lead tech, media and communications practice. He comes from his own consulting practice, and previously served as vp, strategy and biz dev at **Arris**.