

Cablefax Daily™

Friday — December 7, 2018

What the Industry Reads First

Volume 29 / No. 234

Butting Heads: Judges Critical of DOJ in AT&T Oral Arguments

Oral arguments commenced in the DOJ's fight to block the \$81bn merger between AT&T and Time Warner, with lawyers and amici representatives of antitrust scholars rising to the defense of their respective sides. Going into the hearing, most watchers thought the government had the tougher battle—and that was the consensus following the arguments. DOJ lawyer *Michael Murray* argued to the three-judge panel that the district court made clear errors when it gave the merger the go-ahead in June, especially when it concluded that there was no guarantee of blackouts occurring as a result of the combination. The DOJ was not guaranteeing that a blackout would happen, but that there would be a threat of them occurring post-merger. Judges *David Sentelle* and *Judith Rogers* were unmoved by the argument, countering that AT&T and Time Warner would also lose profits should a blackout begin. The panel also appeared skeptical of Murray's claim that the government met its burden of proof by demonstrating that the economic harm from the deal was "not zero" through the Nash model. Questions arose surrounding the validity of the model and the numbers UC Berkeley professor and DOJ expert witness *Carl Shapiro* plugged into it, but Murray argued that if you take out the quantification and the numbers presented, the model still stands to show that there would be some sort of economic harm. "The government had to show that the proposed merger was likely to substantially lessen competition by increasing **Turner's** bargaining leverage in affiliate negotiations," Rogers said. "Some of those adverbs appear to be flying in the face of your statement that if all the numbers aren't zero, you win." Judge Sentelle agreed, adding that if the government was going to put a model in front of the court, it needed to have the numbers and figures that were going to make it work. There's still some hope for the government. Judge *Robert Wilkins* seemed unconvinced that the potential invalidity of the DOJ's economic model was enough to dismiss the appeal, saying it could have been a result of a lawyer over-trying a case and making a misstep. When AT&T took its time to speak, it was all about arbitration. Lawyer *Peter Keisler* said that the seven-year arbitration period proposed during the initial trial and modeled after that imposed in the **Comcast-NBCU** merger would protect rivals of Turner and **DirectTV** from any increased bargaining leverage the pair might have after the merger. He also pushed back against any doubts shown regarding AT&T's commitment to the arbitration deal, which guarantees that Turner networks won't go dark even as it works through negotiations with distributors. "We will honor it. The other side will

**CONGRATULATIONS
TO ALL THE 2018
MOST POWERFUL
WOMEN HONOREES!**

Read the digital version and expanded
profiles at www.CablefaxWomen.com





The annual Cablefax Digital & Tech Awards honor the people, shows and networks who excel in digital content, marketing, advertising, social media and online content. Additionally, the Tech categories recognize the outstanding products, strategy, implementation and people across broadcast, cable and digital technology.

DIGITAL CATEGORIES

Content & Design

- » App for Smartphone
- » App for Tablet
- » Editorial Excellence
- » Graphics/UX Design
- » Live Event Coverage
- » Live Streaming
- » Mobile Experience
- » New Product or Launch
- » Online Press Center
- » Online Short (scripted or unscripted)
- » Original Content
- » Overall Website - Network – Large (More than 50mln subs)
- » Overall Website - Network – Small and Mid-Size (Fewer than 50mln subs)
- » Overall Website - Official Show Website
- » Overall Website - Regional/Local Programmers
- » Overall Website - Distributor
- » Podcast or Videocast
- » Use of Video/Moving Image
- » Virtual Reality/Augmented Reality Content
- » Website or Microsite Design
- » Website Redesign

Advertising / Marketing

- » Ad/Ad Series
- » Branding
- » Content Marketing Campaign
- » Digital Marketing Campaign
- » Email Communications
- » Influencer Campaign
- » Integrated Marketing Campaign

Audience Engagement

- » Contest/Sweepstakes/Promo
- » Fan Base Cultivation
- » Interactive Brand Content
- » Online Community
- » Online Game/Gamification
- » Social Good Campaign
- » Sponsored Content
- » Supplemental Web Content
- » Use of Facebook
- » Use of Instagram
- » Use of Snapchat
- » Use of Twitter
- » Use of YouTube
- » Use of Other Social Platform
- » Social Media Campaign
- » Overall Social Presence

Digital Innovators & Teams

- » Digital Hall of Fame
- » Content Marketing Team of the Year
- » Digital Team of the Year
- » Social Influencer of the Year
- » Social Media Dream Team of the Year
- » UX Designer of the Year

TECH CATEGORIES

Tech Categories

- » AI/Machine Learning
- » Blockchain
- » Cloud Solution
- » Commercial Product, Service or Software
- » Connected TV/Smart TV Solution
- » Home Automation/Networking/Security Product or Service
- » IoT Product or Service
- » OTT/SVOD Support Product or Service
- » Residential Equipment (set-ops, gateways)
- » Residential Software (tablets/smartphone apps)
- » TV Everywhere/Authentication System
- » Virtual Reality/Augmented Reality
- » Wireless/WiFi Solution

Innovation A-List

- » Overall Tech Innovation Award
- » New Product Award
- » Tech Partnership
- » Technology Exhibit, Display or Stunt

Communications

- » Tech Advertising Campaign
- » Tech Sales/Marketing Campaign

Tech Professionals & Teams

- » Innovator of the Year
- » Engineer of the Year
- » Rising Star
- » Tech Team of the Year
- » R&D Team of the Year

Cablefax Daily (ISSN 1069-6644) is published daily by Access Intelligence, LLC ● www.cablefax.com ● 301.354.2101 ● Editorial Director: Amy Maclean, 301.354.1760, amaclean@accessintel.com ● Publisher: Michael Grebb, 323.380.6263, mgrebb@accessintel.com ● Associate Editor: Sara Winegardner, 301.354.1701, swinegardner@accessintel.com ● Associate Editor: Mollie Cahillane, 212.621.4951, mcahillane@accessintel.com ● Acct. Exec: Olivia Murray, 301.354.2010, omurray@accessintel.com ● VP Marketing: Amy Jefferies, 301.354.1699, ajefferies@accessintel.com ● Director of Marketing: Kate Schaeffer, kschaeffer@accessintel.com ● Prod. Mgr: Joann Fato, jfato@accessintel.com ● Diane Schwartz, SVP Media Comms Group, dschwartz@accessintel.com ● Group Subs or Subscription Questions, Client Services: 301.354.2101, clientservices@accessintel.com ● Annual subscription price: \$1,699.97/year ● Access Intelligence, LLC, 9211 Corporate Blvd., 4th Floor, Rockville, MD 20850

invoke it. And it will have real world effects,” Keisler said. Because of the arbitration deal, Keisler argued that Turner would actually have less leverage as a result of the merger, and that should be enough for a decision on the case. Don’t look for a decision until early 2019. “We appreciate the Court’s attention to the arguments of counsel and look forward to receiving its decision,” AT&T said in a statement following the conclusion of the arguments.

Data Mania: As the **DOJ** took heat Thursday in oral arguments regarding the **AT&T-Time Warner** merger, **Turner Ad Sales** pres *Donna Speciale* said she couldn’t be happier with the acquisition. “When a company buys another company, you always hope that the visions are aligned. What Turner’s been doing is right on target,” she said at the TV of Tomorrow conference in NYC. “Now that we have access to 25mln set-top box data, and they have 147mln mobile devices, we now have first party data that’s pretty unbelievable.” With **Xandr’s** in-house data, Turner is now able to start focusing more heavily on attribution. “Now we need to use third-parties [for attribution], which takes time and money. [With the merger], we have a huge data source that is now in-house, so we’re going to be able to use our own data for the attribution,” Speciale explained. The other priority in 2019 for Turner will be addressable advertising. “DirecTV is doing a great job, but they have the footprint and we don’t right now. We have always stated that the journey we have been going on in creating audiences is to get to the end goal of being addressable, which is why I’ve been pushing so much and getting into audience buying and selling,” she said. And the possibility of combining Turner Ad Sales with AT&T’s Xandr? “If there’s opportunity where a client or a holding company wants to talk to us together, we have done this. I’ll never say never, but the way it is today we’re two separate entities.”

ALJ Change-Up: Long-time **FCC** administrative law judge *Richard Sippel* retired earlier this month after 32 years in the post. FCC chmn *Ajit Pai* revealed Thursday that he replaced him with *Jane Hinckley Halprin*, who has spent the past 14 years in the Office of General Counsel as an Ethics Counsel. Sippel’s tenure included overseeing several program carriage disputes, including **Tennis Channel-Comcast**, **NFL Network-Comcast** and **Game Show Network-Cablevision**. Pai thanked Sippel for his work, saying he served “with honor and distinction,” while congratulating Halprin on the new role. FCC commish *Mike O’Rielly* has been critical of the ALJ process, and he used the appointment to repeat his call for reform. “The ALJ process has been allowed to turn into a black hole of indecision, inefficiency, and arbitrariness. It is not worthy of our great nation,” he said in a statement. He most recently raised the issue when the FCC opted to send **Sinclair-Tribune** to the ALJ, with the Republican requesting timelines for ALJ action. Last year, he complained that it took nearly six years for GSN’s carriage complaints against Cablevision to be resolved. That said, he did express admiration for Halprin’s willingness to take on ALJ tasks. “This is the perfect

CFX WHERE WE’LL BE IN 2019

LET CABLEFAX HELP EXCEED YOUR
MARKETING GOALS FOR THE YEAR!

Brand awareness
Prospect Generation
Content Marketing
Relationship Building

Sales Contact: Olivia Murray
301.354.2010 | omurray@accessintel.com

WHERE WE’LL BE

| | |
|---------|--|
| 1/8/19 | CES in Vegas (Jan. 8 - 11) |
| 1/22/19 | NAPTE in Miami (Jan. 22 - 24) |
| 1/28/19 | ReelScreen Summit in New Orleans (Jan. 28 - 31) |
| 1/29/19 | TCA in Los Angeles (Jan. 29 - Feb. 13) |
| 2/25/19 | NCTC Winter Conference in Atlanta (Feb. 25 - 26) |
| 3/8/19 | SXSW Interactive in Austin (March 8-12) |
| 3/19/19 | CFX Roundtable at ACA |
| 3/19/19 | ACA Summit in DC (March 19-21) |

moment to overhaul the ALJ functions and enact needed reforms, including a determination of whether they are still needed,” said O’Rielly, adding that he’ll be pushing Pai to get the ball rolling.

Award Season: It was **FX** by a hair... The basic cable net snagged the most **Golden Globe** nominations Thursday, with its 10 including 2 best drama noms (“The Americans” and “Pose”). It also had the most nominations for a series, with “The Assassination of Gianni Versace” earning 4. Premium net **HBO** had 9 nods, although it received no love in the drama category. Its “Barry” is in the running in the comedy or musical TV category. **Amazon’s Prime Video** had a strong showing with 9 nominations, including for best drama (“Homecoming”) and best comedy (“The Marvelous Mrs. Maisel”). Also snagging multiple nominations were **Netflix** (8, including “Bodyguard” for best drama and “The Kominsky Method” for best comedy) and **Showtime** (6, including *Jim Carrey’s* “Kidding” in the comedy space). Also receiving noms: **NBC** (3), **BBC America** (2), **Hulu** (2), **TNT** (2), **Bravo** (1), **CBS** (1), **Nat Geo** (1) and **Starz** (1). Notably, this is the first ever Globe nomination for Bravo, which is up for best performance by an actress in a limited series/motion picture for *Connie Britton’s* portrayal in “Dirty John.” -- Nominations for the 2019 **Writers Guild Awards** also were announced Thursday, with HBO’s “Barry” up for both best comedy series and best new series. It’s joined in the new series category by Netflix’s “Haunting of Hill House,” Prime Video’s “Homecoming,” FX’s “Pose” and HBO’s “Succession.” Full list of nominees available here.

TV of Tomorrow Notebook: Digital was the hot topic at the TV of Tomorrow conference in NYC on Thursday. Multiple panelists noted the huge amount of growth in connected TV and the trend of moving away from a linear screen to mobile devices. “There’s such a competition from two angles on the consumer when he wants to watch video. It takes so much attention when you have to sit in front of a screen,” said **Applicaster** CEO *Jonathan Laor*. “We’ve really seen this year that the best network brands realize their power is multimedia. It’s not only about video programming.” Execs also noted the growing use of AR and VR, and the challenges that come with it. “It’s hard to scale if you’re not making money off it. We did an augmented reality app last year, and Apple really got behind it. But then it’s what do we do with it next? It could work for a lot of shows, but there’s no motivation behind it,” said **Bravo, Oxygen and Universal Kids** evp of digital *Lisa Hsia*. Other conference highlights included a fireside chat with Discovery’s pres of US digital products *Karen Leever*. She noted that Discovery’s digital offerings attract a younger demo than its linear content, with 61% of users aged 18-44. Leever believes that access to all of Discovery’s content is pivotal for the company’s success. “Just about on every single network we have complete series and seasons. I spent 10 years at **DirecTV** and as we were developing their TV Everywhere platform, we realized the number one complaint was what consumers called ‘Swiss Cheese.’ I could find one episode of a season, but not complete series. So at Discovery we need to give them complete access to all of the content,” she said. Panelists also touched on user experience and voice technology. **Amazon’s** director of engagement and experiences for Fire TV *George Tsipolitis* believes accessibility is key. “Natural language understanding is a deep science, there’s a lot of innovation happening now. [It is] paramount with regards to accessibility and understanding users’ needs, because we don’t want the user to be frustrated,” he said.

Discovery Upgrade: **Pivotal** took **Discovery** to “hold” from “sell,” noting the stock is trading close to its \$27 price target. While CEO *David Zaslav* reduced expectations for 4Q ad growth recently, Pivotal said incorporating the change into their model only has a limited effect on valuation given its longer-term view on the sector.

New Ways to Watch: **Hulu** is the first TV streaming service to offer **Venmo** as a payment option. It’s available now for new subscribers, and soon existing subs will be able to switch their payment preference to the app. -- **Comcast** Xfinity TV subs can now sync their **Movies Anywhere** accounts and combine their Xfinity Digital purchases with those from Movies Anywhere digital retailers so that they can be access across Comcast platforms, including the Xfinity Stream app. Movies Anywhere launched last year with five Hollywood studios. It has six other digital retailers on board, including **iTunes, Amazon Prime, Google Play** and **Vudu**.

FTC Friction: Sen *Mark Warner* (D-VA) is pushing the **FTC** to do more to protect Americans from digital ad fraud. The lawmaker believes a previous response from FTC chmn *Joseph Simons* failed to address his concerns that larger intermediaries are turning a blind eye to such fraud. “The FTC’s failure to act has had the effect of allowing **Google** to structure its own market; through a series of transactions, the company has accomplished a level of vertical integration that allows it in effect to act as the equivalent of market-maker, commodities broker and commodities exchange for digital advertising—in the process creating a range of conflict of interest,” Warner wrote in a letter Thursday. He said he’s not convinced the FTC is using the authority it already has to crack down on misbehavior and would like to meet over the next month.

Programming: **Comedy Central** inked an exclusive overall deal with *Chris Distefano* that includes a first look at content created/developed for any platform. -- **Telemundo Deportes** covers the FIFA Club World Cup UAE 2018 beginning Wednesday. There will be live coverage across **Telemundo, Universo**, the Telemundo Deportes and **NBC Sports** apps.

PROGRAMMER'S PAGE

A Different Lens into Policing

Sometimes it's easy to forget just what all police officers do in their line of work. When there's danger, they run toward it. Even if they are shot, the safety of others comes first, with it necessary to secure the area before EMTs can even arrive on the scene to administer help. **Investigation Discovery's** latest "Body Cam" (Tuesdays, 10pm) puts the viewer right in the middle of the action via the officers' own body camera footage. It makes for dramatic TV—though the shaky camera and intense action may leave the viewer feeling a bit breathless (and queasy) at times. It seems petty mentioning it when you watch just what these law enforcement officers go through. Body Cam's first-person POV combined with reflective interviews is worth being a little uncomfortable for. Similarly, officers featured in the first ep said the body cameras themselves are worth it, even if they can get a little uncomfortable (ahem, they record everything—from a trip to the bathroom to that phone call with your spouse). "I think body cams are fantastic. It tells the story of most of what we see. It doesn't tell what happened behind me, but it does tell everything in front of me. It tells the truth," Sgt. *David White* (Ret.) Uniontown, PD (Ohio) said during a recent DC screening of the series. "It makes everyone accountable, whether it's the citizens or the police." The cams also make for fantastic storytelling. The idea was born out of a discussion on how to tell stories through a different lens, said *Thomas Cutler*, sr exec producer for ID. "We spent a lot of time finding footage... and then backing out of it and finding how can we make this personal, how can we make this human," he said. Those direct interviews are what set Body Cam apart from the jerky footage you see on the nightly news. It's as close to a police ride along as many of us are going to get. — *Amy Maclean*

Reviews: "Finding Joy," streaming from Dec. 3, **Acorn TV**. Fans of Acorn TV's imported fare will recognize *Amy Huberman* from her standout portrayal of a renegade attorney in the Irish legal drama "Striking Out." A polymath, Huberman also is at home in comedy; she's the writer and star of this quirky and top-rated (in Ireland) series about a TV features reporter who gets into a slew of trouble both personally and professionally. At home she lacks a long-term relationship, at work her character's dealing with strange bosses who, in their obsession for ratings, put her into awkward situations, sometimes reminiscent of the hijinks *Lucile Ball* encountered in "Lucy." -- "Counterpart," Season 2 premiere, 9pm, **Starz**. It's a fool's errand to summarize the plot of "Counterpart," whose freshman year was critically acclaimed. Expertly filmed, it features *J.K. Simmons* as a nearly retired, low-level spy in Berlin, where nearly everyone seems suspicious. We recommend watching Season 1 eps before jumping into Season 2. But even without preparation, viewers will savor Counterpart's cinematic touches as the camera lingers on characters. -- Notable: It's good to be the king, except when someone in your entourage is out to get you. That's the situation for Louis XIV (*George Blagden*) in the finale of "Versailles" (10pm ET, Saturday, **Ovation TV**), which has been a terrific series. -- *Seth Arenstein*

Basic Cable P2+ Prime Rankings*

(11/26/18-12/2/18)

| Mon-Sun | MC | MC |
|---------|-------|-------|
| | US | US AA |
| | AA% | (000) |
| ESPN | 0.756 | 2308 |
| FNC | 0.659 | 2012 |
| HALL | 0.644 | 1968 |
| MSNBC | 0.596 | 1819 |
| USA | 0.402 | 1229 |
| HMM | 0.382 | 1166 |
| HGTV | 0.358 | 1094 |
| HIST | 0.357 | 1091 |
| FOOD | 0.342 | 1045 |
| TBSC | 0.342 | 1044 |
| A&E | 0.336 | 1027 |
| CNN | 0.333 | 1016 |
| ID | 0.329 | 1005 |
| AMC | 0.295 | 902 |
| FRFM | 0.295 | 900 |
| NICK | 0.280 | 854 |
| DISC | 0.258 | 789 |
| ADSM | 0.253 | 773 |
| LIFE | 0.250 | 764 |
| TLC | 0.245 | 747 |
| BRAVO | 0.227 | 695 |
| NAN | 0.210 | 641 |
| TVLAND | 0.205 | 626 |
| FX | 0.201 | 614 |
| NFL | 0.190 | 579 |
| TNT | 0.186 | 569 |
| INSP | 0.176 | 538 |
| CRN | 0.172 | 524 |
| DSJR | 0.165 | 504 |
| DSNY | 0.163 | 496 |
| MTV | 0.162 | 494 |
| NATGEO | 0.146 | 445 |
| SYFY | 0.140 | 429 |
| VH1 | 0.135 | 412 |
| TRAVEL | 0.133 | 405 |
| NKJR | 0.131 | 400 |
| APL | 0.129 | 395 |
| BET | 0.127 | 387 |
| COM | 0.122 | 372 |
| PARA | 0.121 | 371 |
| WGNA | 0.121 | 371 |

*P2+ L+SD rankers are based on national Nielsen numbers, not coverage.



**18th Holiday
Rock & Roll
Bash**

DECEMBER 13, 2018

PRESENTED BY




**A BENEFIT FOR
THE LUSTGARTEN FOUNDATION**

Thanks to separate funding to support administrative expenses, 100% of your donation goes directly to pancreatic cancer research.

For more information, please call 914-579-1000 or email holidaybash@buckleyhallevants.com

