

# Cablefax Daily™

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What the Industry Reads First

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## Shady Daze: FX's Landgraf Hits Netflix Over Recent Viewership Brags

As rain outside cast clouds over Southern California Monday, **FX** chief *John Landgraf* brought his own brand of shade to the **Langham** hotel in Pasadena, ripping into **Netflix's** recent (and very selective) crowing about viewership numbers. "The source of those numbers? Netflix," he told critics, invoking laughter from those gathered for the Winter **Television Critics Association** (TCA) tour. "And what do you know?," he continued. "The numbers look really big and promote the notion that many shows on their platform are gigantic hits that are watched more than shows on broadcast networks or on basic cable." Au contraire, argued Landgraf. He cited the recent release of limited internal numbers for Netflix's highly publicized movie "Bird Box," as well as series "You" and "Sex Education," all of which he said aren't based on average viewing and can't even be verified. "One way or another, the truth will come out—it always does" he said, adding that **Nielsen** will eventually find a way to accurately measure the streaming services. "Until then, everyone in this room might consider waiting until accurate third-party measurement is available to report any viewership on anyone's platform," he said. "If you choose to accept anyone's cherry-picked and unverified internal data, you should at least insist that they give you an average audience number so that the reader is not misled." Landgraf, whose FX is widely recognized as one of the best marketing forces in TV, said Netflix has essentially used selective data as a marketing tool to create its own aura of "tremendous success that has eluded everyone else since the creation of television. They have given the impression that the vast majority of shows on their platform are working, and that they have the best batting average and that they have or will have many more hits than anyone else." As for Silicon Valley's take-no-prisoners strategy to dominate markets—whether **Facebook** for social, **Google** for search or **Netflix** for video, "I don't think that winner-take-all mentality is good for world," he said. "I don't think it's good for America. It's not necessarily about who wins. It's about the notion that the balance of power—it's in our Constitution, it should be in our economy—I think it's a good thing."

**Charter-NY PSC Settlement Progress:** Charter was granted another extension by the **NY PSC** regarding the agency's revocation of its acquisition of **Time Warner Cable**. Monday was supposed to be the deadline to file for a rehearing, but instead the PSC gave it a 30-day extension to March 6. The MSO is engaged in settlement discussions with PSC staff, which have advised that any final settlement will include a penalty and/or funding provided by Charter to

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**Deadline:** March 1, 2019 | **Final Deadline:** March 8, 2019

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expand broadband access to further customers in addition to those passed pursuant to its TWC buildout condition. A settlement would also contain an agreement on eligible passings that count toward Charter's 145K buildout merger condition and an enforceable schedule to complete the remaining buildout work. Monday's PSC order said the parties should reach a term sheet agreement within two weeks and a full written agreement within four weeks.

**In the Courts:** *Byron Allen's Entertainment Studios Networks* can continue forward in its lawsuits alleging bias against **Charter** and **Comcast**. In November, the **9th Circuit** upheld a lower court ruling that ESN could sue the operators. On Monday, a three-judge panel declined the MSOs' requests for a rehearing en banc. "Charter's race-neutral explanations for its conduct are not so convincing as to render Plaintiffs' theory implausible," judge *Milan Smith* wrote in an order published Monday. ESN is seeking \$20bln in damages against Comcast and \$10bln against Charter for alleged Civil Rights violations. Both companies deny the claims. "We are reviewing the opinion and examining our options," a Comcast spokesperson said. Comcast and Charter are the first two distributors for **Cleo TV**, a new channel that launched this month from African-American owned company **Urban One**.

**Handicapping Net Neutrality Arguments:** If anyone claims to know how the **DC Circuit** is likely to rule on the **FCC's** Restoring Internet Freedom order, be wary. They may also have some oceanfront property in Arizona to sell. **NewStreet Research's** analysts, including former FCC'er *Blair Levin*, don't claim to hold any answers and warn against prognostications. That said, they have identified judge *Robert Wilkins* as the likely swing vote, viewing *Patricia Millett* as most likely to overturn the FCC's return to Title I and *Stephen Williams* most likely to uphold it. NewStreet told clients Monday that its team believes the most likely outcome is Wilkins joins Millett to overturn the ruling on public safety grounds or an issue involving Section 257 of the Communications Act instead of the broader classification issue. "This could result in the court remanding the issue to the FCC, rather than a substantive decision on Title I or Title II that would be appealed to the Supreme Court," the analysts wrote, noting they expect a court decision this summer. NewStreet warned that headlines could be coming that say ISPs will be regulated under Title II, but suggested the *Trump* FCC won't enforce the law in a way likely to change current practices. The big question mark is what happens if Dems win in 2020. And that's why we see a push for legislative action. All eyes following the debate will turn to **House Commerce**, which will hold an open internet hearing Thursday that **NCTA's** Michael Powell and former FCC chmn *Tom Wheeler* are set to testify at. Other witnesses include *Denelle Dixon*, COO of **Mozilla**, which is among those challenging the FCC's current open internet rules.

**Game Time:** **TDS** customers received good news Friday as the operator ended its month-long retrans blackout of **Nexstar** stations less than 48 hours before the Super Bowl aired on **CBS**. The big game saw its lowest ratings in 10

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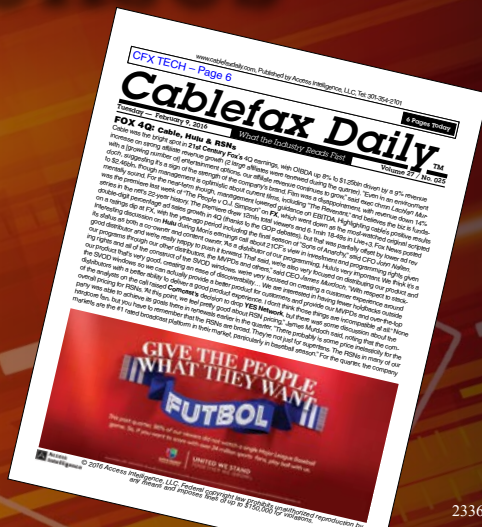
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years, according to early numbers from **Nielsen**. It averaged a 44.9 HH rating on **CBS**, down 5% from last year on **NBC** and the lowest since 2009 (42.1). The game was also the lowest-scoring in Super Bowl history, with the **New England Patriots** topping the **Los Angeles Rams** 13-3. TDS is issuing bill credits on February statements for the loss of programming in January. "We know you've felt caught in the middle and we appreciate you sticking by us... Your voice was heard!" TDS said in messages to customers. Eight Nexstar stations, including several CBS stations, went dark on Dec 31 as the two couldn't agree to terms on a new retrans deal.

**RSNs Update:** A surprise potential bidder may be stepping up to the plate in the auction for the **Fox RSNs**. **Liberty Media** chmn *John Malone* and Liberty Media pres/CEO *Greg Maffei* are attempting to team up with investors, including private equity firm **Platinum Equity**, to purchase the nets, according to a **Fox Business** report. Platinum CEO/chmn *Tom Gores* owns the **Detroit Pistons** while Malone owns the **Atlanta Braves**, with both teams having their games aired on a Fox RSN. Should they submit a bid, they'll be up against **MLB**, **Sinclair Broadcasting** and **Apollo Management**, all of whom submitted second round bids. It hasn't been confirmed whether Maffei officially bid on the networks, but reports say that Maffei has expressed a willingness to pay up to \$10bln for the RSNs. Sources told **CNBC** that MLB's bid would value the RSNs at no more than 6.5 times EBITDA. The original anticipated acquisition price of the 22 RSNs was \$20bln, but with the **Yankees** moving forward with plans to buy back **YES Network**, the value of the RSNs declined. However, if Malone and Maffei ramp up prices in a wage war, it could drive the price back up. **21st Century Fox** sold its movie studio and TV assets to **Disney** in a \$71bln last year, and New Fox said last month it has no intention of bidding for the nets.

**Taking Back The Reins:** You knew this was coming when the Dems took back the House. Right on time, **House Commerce** chmn *Frank Pallone Jr* (D-NJ) and **House Communications** subcmte chmn *Mike Doyle* (D-PA) are exerting their new influence. The duo sent a letter to chmn *Ajit Pai* asking for information regarding the agency's current workload and its interactions with the public through the handling of consumer complaints and FOIA requests. They also stated that the committee would be returning to its traditional role of oversight over the FCC to ensure it was acting in the public's best interest. "Not only have you failed on numerous occasions to provide Democratic members of this Committee with responses to their inquiries, you have also repeatedly denied or delayed responding to legitimate information requests from the public about agency operations," the letter reads. "These actions have denied the public of a full and fair understanding of how the FCC under your leadership has arrived at public policy decisions that impact Americans every day in communities across the country." Pallone and Doyle requested written responses to their questions by March 4.

**Up to Date:** The **FCC Media Bureau** is seeking comment on recent developments in the video description marketplace. Responses will inform a report to Congress required by the Twenty-First Century Communications and Video Accessibility Act of 2010 on the availability, use, benefits and costs of video description. The report must be completed no later than October 8.

**Apple Launch:** **fuboTV** became the second live TV streaming service to integrate with the TV app on **Apple TV**, following **PlayStation Vue's** support in October. The service is now integrated with Apple's TV app, giving iPhone, iPad and Apple TV users easy access to content. It is also compatible with Siri, meaning subs can ask the virtual personal assistant to launch content. fuboTV will also implement single sign-on, where subs will be able to log in once with their credentials and unlock access to third-party video apps.

**First Look:** **Amazon Studios** has signed a first-look television deal with *Michael B Jordan's* production company, **Outlier Society**. The company will develop and produce new original series for Amazon Prime Video. Each series will also have an inclusion rider requiring representative hiring amongst the cast and crew.

**Ratings:** The fourth episode of **Freeform's** "Good Trouble" (airing Jan 29) grew to its best performance since its series debut with 632K total viewers in L+3. It drew 226K A18-34, 365K A18-49 and 269K P12-34. It also grew by 12% over the previous week in W18-34 (179K), by 4% in W18-49 (187K) and by 20% in F12-34 (219K) to achieve series highs. -- **Shudder** and **Sundance Now** found the magic with "A Discovery of Witches." The eight-ep season is the most successful title on the streamer. The services say since the show's premiere on Jan 17 it has driven 35x the number of streams of any previous premiere in its first two weeks, and total subs are up double-digits across both services.

**People:** **Roku** tapped *Mustafa Ozgen* as svp/gm of account acquisition. He comes over from **SmartKem**, where he served as CEO. Ozgen is replacing *Chas Smith* who serves as gm, svp of Roku TVs and player. Smith will stay on for a transition period, and is expected to retire and leave the company at the end of Q1 2019.