

Cablefax Daily™

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What the Industry Reads First

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Fire Starter: Title II Rollback Harming Public Safety?

Several groups came out of the woodwork to file briefs with the **US Court of Appeals for the DC Circuit Court** challenging the **FCC's** reclassification of broadband as an information service at Monday's deadline. As expected, **Public Knowledge, Vimeo, Open Technology Institute, National Hispanic Media Coalition** and other non-government entities filed a joint appellant brief. Their argument focused on the FCC's abandonment of the open internet rules and denial of motions to introduce additional evidence being a violation of the Administrative Procedure Act. Government officials also took a stand against the FCC's Restoring Internet Freedom Order. State attorneys general from New York, California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Mississippi, New Jersey, New Mexico, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington state and Washington, DC, joined non-government petitioners, saying that the FCC failed to think of the impact on public safety with the Restoring Internet Freedom Order. They called for an invalidation of the order, pointing to the 1996 Telecom Act, which gave state and local governments the power to legislate communications to protect their citizens from edge providers. "Even if the Order were otherwise lawful, the Commission exceeded its authority by purporting to preempt state and local governments from taking action to protect consumers and edge providers from abuses by BIAS providers," they wrote. Standing out among the filings was the declaration of Santa Clara County fire chief *Anthony Bowden*, who claims responsibility for the coordination of fire resources during events such as the wildfires that have plagued California. He explained that throttling from **Verizon** had a significant ability on emergency responders ability to respond to emergency situations. When attempting to route resources to the Mendocino Complex Fire, data rates had been reduced to 1/200 or less than previous speeds. Bowden included an email exchange between Verizon and his IT staff, with Verizon confirming that all unlimited data plans have "some sort of data throttling built-in" and suggesting a more expensive plan that would charge by the gig after 20GB of usage. "County Fire believes it is likely that Verizon will continue to use the exigent nature of public safety emergencies and catastrophic events to coerce public agencies into higher cost plans ultimately paying significantly more for mission critical service—even if that means risking harm to public safety during negotiations," Bowden wrote. Verizon did not offer comment by our deadline.

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Sinking Ship: The VMAs dropped 8% in viewers from last year, hitting a record low for the second consecutive year. Monday night's show had 2.25mln viewers and a 1.1 rating in Adults 18-49, according to **Nielsen**. However, **MTV** was still the No. 1 network among viewers 18-34 Monday night, even though the show's 1.2 rating with the demo fell by 47% from 2.2 a year ago. Across 8 **Viacom**-owned channels, the program saw 4.87mln, down from 5.36mln in 2017. Last year's awards aired opposite the "Game of Thrones" finale on **HBO**, but the company's decision to move the 2018 awards to Monday night didn't boost ratings. Though with a younger demo, streaming is expected to be strong. Case in point, the program did extremely well on social media, recording more than 2.3mln social posts in 14 hours according to **Talkwalker**. **Nicki Minaj** was the top trending celebrity with 86.4K mentions, followed by **Ariana Grande** with 52.7K.

Court Watch: Music publisher **BMG's** suit against **Cox Communications** for copyright infringement is slated to get underway in the **US District Court for the Eastern District of Virginia** on Tuesday. (It's taking place in Alexandria at the same courthouse where jurors were on Tuesday found **Paul Manafort** guilty of eight counts of fraud.) This is a do-over after the **Fourth Circuit** reversed a jury's \$25mln verdict and ordered a new trial. **BMG** has claimed that **Rightscorp** sent 1.8mln notices of infringement sent to Cox alleging infringement by its subs were blocked or ignored. The new trial "will likely focus on whether the emails and other evidence could prove 'willful blindness' to the alleged infringements, and whether Rightscorp's notices can establish direct infringement by the subscribers (there was no other evidence of direct infringement)," **Davis Wright Tremain's John Seiver** wrote in a blog post.

Notes to the FTC: The **FTC** received plenty of input to its inquiry on competition and consumer protection in the 21st Century. **NCTA** used the opportunity to argue that ISPs shouldn't be singled out for unique regulatory burdens, declaring that large internet platforms pose a greater risk to openness and consumer privacy than ISPs. The cable group recommended the **FTC** take steps to ensure that a consistent framework is provided across the country, rather than separate, conflicting approaches by states to net neutrality, data security, etc. The **FTC** plans to hold a series of public hearings this fall and winter, examining everything from the intersection between privacy, big data and competition to the competitive effects of M&A. Other commenters included **ACA**, which talked up the competitive markets smaller ISPs operate in, and **USTelecom**, which urged the **FTC** not to limit competitive analysis to "fixed" broadband because of mobile's increasing importance. **Public Knowledge** suggested the agency consider how it may be necessary to encourage or require transparency for algorithms related to artificial intelligence, suggesting AI and predictive analytics can result in discrimination.

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Making it Official: The **FCC** has extended the Mobility Fund Phase II challenge process window by 90 days to Nov 26 in an effort to give those interested enough time to “initiate and submit speed test data for areas they wish to challenge.” The extension comes after an FCC Oversight hearing Thursday where discussions of the inaccurate broadband maps, to be used as the basis for the distribution of \$4.53bn to underserved areas, took center stage. While the hope would be that this extension would solve the maps problems, both commissioners and congressman alike have expressed their doubts. “I worry that today’s action will neither be the end of the debate nor allow the Commission to quickly complete Mobility Fund Phase II,” commish *Michael O’Rielly* said in a statement.

Comcast Ad Suit Victory: A federal appeal court judge handed **Comcast** a victory, granting it summary judgment in ad buy firm **Viamedia’s** multimillion dollar antitrust suit. A spokesperson said Viamedia is evaluating its options. The lawsuit, filed in 2016, alleged Comcast controls and excludes third party sales reps from interconnects in some of the most populous DMAs. Judge *Amy St Eve* wrote in her decision that Comcast didn’t act improperly but instead declined to do business with a rival. “Viamedia brought this case in an attempt to force—under Court order—Comcast to provide it access to the interconnects on favorable terms. Antitrust law does not oblige,” St Eve wrote.

For the Future: **CTIA** announced its creation of a cybersecurity certification program for cellular-connected IoT devices. The program, the first to be developed in collaboration with the nationwide providers, not only aims to protect customers and the infrastructure, but to create a more secure foundation for smart cities and other IoT applications. The program is meant to build upon IoT security recommendations from the **NTIA** and the **NIST**. The CTIA IoT Cybersecurity Certification Program will begin accepting devices for certification testing in October.

Safety First: Smart locks from **Yale Locks & Hardware’s** Assure Lock line can now be connected to **Comcast’s** Xfinity Home service when purchased with a Yale Zigbee Network Module. The Yale Assure line offers key-free or keyed smart locks in both touchscreen and pushbutton versions.

Comcast Gets Educated: The University of Alabama in Huntsville will be the first school in the state with **Xfinity On Campus** (XOC). The service lets students living in on-campus watch live TV and On Demand content on their IP-enabled devices. XOC is delivered over a separate pipe and therefore does not occupy bandwidth on the school’s network. The service offers more than 100 live channels including every major broadcast network.

Game, Set, Match: **ESPN** is pulling out all the stops for the 50th Anniversary US Open, airing two weeks of exclusive live coverage. Starting Monday, all 16 courts will be covered for the first time across ESPN platforms, with 130 hours on TV and 1300 more streaming live on the ESPN app via **ESPN3** and **ESPN+**. The celebrations have already begun, with NY artist *Jessie Bearden* using the Grandstand Court at the Billie Jean King National Tennis Center and materials associated with the sport to create portraits of *Roger Federer* and *Serena Williams*. The art is now the centerpiece for the promotional spots ESPN will run throughout the tournament.

Unified TiVo: **Atlantic Broadband** launched **TiVo’s** new Unified Entertainment System for new and existing customers in Northern PA and the Miami area. The on-screen user interface is redesigned with a modern and sleek navigation system, as well as more personalized and tailored programming recommendations. A new voice remote improves search and discovery, and content is also searchable across multiple sources and platforms.

Distribution: **Entertainment Studios’s Recipe.TV** network has launched on **DISH**. They’ll have full access to the channel’s programming lineup, including new series “Destination Eats!,” “A Parisian Food Affair with Julie Neis,” “Katie Parla’s Rome!” and “Vera’s Latin America.” Recipe.TV is available on several DISH packages.

Programming: The gang is headed back to LA in 2019 for a fresh start. **MTV** announced the return of “The Hills” during Monday night’s VMAs. The new docuseries “The Hills: New Beginnings” will reunite the original cast members of the iconic reality show alongside their children and friends, following their personal and professional lives. -- **AMC’s** “The Little Drummer Girl” is set to premiere with a three-night event, starting with a two-hour ep on Nov 19. Additional two-hour episodes will air on Nov 20 and 21. -- **HGTV** ordered another 17 half-hour episodes of “Hidden Potential” with production scheduled to begin in September. The freshman season of the home reno series attracted more than 13mln viewers. The new season will premiere in 2019.

People: **Disney** promoted *Mila Livitz* to svp, business affairs of **Disney/ABC Cable Services**. Livitz has been with the company since 2009 and most recently served as vp, business affairs.

Editor’s Note: Congrats to **Cablefax: The Magazine’s** 2018 Most Influential Minorities. Check out the list of honorees [here](#), with the magazine to debut during Diversity Week. **Cablefax** and **NAMIC** will recognize the honorees on Oct 16 at an exclusive [breakfast](#).