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Dems in da House: Midterms Bring New Leaders, Big Ratings

Tuesday's midterms brought the expected flip of the House, with *Frank Pallone* (D-NJ) poised to become chmn of **House Commerce**. Pallone's to-do list includes broadband infrastructure, protecting net neutrality and providing meaningful privacy and data security protections—though his efforts may not go very far given the Republican-controlled Senate. One thing he can do is hold a lot of hearings and investigations into the **FCC**, which seems likely given his scrutiny over the past year of the FCC's handling of everything from **Sinclair-Tribune** to USF. "Next year, we will follow through on pushing policies that build a stronger economy, create more good-paying jobs and protect consumers from skyrocketing costs that make it increasingly difficult to make ends meet," Pallone said in a statement. "We'll also conduct vigorous oversight of the Trump Administration, so Washington works again for the people not the special interests." While reinstating a Title II regime seems unlikely, infrastructure—particularly for rural America—could be a consensus issue this Congress. Same goes for data privacy. Cable is certainly crossing its fingers that the net neutrality debate doesn't gain a lot of new life with the flip. A **Morning Consult/Politico** poll found that 30% of US voter respondents said legislation protecting net neutrality should be a top priority, compared to 40% of Dems and 24% of Republicans. Ranking **House Communications** member *Mike Doyle* (D-PA) is expected to be named chmn of that committee for the new Congress. Notable losses on Tuesday included *Sen Claire McCaskill* (D-MO), who has complained for years about pay TV billing practices and customer service issues, and *Rep Mike Coffman* (R-CO), who supported the House Congressional Review Act Resolution of Disapproval that sought to reinstate the FCC's 2015 net neutrality rules. Then there's the expected defeat of *Bill Nelson* (D-FL), which would open up the **Sen Commerce** Ranking Member spot, possibly to *Maria Cantwell* (D-WA) or *Amy Klobuchar* (D-MN). When it comes to election night coverage, **Fox News** beat out all cable and broadcast competition, averaging 7.8mln total viewers from 8pm-11pm, according to early **Nielsen** numbers. That put it well ahead of **NBC** (5.7mln), **ABC** (5.3mln), **CNN** (5mln), **MSNBC** (4.7mln) and **CBS** (3.9mln). CNN, however, took the crown in the so-called "news demo"—those 25-54. CNN averaged 2.5mln compared to runner-up Fox News' 2.4mln. CNN was also No. 1 among younger viewers (18-34), topping FNC and MSNBC combined with 907K. Fox had 424K and MSNBC netted 363K.

DISH's Dark Nets: **DISH** shed 367K subs, well below the **StreetAccount** consensus of 175K, with the loss of **Univision**

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taking its toll. The company said about 50% of churn could be attributed to the loss of Univision. While both companies have tried to work something out, chmn *Charlie Ergen* didn't sound very optimistic during DISH's earnings call Wednesday. "We're in a weird position where because we've given our customers discounts and many of our customers have gone to Univision for free with an off-air antenna or perhaps to one of the streaming services online that's free or perhaps from Univision directly or perhaps from one of our competitors, we actually would face backlash if we put Univision back up again," he said. Ergen said the worst losses come in the first four months, though the impact of the losses can hurt new customer gains (Univision and sibling nets went dark on DISH June 30, with the Spanish-language programmer warning that subs could soon lose **Univision Deportes** as well). He is hopeful that DISH can increase Latino market share next year by giving customers Univision with an off-air antenna, arguing that competitors will have higher prices since they will be charging for it. Univision hasn't sat back quietly, with CEO *Vince Sadusky* warning during 2Q earnings that the company would use "the full promotional capabilities" to begin to convert "well over a million" DISH Latino customers to other pay TV services. "Going forward, we expect churn will remain elevated given the ongoing Univision/ emerging **HBO** dispute and rising number of video alternatives. Bunny ears handouts may not meet consumer demands," said **Macquarie Research** analysts. The Univision loss did help DISH record better-than-expected EBITDA of $738mln (+12%). "We view the benefit as somewhat temporary as we anticipate additional subscriber losses as a result of the loss of Univision programming, exacerbated by the loss of **HBO/Cinemax**," **Pivotal Research** said in a note to clients. On HBO, which went dark Oct 31, management reiterated unhappiness with the net seeking subscriber minimums. "That might not be unusual in an environment 20 years ago, but the environment today is… you could be in a situation where your competition, **AT&T/DirecTV**… is giving away HBO free for life. So why would a customer pay DISH?" Ergen said. "This is purely an anti-competitive play." HBO chmn/CEO *Richard Plepler* issued a response after the earnings call: "The notion that AT&T had anything to do with our inability to reach a reasonable deal with DISH is simply not true. It seems to be a silly but transparent attempt on DISH's behalf to muddy the waters for reasons only they can explain." He also repeated the claim that HBO offered DISH an extension as negotiations continue. **Sling TV** didn't help DISH out much, with sub additions for the vMVPD service continuing to slow. They came in at 26K for the quarter, down from 236K a year ago.

Good News for Fox: **21st Century Fox** had plenty of positives to talk about with its 1Q2019 earnings, giving everyone someone to look forward to with the creation of New Fox. The deal with **Disney** that will lead to New Fox is still set to close early next year. The company reported total quarterly revenues of $7.18bln, a 2% increase from the $7bln reported in the prior year quarter. That's mostly due to higher affiliate and advertising revenues in the Television and Cable segments. Its cable network programming reported quarterly segment OIBDA of $1.54bln, seeing a 4% revenue growth on those ad revenues as well as a 5% increase in expenses from global sports programming costs with the World Cup. Television saw a quarterly segment OIBDA of $168mln, with ad revenue coming in at 22% higher than the prior year quarter. That reflects a greater amount of sports broadcasts with the World Cup as well as higher political ad revenues with the midterm elections. Despite these successes, **MoffettNathanson** said that it was reiterating its $51 price target for "Fox" as well as its Buy rating, saying that "too much focus on the near-term numbers clouds the view of the compelling story at New Fox."

DOJ Dealings: **Sinclair** said it entered into a consent decree resolving the **DOJ** investigation into the sharing of pacing information among certain stations in some local markets. The DOJ is expected to file the consent with the court Thursday. Sinclair execs said there is no admission of wrongdoing or financial settlement, with the decree requiring it to adopt certain additional compliance measures. The *WSJ* reported over the summer that DOJ was looking at whether Sinclair and other broadcasters had inflated local TV ad prices by banding together.

Retrans Complaint: The **FCC** Media Bureau denied a retrans complaint **Coastal Television Broadcasting** filed against **MTA Communications** regarding its broadcast station **KTBY**, an Anchorage, AK, **Fox** affiliate. Coastal claimed MTA failed to negotiate retrans consent in good faith. MTA customers have been without KTBY since the beginning of the year. The Bureau rejected the argument that MTA didn't provide counter offers in a timely manner. The Bureau also said MTA crossed no lines when informing Coastal it wasn't going to pursue further negotiations as it made clear it was due to the fundamental negotiating impasse between the parties due to rates. The Bureau urged the companies to return to the bargaining table and recommence negotiations "in an atmosphere of honesty, purpose and clarity of process."

Love on Top: It's no surprise that **Netflix** is the top 10 subscription OTT service in the US. **Amazon Prime** and **Hulu** follow, based on an estimated number of subs from **Parks Associates**. **HBO Now** and **Starz** round out the top 5. **MLB.TV** took sixth followed by **Showtime** and **CBS All Access**. Parks Associates noted that online pay-TV services **Sling TV** and **DirecTV Now** surpass **Hulu with Live TV**, **YouTube TV** and **PlayStation Vue** to make the top 10. OTT video sub penetration has reached 64% of US broadband households, according to Parks' OTT Video Market Tracker, with 36% of broadband households subscribing to two or more OTT video services. Over the past three years, OTT churn rates have gradually fallen from 31% of subscriptions cancelled each year in 2015 to 28% in 2018.

Obituary: Well-known media attorney *Frank Lloyd* passed away Oct 31 following a long illness. Lloyd worked at the **FCC** under chmn *Charles Ferris* and went on to join **Mintz Levin** and spend decades advocating for cable. There will be a service celebrating his life and a reception at St. Mark's Church, 301 A Street SE, Capitol Hill, DC on Dec 2 at 1:30 pm.

People: *Byron Allen's* **Entertainment Studios/Allen Media** promoted *Matt Anderson* to vp, distribution. Distribution head *Janice Arouh* said he'll work to expand distribution of the portfolio of 8 nets across all platforms. -- **El Rey** appointed *Mauricio Rios* vp, programming and acquisitions. He comes over from **Universo Channel**, where he served as director of programming & scheduling. -- Longtime **HSN** affiliate sales exec *Peter Ruben* has joined **ION Media** as head of distribution.

Think about that for a minute...

No Surprises

Commentary by Steve Effros

OK, there is hardly any way to avoid this. Too many folks are still asking questions about the midterm elections and what they might mean. We're all exhausted from the clamor, and regrettably it will likely start up very soon with the moniker "2020" before we get a chance to regain peace of mind. But, I think happily, my take is pretty simple; no surprises.

What do I mean by that? Well, we knew that broadcasters and cable operators as well as web sites were going to make lots of money on this election cycle. No surprise there. Indeed, I could hatch a conspiracy theory that all the over a billion dollars spent on this election was induced by overheated rhetoric on all sides encouraged by the very folks who gain by selling all that advertising! After all, if you look at the results, political analysts pointed out many months ago that the Senate was likely to stay in Republican hands and the House was likely to shift to the Democrats for lots of simple "look at the numbers" reasons. And lo, that's what happened! Millions of dollars and lots of anxiety, heated conversation and aspirin later, we're right where we thought we would be a half-year ago!

So what does it mean for us? Not that much. The legislative, regulatory battle over net neutrality will not go away, but it won't get very far either. Sure, there will be House hearings and probably a bill to "reinstate" the NN rules. Won't get through the Senate. The Courts will have to handle that one for a while, and as I have noted before, the whole "political" discussion regarding the appointment of judges makes little sense when the concept of a "conservative" judge could mean either one that supports the executive branch powers, or one that supports "states rights."

On issues like net neutrality you could be "conservative" by deciding that it's an "interstate commerce" issue, thus the FCC rules, or you could say that a "conservative" justice would support state action as opposed to federal! So forget all the simplistic analysis. We just don't know, and since legislation on the issue is unlikely for the next two years, we should just go about our business.

Remember that the current business plans being executed by the major broadband companies (they already don't block, throttle, etc.,) would likely all be considered legitimate whether Title I or Title II of the Communications Act was applied, so this is all more atmospherics than it is significant.

The one exception to my general feeling that the newly split governing structure in Washington, while continuing the essential gridlock we have had for the past two years, will not change things for our business is the issue of privacy, power, and the "Edge" providers. There is little argument that Amazon, Google, Facebook and their kin will be in the crosshairs of both Republicans and Democrats. Maybe for different reasons, or different perceived faults, but both sides want to focus on the power of these companies to affect, control, curate, or inflame the national discourse.

Does that mean there will be significant legislation coming out of that mutual focus? Not really. The two sides complaining about the power of the social media, search, and aggregator companies are exercised over very different things, and have different ideas about how to deal with the perceived problems. But, but, it could happen. There might be some compromise, agreement, and even legislation. Will it affect us? Not likely.

No Surprises.

Steve

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(Steve Effros was President of CATA for 23 years and is now an advisor and consultant to the cable industry. His views do not necessarily reflect the views of Cablefax.)