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On the Hill Again: Lawmakers Get Earful on Video Marketplace of Today

While retrans was the word of the day at Tuesday's **House Communications** subcmte hearing on STELAR, regulatory parity took the front seat at Wednesday's **Senate Commerce** meeting on the video marketplace. "If localism matters, I think they [new entrants like **Google**, **Facebook**, etc] should be held to the standards we're held to. They're like separate nations now," **NAB** pres/CEO *Gordon Smith* told senators, arguing that unregulated companies are cannibalizing the ad market. *Michael Powell*, **NCTA- The Internet & TV Association's** pres/CEO, made a similar level playing field call. "Many of the video laws apply incoherently to some industry groups and not others. And the newer services are completely unregulated," he testified, calling himself a fan of light regulation. "Trying to create greater parity and regulatory harmony is essential." Smith was the only witness who appeared at both hearings, making a case each time that STELAR should be allowed to sunset. For cable's part, Powell said the Act's requirement that broadcasters and MVPDs negotiate in good faith is what's most important to NCTA members. "We think that's an important disciplining element of those negotiations, to try and limit those negotiations from failing and leading to consumer blackouts," he said, later giving **Boycom's** *Patricia Jo Boyers* a shout-out for her "excellent" testimony Tuesday before House Communications on the imbalance smaller distributors often feel in negotiations. Smith countered that broadcasters don't have a problem with good faith rules, but they don't have to be part of STELAR. "That shouldn't be the reason STELAR is reauthorized. It's a separate issue." All this talk about creating regulatory parity meant a lot of dirt kicking to the 1992 Cable Act, with lawmakers acknowledging that it's a whole different video world today. "Despite this vast transformation of the video marketplace in the last century, consumers remain frustrated as there are still a litany of government regulations that restrict how content is ultimately delivered to consumers," said Sen *Ted Cruz* (R-TX). "The TV and video marketplace has evolved into something no one from 1990 would recognize and a multibillion part of the economy that only continues to grow." Yet **Free Press** chief *Craig Aaron* cautioned against throwing the whole Act out when crafting rules. "I know 1992 seems like a long time ago. That was also the only time, right after passage of the Cable Act, that cable bills actually went down in the last 35 years," he told senators. "We should figure out what's working there, and then update it. I think the thing to look at is how do we empower consumers with more choice [to choose the channels

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they want from their MVPD].” Also making an appearance at the hearing was **Nielsen** CEO *David Kenny*, who had to leave early. His pleas were that Congress protect and embrace the importance of independent, third party analysis of the video marketplace. Senators had a lot of concern about orphan counties, with NAB's Smith arguing that the best way to help them would be to let STELAR expire so satellite can't export distant broadcast signals (**DISH** and **AT&T** weren't there today, but disagree). “These hearings are an important first step in ensuring that rural Americans continue receiving the television channels they rely upon. Not only is it critical that Congress reauthorize STELAR, it's time to reform the outdated laws that govern retransmission consent negotiations,” DISH said in a statement. Other issues covered during the hearing included Sen *Ed Markey's* (D-MA) bill for transparency in cable billing. Powell pledged to work with him, but said there are adequate rules in place to cover misleading practices.

Ready to Bet: When it comes to sports betting, **Fox** isn't the only one ready to make a play. “Sports betting is a huge opportunity, particularly for local [advertising],” **CBS** acting chief *Joe Ianniello* said at the Credit Suisse 21st Annual Communications Conference Wednesday. “It's already generating millions of dollars of advertising revenue for us” for 2 CBS stations where wagering is legal. Ianniello believes betting could go big once more states begin to legalize it. It would make sense for CBS to make a big play in the space with its ownership of **SportsLine**, which was revived in 2015 as a subscription-based site for sports betting and advanced statistics and its **CBS Sports** cable network. “I do think there's a bigger platform opportunity for partnering with CBS Sports, so we'll bring that to the table and we're having multiple discussions with several partners on that to make sure we get the opportunity right,” Ianniello said. Ianniello also spoke to the importance of CBS's affiliate relationships and maintaining their strength in the shifting entertainment ecosystem. “A stronger affiliate body is a better overall ecosystem for us at the end of the day because those affiliates are negotiating with the distributors for their fair share,” he said. “What we provide a television affiliate is content. We provide a significant amount of the day of content to them and that partnership has worked for decades. I would much rather have a stronger affiliate body going into an ecosystem than a fragmented affiliate body. We are the lifeblood, the content provider that allows them to not only go get retrans, but also advertising dollars as well.”

At the Wire: Just ahead of the **FCC's** Thursday vote to loosen leased access rules for cable operators, a group called the **Leased Access Programmers Association** filed informal comments at the FCC expressing concern about the proposed changes. The FCC appears to be on the verge of “adopting rules, that favor and coddles the cable companies and discourages the use of leased access by the people that it was intended for,” the group said in the filing dated Tuesday. “The Leased Access Programmers Association was formed to represent the interest of the users of leased access. It does not have the resources to delve into the legal-mumbo jumbo that the **NCTA**, **ACA** and the cable companies have. Common sense needs to be part of the equation as well." Given the proximity to the vote, it's not clear the FCC can actually consider LAPA's comments. The FCC will vote on a report and order to eliminate a requirement that cable operators provide part-time leased access and allow them to charge a per system specific application for leased access. Cable supports the changes, while LAPA calls them a "giant step backwards." The group said most programmers can only afford to use leased access on a part-time basis. LAPA noted that its founder *Charlie Stogner* of **StogMedia** has passed away. "His shoes will be hard to fill, but LAPA intends to carry on his vision that leased access is useful and beneficial to the American public," said the letter, signed by LAPA vp *Duane Polich*.

No Losers: **TiVo** isn't the only one counting a favorable determination by an **ITC** judge yesterday regarding patents for **Comcast's** X1 platform. The company it's fighting against is tallying it up as a win as well. "We view today's initial determination to be a victory for Comcast because the Administrative Law Judge found no violation as to two of the three patents addressed," Comcast told ***Cablefax*** in a statement. "We look forward to the full Commission's review of the one remaining patent later this year, but we are confident, regardless, this ruling will not disrupt our service to our customers. **Rovi** (aka TiVo) also was unsuccessful on five other patents that it had previously withdrawn from this case. We will continue to resist Rovi's efforts to force Comcast and our customers to make unreasonable payments for aging and obsolete patents."

A Few More Channels: **HBO** veteran *Chris Spadaccini* will now serve as CMO of **WarnerMedia's** Entertainment group. The new role expands his purview far beyond HBO to include networks like **TBS** and **TNT** as well as WarnerMedia's upcoming streaming service. Spaddaccini has been a part of the HBO family since 1999, and rose to evp, marketing for the premium net in 2016. He'll take over for *Michael Engleman*, who has acted as evp/CMO for TNT and TBS for the last four years. He'll remain onboard for a transition period before moving on to another opportunity.

Ad Crystal Ball: **GroupM** released its latest US advertising forecast, saying that television on a normalized basis (excluding political) was up slightly in 2018 (+0.7%) after falling 2.4% in 2017. It projects a decline of 0.2% this year and 2.3% in 2020. "It is benefiting from the emergence of new advertisers, certainly, (including the app-developing technology companies), but it is hampered by the relative weakness of the medium's traditional sponsors," the firm said.

Partner Up: **NCTC** has partnered with **Atlas Digital** to offer its members a pay-per-click digital marketing lead generation program. Atlas Digital Search program doesn't require investments or upfront costs, lowering the barrier to entry for paid search programs. Atlas Digital also offers a turnkey e-commerce solution as well as a digital benchmarking tool.

True Colors: **Comcast** is celebrating Pride Month by offering 1200 hours of Pride free preview content to **Xfinity** video customers through Sunday. The offered content is all a part of Comcast's LGBTQ Film & TV Collection. The preview will include series from queer streaming network **Revry**, film festival pics from streamer **Dekkoo**, films from **Here TV** and documentaries on the lives of LGBTQ activists. Family Pride content will also be available from **Hopster**. Those with the X1 voice remote can find the content by saying "Pride."

Retail Therapy: **Nielsen** Media Impact has been upgraded to include Nielsen Scarborough USA+'s set of advanced audience segments. Those segments include brand preferences, retail insights, buying behaviors and consumer lifestyles. Companies will be able to use that information and the tools already integrated in Nielsen Media Impact to identify where and when to engage audiences with advertising.

Ratings: The season finale of **WE tv's** "Mama June: From Not to Hot" delivered season highs in total viewers and all key demos. The finale garnered 1.4mln total viewers in L+3 ratings, up 35% from the 11-episode half-season's premiere. It also grew 41% among W18-49 and 37% among W25-54. -- The 2019 **MLB** Draft Monday brought in its highest-ever audience on **MLB Network** in 10 years. The draft peaked with 344K homes and 399K viewers from 7:15-7:30, with an average of 244K homes.

Programming: **Oxygen** is examining the extreme lies people tell and the lengths they'll go to keep them a secret in "A Lie to Die For." The series is set to premiere on June 23 at 8pm. -- **HBO Europe** drama "Success" has set its sights on a June 5 US release date. The series will be housed on **HBO Now**, **HBO Go** and HBO On Demand. -- **UPtv** has licensed all six seasons of "Reba," starring country singer *Reba McEntire*, from **Twentieth Television**. The family comedy is set to launch on UPtv in August.

People: *Ayo Davis* has been upped to evp, talent and casting, **ABC Entertainment** and **Disney+**. The newly-created role will see Davis offering casting strategy and services to Disney's Direct-to-Consumer and International segment. She'll report in to ABC Entertainment pres *Karey Burke*.

Think about that for a minute...

Consensus?

Commentary by Steve Effros

Bipartisan agreement seems to be breaking out in Washington. Whenever that happens, you really need to take a close look at what is going on and ask yourself whether it's real, or just noise, or whether that even matters. In this case a whole lot is at stake.

The consensus seems to be around the issue of whether something needs to be done about the overwhelming power that has been accumulated by companies such as Google, Apple, Facebook and Amazon. Notice, please, that we can't keep using "FAANG" as the shorthand for these companies, since Netflix appears to have increasing competition and, while very big and impressive, is nowhere near the size or dominance of the others. We obviously have to skip that acronym.

The news and reporting on this major group of players, however, has been coming hot and heavy this week. The Department of Justice and the Federal Trade Commission have come to an agreement, apparently, that DOJ is going to look at potential antitrust issues related to Google and Apple, and the FTC is going to be investigating both Facebook and Amazon. This is no small deal. Once investigations of this sort get geared up they rarely just go away. At the very least they last for years and cause great disruption to the activities of the companies they are investigating.

Both Microsoft and AT&T, of course, were the subjects of probes like the ones that are now apparently going to be initiated (although the agencies themselves have not formally said anything yet). It did not turn out well for either company. And in this case, the Europeans have actually beaten us to the punch. Google was already under investigation and fine in Europe for anticompetitive conduct. It's going to get a lot messier now that they will be under the hot lights on both sides of the pond.

And those lights are going to be unusually public, since a bipartisan consensus seems to have coalesced around hearings both in the House, and possibly the Senate as well, regarding the application of the antitrust laws, particularly to these companies. That's no small feat. Sort of like "Nixon in China." We have a Republican administration and Senate majority, ostensibly more "pro business," and a very active "progressive" wing of the Democrats in the House all agreeing on the same thing! They want to take a new look at the antitrust laws in the context of Facebook, Apple, Amazon and Google!

The underlying issue is a complex one. Current antitrust doctrine focuses on whether the "consumer" in any given "market" is being harmed. But we now have companies that seemingly "give away" (think Google) their service, such as "search" that they offer to the public. They make their money by selling information on how those searches are used. It just doesn't fit the current antitrust paradigm.

But we all know we're worried about the power and dominance of these companies. Their sheer size allows them to buy into and suddenly dominate new markets and businesses. Their practices change our entire viewpoint about "free speech" and "privacy." Hence, even the noise created by putting these companies under a public and legal microscope is going to change the dynamic of what they do, even if no major "break-up" or new law is the result.

I've been puzzling here for a long time about whether the claim that "big is bad" had any merit. Now both sides of the political spectrum are seriously asking the question. That's big news.

Steve

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