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What the Industry Reads First

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Effective Competition: Charter Argues DirecTV NOW Checks the Box

In 2015, the FCC switched things up and presumed that most US franchises had effective video competition unless they proved to the agency that they didn't. There were 118 municipalities in Massachusetts found not to have effective competition as well as the franchise area of Hawaii's Kauai—meaning basic cable rates and equipment rates remain regulated by the government in those markets. Now Charter is trying to argue that those carve-out markets do face competition thanks to streaming service **DirecTV NOW**. An FCC official confirmed that Charter is the first to argue that DirecTV NOW constitutes effective competition. The crux of Charter's argument is that the streaming service meets the Local Exchange Carrier test, which requires an LEC affiliate (in this case, **AT&T**) to offer a comparable video programming service by any means other than DTH satellite in areas that substantially overlap a cable system's franchise area. In addition to Kauai, Charter's footprint includes 32 of the 118 Massachusetts municipalities. With DirecTV NOW available in all 50 states, Charter's petition could impact the entire cable industry. The MSO's list of reasons it believes DirecTV NOW satisfies the requirement include that its most basic package features at least 65 channels of content plus local broadcast channels in the "vast majority" of franchise areas (for Charter, it's true for Kauai and 23 of the 32 Massachusetts franchises). Of course, residents need internet to access the service—and that appears to be the biggest question mark for effective competition determination. Does a LEC need to offer the programming over its own facilities? Charter argues that speeds of at least 25Mbps down are available to "virtually 100%" of its customers in the areas and that it actually provides speeds of at least 100Mbps in the franchises and that there's nothing in the statute that requires a physical presence by the LEC affiliate. "The fact that subscribers must have broadband service in order to access DirecTV NOW is not a 'technical impediment' that prevents AT&T from offering DirecTV NOW to substantially all households in the franchise areas," Charter argued in its petition. "As the Commission has explained, service is deemed 'technically available' when the video distributor 'is physically able to deliver service to a household wishing to subscribe, with only minimal additional investment by the distributor, if necessary.'" AT&T declined to comment on this story, and Charter did not return a request for comment. The second part of the FCC's LEC Test requires showing that consumers are reasonably aware of the competing

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service. Charter points to DirectTV NOW's multiple national advertising campaigns, which have featured celebs such as *Mark Wahlberg* and *Michael B. Jordan*, as well as digital marketing. The next step will be for the FCC to weigh in, with the Media Bureau potentially putting Charter's petition out for comment.

T-Mobile/Sprint Deal: T-Mobile and Sprint had to reply to oppositions to their merger at the FCC this week, with the wireless carriers arguing that no petitioner seriously challenged that the new company will deliver transformative increases in capacity, speed and coverage to the public. **Altice USA, DISH and Free Press** are among those filing petitions to deny or at least condition the merger. Altice expressed concerns over the opportunity to expand its wireless service nationwide over the long term, saying the companies have made no commitments regarding meaningful support for current MVNO partners. New T-Mobile will continue its positive relationship with MVNOs, including Altice, the companies said, adding that even after agreements expire the new company will be "constrained in its ability to raise wholesale prices." "Petitioners are wrong that the transaction will decrease wholesale competition. To the contrary, the merger will provide a robust MNO option for MVNOs seeking wholesale services," T-Mobile and Sprint said, declaring that many MVNOs wanting high-quality network options can only partner with Verizon and AT&T in many parts of the country. Sprint and T-Mobile also rebutted simulations presented by DISH that conclude ARPU would likely increase as a result of the deal, dubbing them defective because they fail to take into account any efficiencies from the deal. Others have argued that the carriers already have announced 5G plans and thus the deal doesn't have much impact on the technology. "T-Mobile and Sprint standalone plans to deploy 5G are not even close to comparable to what New T-Mobile will deliver," they said.

Emmy Champs: HBO and Netflix were Monday night's big winners, each taking home 23 Emmys. This was the first year the streamer surpassed the net in nominations, though this is the 17th year in a row HBO took home the most awards. "Game of Thrones" led all programming and earned 9 Emmys, bringing its total to 47 overall, the most ever by a comedy or drama series. Amazon's "The Marvelous Mrs. Maisel" brought home 5 of the major awards, and FX's "The Americans" finally got some recognition in its final season, with Matthew Rhys winning lead actor in a drama. HBO's "Last Week Tonight with John Oliver" earned its third consecutive Variety Talk Series Emmy, and FX's "The Assassination of Gianni Versace: American Crime," helmed by *Ryan Murphy*, brought home the Limited Series award.

Parental Controls: *Rep Mia Love* (R-UT) and the Utah Congressional Delegation recently introduced The Family

Cablefax:

What's Happening in October

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>> Most Influential Minorities Magazine

Cablefax's annual Most Influential Minorities magazine, celebrates the men and women who are shaping the industry and opening doors for minorities across all areas of business.

>> Hispanic Heritage Month

This growing demo has a huge impact on every aspect of the industry. This series we'll explore upcoming trends in the Hispanic marketplace, examine the latest research and look at what networks and distributors are doing to cater to this powerful segment.

>> CTHRA

Cablefax looks at the HR side of the business. What do the hiring trends and needs say about where cable is headed? Coverage will include HR organization CTHRA's annual Symposium and awards.

>> Diversity Week

Cablefax will be on the ground in New York for all the Diversity Week happenings, including WICT's Leadership Conference, NAMIC's annual conference and The Walter Kaitz Annual Fundraising Dinner.

>> SCTE Cable-Tec Expo

Daily coverage from the Expo show floor along with a preshow special report. We'll look at the technology and standards development that you need to know about right now. Our preshow will also highlight SCTE, WICT and Cablefax's Woman in Technology award winner.

Events

Cablefax & NAMIC Diversity Breakfast
October 16
NYC

Movie Act Clarification Act of 2018, which aims to update the original act from 2005 to protect filtering of entertainment content on streaming services. The act, which has garnered support from family and religious groups, could impact services like **VidAngel**, which offers customers the ability to “skip and mute any objectionable content, all in the privacy of your home.” VidAngel has been wracked with legal battles since its initial launch in 2014. Hollywood studios, including **Disney**, have argued the service infringes on copyrights.

You Just Can't Win: Despite **Discovery** announcing distribution deals with **Hulu** and **Sling TV**, **Pivotal Research** is downgrading its recommendation from “Hold” to “Sell.” “Although news of agreements with Hulu and Sling are positive, they do not meaningfully alter fundamentals by much,” Pivotal wrote. Discovery has had a phenomenal month, being up more than 20% despite what Pivotal views as lukewarm earnings results. Analyst Brian Wieser sees that as a bit of an overshoot, especially considering the major bump that came after the company's earnings call. Pivotal's price target remains at \$26, which is currently -19% below current trading levels.

Brand New Toolbox: **RDK Management** showed off an upgraded app program Tuesday that promises to make developing and launching apps on RDK-based set-top boxes easier. It gives service providers the option of using a revamped RDK App Framework or choosing a pre-integrated app store solution. With the framework, service providers to integrate apps into TV viewing, offers onboarding and life cycle management tools and allows app portability across different set-top box models.

Weekly Ratings: **Fox News** celebrated its 36th consecutive week as the most-watched basic cable net in total day, averaging 1.44mln total viewers last week. That put it ahead of runner-up **MSNBC** (1.18mln). For primetime, **ESPN** kept the top spot thanks to football, averaging 2.72mln viewers. Fox News had 2.49mln in prime, followed by **MSNBC's** 2.19mln, **HGTV's** 1.37mln and **USA's** 1.3mln.

Aloha, Connectivity: The city and county of Honolulu accepted **Mobilitie's** Connected City Award for improving wireless connectivity for its residents and businesses. While improving the city's wireless infrastructure and streamlining permitting and approval procedures, the city council approved a resolution in April allowing Mobilitie to attach small cell facilities to city-owned streetlights. The first was build in June, with about 60 additional sites to be build around O'ahu.

High Flying: **American Airlines** passengers flying on select domestic flights will be able to watch live TV powered by **DISH**. They'll have access to 12 channels, including **Bravo**, **Telemundo** and **TNT**. The offering is initially launching on 100 aircraft, expanding to more than 700 additional aircraft during 2019.

On Tour: Through an integration with **Ticketmaster**, **Comcast Xfinity X1** customers will be able to find tour dates and request concert tickets directly on their TVs through the Ticketmaster open ticketing platform. The partnership launched with *Kelly Clarkson's* 2019 tour, with fans being able to say “Kelly Clarkson Tour” into their voice remote to take advantage of a special presale window running through Sept 23.

Political Transparency: The **Digital Advertising Alliance** released creative implementation guidelines for the previously announced “Political Ad” icon. It is part of an advertising initiative to increase transparency and accountability for digital political ads. Under the guidance, the icon and/or wording should be used to provide clear, meaningful and prominent notice for ads that advocate the election or defeat of a candidate. Maryland became the first state to authorize this type of approach for digital and mobile ads, after the state board of elections voted on Aug 23 to allow covered political entities to use a Political Ad-type icon in small ads.

The Doctor Is In: **CableLabs** fellow and vp of the core innovation team *Dr Bernardo Huberman* will be a guest speaker during the opening general session of **SCTE-ISBE Cable-Tec Expo** on Oct 23. Dr Huberman's focus will be on how telecom can unlock areas of growth with AI and IoT technologies.

Programming: **Fox Business Networks** will debut a new primetime lineup starting on Oct 15. *Trish Regan* will move to the 8pm slot as the host of the new show “Trish Regan Primetime.” “Bulls & Bears with David Asman” will return, with *Asman* departing from “After the Bell.” “The Evening Edit with Elizabeth MacDonald” jumps to the 6pm slot, and “Kennedy Live” will air at 9pm. -- **Velocity** and **Discovery Channel** will air the 11th annual Barrett-Jackson Las Vegas auction with coverage starting on Sept 27 at 3pm on Velocity. It will continue on the net on Sept 28, and then move to Discovery on Sept 29 at 3pm before finishing on Velocity at 5pm.

People: **Netflix** appointed *Mathias Döpfner* to its board. Döpfner is the chairman and CEO of **Axel Springer SE**. -- *Brian Nurse* has been appointed svp, general counsel & secretary of **WWE**. He comes over from **Nestle Waters North America** where he served as vp, associate general counsel & secretary.