

# Cablefax Daily™

Tuesday — November 20, 2018

What the Industry Reads First

Volume 29 / No. 224

## Franchise Fees: LFAs Sweating Proposed FCC Changes

Cities, towns and public access channels have flooded the **FCC** with comments on a proposed rulemaking that seeks to include cable-related, in-kind contributions in the definition of franchise fees. The fees are the monies paid for using rights of way to provide service. Under the new definition, in-kind contributions would include things such as unlimited free or discounted cable services for Local Franchise Authorities (LFAs). Thus those contributions would be subject to the statutory 5% franchise fee cap. While cable's an obvious fan of the move, franchises, wary of losing money or services, aren't. "The Commission's proposals violate the plain language of the statute which authorizes LFAs to both collect franchise fees and to impose franchise requirements on cable operators," said a joint filing from a number of players, including the cities of Atlanta, Dallas and Boston. Public access channels are concerned that the proposal deems non-capital Public, Educational & Governmental requirements as franchise fees. "Such an action would decimate our ability to provide services to our community," said **PhillyCAM**, the nonprofit that operates the City of Philadelphia's public access TV. The FCC's Second Further Notice of Proposed Rulemaking, which makes these tentative conclusions, was adopted 4-0 in September. It addresses issues raised in July after the US Sixth Circuit vacated parts of FCC decisions that had limited the ability of LFAs to regulate non-cable services provided over a mixed use cable system and nixed LFAs imposing non-monetary assessments on cable ops. In defense of the change-up, cable argues that the consumer will ultimately benefit. "If these 'in-kind' contributions are not counted as franchise fees, a cable operator faces a dilemma: either 'eat' the costs or pass them along to subscribers, raising the total cost of service. Neither of these alternatives serves the public interest," **ACA** said. The independent cable operator group is hoping the FCC will go one step further. The FCC has proposed excluding build-out requirements from the definition of franchise fee, reasoning that they are not imposed for the benefit of the LFA and may result in profit for the operator. **ACA** argued that such mandates also impose costs. It suggests build-out requirements that exceed the scope of assuring access to cable to potential subs regardless of income be counted as a franchise fee. **NCTA** has said "reasonable build-out requirements" shouldn't be subject to the 5% cap, adding that reasonableness should be evaluated on a franchise-by-franchise basis (rather than company-wide). It will likely be early next year before the FCC sets the new rules. Initial





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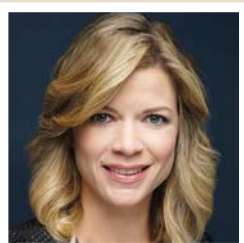
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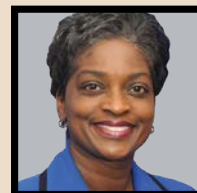
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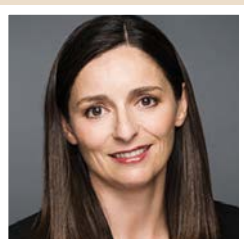
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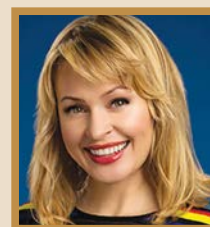
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comments were due to the FCC last Wednesday, with reply comments due Dec 14.

**ESN-Charter Suit Moves Forward:** *Byron Allen's Entertainment Studios Networks* can proceed with its complaint against **Charter** over carriage. On Monday, the **9th Circuit Court of Appeals** affirmed a lower court's decision to reject the MSO's attempt to dismiss the claim. ESN, along with the **National Assn of African American-Owned Media**, filed the complaint in January 2016, alleging that Charter's refusal to enter into a carriage contract was racially motivated. Charter sought dismissal, arguing that the First Amendment barred a claim based on a cable operator's editorial discretion. The 9th Circuit didn't rule on whether Charter discriminated against ESN, only on whether the First Amendment prevents the challenge. "This lawsuit is a desperate tactic that this programmer has used before with other distributors. We are disappointed with today's decision and will vigorously defend ourselves against these claims," Charter said. ESN had the support of **Public Knowledge**, which filed an amicus brief arguing that the First Amendment doesn't provide Charter with a shield against litigation alleging violations of the Civil Rights Act of 1866. "The First Amendment is a tool for promoting free expression. Too often, though, courts have turned it into a tool for deregulation, arguing that the purported free speech interests of billion-dollar companies outweigh the rights of citizens to be informed, to communicate, and to participate in the public sphere," said PK gen counsel *John Bergmayer*. "Here, Charter put forth arguments that, if taken to their logical conclusion, would mean that the Constitution barred nearly all regulation of cable companies and broadband providers, as their services are a conduit for speech." Allen's ESN filed a similar suit against **Comcast** in 2015 that was dismissed. **AT&T** settled a lawsuit ESN filed in 2014, granting its **Comedy.TV, Justice Central. TV, Recipe.TV, ES.TV, MyDestination.TV, Cars TV** and **Pets TV** carriage across **DirecTV** and **AT&T**. In March, ESN acquired **Weather Channel**.

**Carry On:** **AT&T** and **Fox Networks Group** renewed a multi-year deal to keep distributing Fox programming across **DirecTV, DirecTV Now** and **AT&T U-verse**. The agreement also includes Fox-owned broadcast stations in 17 cities, the 22 Fox RSNs, **FS1, FS2, FX, FXX, FXM, National Geographic Channel, Nat Geo Wild, BabyTV, Fox Deportes, Nat Geo Mundo, Fox Life** and the **Fox Soccer Plus** PPV service.

**FilmStruck Strikes Again:** After **AT&T** announced it will shutter SVOD service **FilmStruck** on Nov 29, there was an outpouring of petitions and letters to keep the service alive. **Criterion Collection** came to the rescue, announcing it will launch the **Criterion Channel** as a freestanding service in spring 2019. The channel will feature curated classic film programming very similar to FilmStruck, and the service will include classic films from **WarnerMedia's** unit. The films will also be a part of the upcoming WarnerMedia service. It will cost \$10.99 a month or \$100 a year, and

## Cablefax Industry Jobs

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**Altice Anywhere:** **Altice USA** rolled out its first major upgrade to the Altice One OS, adding enhanced mobility and additional features. Customers now have the ability to watch Cloud DVR recordings through the Altice One mobile app, the **YouTube Kids** app and restart live shows after they've already started watching. Remote control voice search was also integrated for the YouTube app and the **News 12** app was improved for Optimum customers.

**Headed to Pluto:** **Discovery** is coming to yet another streamer this month, signing a non-exclusive, multi-year content deal with **Pluto TV**. Pluto will stream library content from six Discovery networks: **Discovery Channel**, **Animal Planet**, **ID**, **Discovery Life**, **Science Channel** and **TLC**. Discovery is an investor in Pluto TV through its purchase of Scripps Networks Interactive in March. This is the third distribution deal Discovery has announced with a streamer recently with Discovery networks coming to **Hulu** and **Sling TV** by the end of 2018.

**Spooky Season:** TV consumption via internet-connected devices continued to grow in October, rising by +42% YOY among all households. **Pivotal Research** also reported a +31% boost YOY with A18-49 to account for 15.8% of total TV use on a total daily basis by the age group. TV consumption growth was down slightly against all adults on a total daily basis during the month (-0.9%), but fell far more against A18-49 (-5.7%). That's not surprising considering the growth of viewing on devices. National TV commercial impressions fell -11.2% YOY as national commercial loads increased again from 11.0 minutes/hour to 11.1 minutes/hour. NBCU scored the highest share of national TV rated viewing, garnering 14.8% of the industry's total.

**Fire Relief:** **Comcast NBCU** is donating \$1.1mln in cash and in-kind support to communities impacted by the devastating fires in California. On Wednesday, **Verizon** announced a \$100K contribution to the North Valley Community Center, and the company is waiving overage charges for customers affected by the fires through Nov 30. Verizon volunteers are also on the ground at evacuation shelters, helping get people connected through laptops, phones and cell phone charging stations. **AT&T** is donating \$150K to the communities impacted and waiving additional charges from Nov 9-30 to help people stay connected.

**Holiday Cheer:** **Crown Media Family Networks'** streaming service **Hallmark Movies Now** passed 500K subscribers. The news comes as the service rolls out its annual programming event "Movies & Mistletoe." After it launched in October, Hallmark Movies Now saw a 93% increase in viewership vs this time last year.

**Santa Season:** **zone-tv** is bringing back Santa Tracker for the 10th year. On Christmas Eve the company's original programming tracks Santa's location and where he's headed next. The programming also has a collection of winter and holiday read-along books, holiday movie classics, sing-alongs and games. Santa Tracker is available on **Comcast Xfinity X1**, **AT&T U-verse** channels, **DirecTV**, **Frontier Communications** and **CenturyLink**.

**Ratings:** **Nielsen** released ratings for Season 6 of "House of Cards," which premiered on **Netflix** on Nov 2. Within the first seven days of availability, the first ep received an average minute audience of 2.9mln viewers P2+ in the US. Season 5's first ep received an average minute audience of 4.4mln viewers over the same time. All eight episodes saw an average minute audience of 1.5mln US viewers over the first week.

**Programming:** **ID** is reopening the case of Chicago-based serial killer *John Wayne Gacy* in hopes of identifying the eight remaining unknown victims. "Deadly Legacy," a three-part limited series, premieres on Dec 9 at 10pm. -- **Showtime's** comedy series "SMILF" will return on Jan 20 at 10:30pm. -- **Aspire TV** renewed "Butter + Brown" for Season 3. Fans of the show can now enter a video competition for the chance to appear as a guest in the third season. -- **AT&T Audience Network** renewed "Mr. Mercedes" for a third season. -- **VH1** is expanding "Love & Hip Hop" to two nights a week starting Jan 2 at 8pm. -- **B/R Live** and **TNT** will continue coverage of the **UEFA Champions League** starting with Matchday 5 of Group Stage on Nov 27-28. Live match coverage will be available through B/R Live and TNT.

**People:** **Discovery** boosted *Courtney White* to president of **Food Network**. *Allison Page*, formerly pres of **HGTV** and Food, will continue to lead HGTV while also developing the pending partnership with *Chip and Joanna Gaines*. -- *Atila Tinic* is joining **DISH** as svp/CIO. Tinic last served as svp, IT at **CenturyLink** and as CIO of **Level 3**. -- **A+E Networks** named *Moreya Bidessie* as dir, scripted development and sales as the company prepares to launch into internationally-focused co-productions. She comes from **Sky Vision**. -- **CBS Corp** promoted *Kelli Raftery* to evp, communications.

**Editor's Note:** Join **Cablefax** at the [People to Watch](#) Luncheon on Dec 4 for a mentoring experience that combines executive roundtables and speed networking. Attendees will be able to get up close and personal with a group of Distinguished Mentors including **Univision** president, content distribution & partnerships, *Henry Ahn*; **A+E Networks** CTO *Raj Bahl*; **Discovery** svp, HR, *Kit Herrera*; and **CTAM** pres/CEO *Vicki Lins*.