

# Cablefax Daily™

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What the Industry Reads First

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## Band Together: Major Broadcasters Go After Locast

Moments after a panel of attorneys at The Indy Show discussed if/when broadcasters would sue over streaming app **Locast**, a *WSJ* story broke that the four major broadcast networks have filed suit in the hopes of shuttering the nonprofit. Since Locast launched in New York in January 2018, there have been questions over whether broadcasters would sue since it offers free streams of local market broadcast stations. Locast argues that it is legal because it's a nonprofit digital translator service that fits under US Copyright law, which allows nonprofits to retransmit broadcasters' signals. "Its activities are expressly permitted under the Copyright Act," Locast said in a statement. "The fact that no broadcasters have previously filed suit for more than a year and a half suggests that they recognize this." It asks users for donations to help fund the service, while it also seeks underwriters. **NAB** supports the lawsuit, saying Locast is "thinly disguised as a not-for-profit entity that mirrors failed predecessors Aereo and Film-On in its bid to legitimize the theft of local TV broadcast signals." The straw that may have broken the broadcasters' backs was **AT&T's** \$500mln donation to the service last month. This month, AT&T is engaged in a blackout that includes **CBS** O&Os in 14 markets—9 of which Locast is available in. It's pointed impacted customers to Locast as a way to watch the stations during the retrans skirmish. AT&T said in a statement that Locast is an innovative way to access free over-the-air signals and that it supports technologies that offer consumers more choice and better access to local content. "I think it's an open question as to whether Locast is legal," **Harris, Wiltshire & Grannis** partner *Mike Nilsson*, who reps **ACA Connects**, said at the Indy Show Wednesday. "The big question has been whether or when broadcasters sued. It looks like broadcasters took the strategy of hoping that Locast would run out of money so they wouldn't have to sue. Because unfortunately if you sue, you might get the wrong answer from court." He suggested that the longer they wait to sue, the harder it is to claim Locast is an emergency and worthy of an injunction from the court. The panel's advice to ACA Connects and **NCTC** members who want to follow AT&T's Locast lead is to wait for now because the risk for operators with much smaller budgets may be too high. "AT&T has this big legal shop. It has deep pockets. It's also a programmer now," said *Tom Cohen*, a partner at **Kelley Drye**. "It's positioned a little bit differently in terms of how it negotiates with Disney over ABC or NBC and those

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properties. It's a more complex game and one they are able to play longer and with a different degree of risks.”

**Altice Gearing Up for Mobile Service Launch:** While **DISH**, **T-Mobile** and **Sprint** have been the talk of the town for the past week, they weren't the only ones directly affected by the DOJ's greenlight on the merger deal. The settlement was all good news for **Altice USA** and its MVNO with Sprint for its mobile service. Altice Mobile remains on track for a launch this summer and has already been offered up to employees for \$25/line as part of an exclusive offer. With the **DOJ's** approval of the merger between Sprint and T-Mobile, Altice's MVNO agreement with Sprint will be expanded to the New T-Mobile network, inclusive of 5G services. CEO *Dexter Goei* revealed that Altice has also signed a complementary nationwide roaming contract with **AT&T** to give its customers an aggregate 99% nationwide coverage. It also has deals with some unnamed international carriers to provide more global coverage. On the video side, Altice lost 21K residential video subs while gaining 13K broadband subscribers. Those broadband subscribers that are joining are demanding higher tiers. The average speed taken by Altice's customer base is 204Mbps, up from 52Mbps in 2Q16 while the average household data usage was over 280Gb per month, up 20% YOY. With that, Goei said that continued network investment will be a priority moving forward. Advertising revenue growth was up 2.8% YOY which Goei attributed to the growth of Altice's advanced advertising platform **a4**. The better-than-expected results and its belief that its acquisition of **Cheddar** will have a positive effect on its Altice News portfolio have led Altice to up its 2019 revenue growth guidance to 3-3.5% YOY from a previous mark of 2.5-3%.

**Walking Dead Revived by Universal Pictures Deal:** **AMC Networks** is continuing to bet on the future of “The Walking Dead” with pres/CEO *Josh Sapan* saying on the company's 2Q19 earnings call that the universe is in its “early stages of life.” He pointed to The Walking Dead theatrical movie deal AMC announced with **Universal Pictures** at **San Diego Comic-Con**. Sapan declined to offer financials on the deal with Universal, only saying it was a sign of the strength and vitality of the franchise. Not everyone is as confident in consumers' continued love of the undead. **MoffettNathanson** maintained its “Neutral” rating on AMC, but dropped its target price to \$57 from \$66 in light of the company's 11.1% drop in US ad revenues to \$219mln. Overall revenues for the AMC's national networks decreased 3.6% to \$605mln. “As viewership for AMC's top show fades, we believe that advertising results will be increasingly impacted as the company continues to use The Walking Dead as the linchpin to package and sell advertising,” MoffettNathanson wrote in a research note. “The stock is stuck in no man's land—it is too cheap to have a ‘Sell’ on it and growing too slowly to upgrade to a ‘Buy.’” Beyond zombies and survival, Sapan highlighted AMC's

## Cablefax: What's Happening... August, September & October

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**EDITORIAL:** Amy Maclean  
Sara Winegardner  
Mollie Cahillane  
**ADVERTISING:** Olivia Murray  
**AWARDS:** Mary-Lou French

- amaclean@accessintel.com
- swinegardner@accessintel.com
- mcahillane@accessintel.com
- omurray@accessintel.com
- mfrench@accessintel.com

		Awards	Events
<b>AUGUST</b>	<b>Woodstock 50th Anniversary</b> We'll celebrate peace, love and music with a special report that looks at how programmers are recognizing this historic music festival, as well as how the event helped shape the entertainment industry.		
<b>SEPTEMBER</b>	<b>Cablefax: The Magazine – September Issue</b> <b>Most Influential Minorities</b> Our annual magazine will salute the men and women who are shaping the industry for years to come. <b>SCTE Cable-Tec Expo</b> Daily coverage from the Expo show floor along with a pre-show special report. We'll look at the technology and standards development that you need to know about right now, including the progress with the Energy 2020 initiative. Our pre-show issue also highlights SCTE, WICT and Cablefax's Woman in Technology award winner.		<b>Cablefax &amp; NAMIC Diversity Breakfast</b> September 17 NYC
<b>OCTOBER</b>	<b>C2HR</b> In addition to shining a spotlight on Excellence in HR honorees, Cablefax will present the latest developments in HR and how they are impacting business results.		<b>The FAXIES Awards Luncheon</b> NYC

portfolio of specialty SVODs, which includes **Acorn TV**, **Sundance Now**, **Urban Movie Channel** and **Shudder**. AMC added 400K subscribers across the four services as of mid-2019 and is guiding for a 2mln growth in aggregate subs by the year's end. It anticipates they'll cross the 3.5-4mln subscriber threshold by 2022. By 2024, that number should surpass the 5-7mln sub mark while delivering in excess of half a billion dollars in revenue.

**C-Band Comments Due Next Week:** Retrans is always a hot topic for **ACA Connects**, but the small- and medium- independent operator group has a few other issues on the front burner. Most notably is C-Band, with comments due to the **FCC** next week on a mid-band allocation plan proposed by ACA Connects, **Charter** and the **Competitive Carriers Association**. "The Hill reaction has been very positive given that what ACA Connects has proposed is a significant amount of money that would go to the Treasury, which was a missing component in the [C-Band Alliance] plan," **Alpine Group** evp *Ansley Erdel* said during an Indy Show panel Wednesday. "In addition to that, you're almost doubling the amount of spectrum that was otherwise being discussed and for a number of members who are very interested in delivery in rural areas, they are very encouraged to see what might be able to approve coverage in those areas. I think you answer a number of questions and issues that the CBA plan failed to consider." In addition to proposing freeing up 370Mhz of spectrum and having the FCC hold the spectrum auction, the ACA-backed plan would create a nationwide fiber delivery video network at every C-band site current users have.

**T-Mobile Achieves 5G Milestone:** Following the **DOJ's** approval of the **Sprint/T-Mobile** merger, T-Mobile accomplished what it says is the world's first standalone 5G data session in North America. The carrier was also the first in the world on a multi-vendor 5G next generation radio and core network. The data session was completed in its Bellevue, WA, lab with help from **Ericsson**, **Nokia**, **Cisco** and **MediaTek**. Existing 5G networks are not standalone, meaning that devices connect simultaneously to 5G and LTE. T-Mobile hopes to launch standalone 5G in 2020.

**D23 Attendees to Go Hands-on with Disney+:** Consumers will be able to go hands-on with **Disney+** for the first time at D23 Expo. The Disney+ Pavilion will offer guests demonstrations of the app on mobile and connected TV devices. Guests will also have an opportunity to subscribe with an exclusive offer for Expo attendees and D23 members. Away from the show floor, Disney+ and its lineup of originals will appear at the Disney+ First Look Showcase on Aug 23 at 3:30pm. **ESPN+** and **Hulu** will also have pavilions at the event, showcasing original content for the former and costumes from the latter's series like "The Handmaid's Tale" and "Catch-22." D23 will be held in Anaheim, CA on Aug 23-25.

**Allen Gets FCC Go Ahead on Bayou City Buy:** The **FCC** has given *Byron Allen's* **Entertainment Studios** formal approval to move ahead with its \$165mln acquisition of four Bayou City Broadcasting entities. They include WEVV (**CBS**) and WEEV (**Fox**) in Evansville, IN and KLAJ (**NBC**) and KADN (**Fox**) in Lafayette, LA. The FCC consented to transfer the television station licenses to ES founder Byron Allen in mid-June with Allen taking control of the station groups on July 3.

**Google Assistant Arrives on DISH:** DISH is rolling out a software update on Hopper family receivers that will give customers access to the **Google** Assistant on the DISH voice remote at no extra cost. The integration will give customers the option of using the Google Assistant to control their smart home devices and to answer questions on the program they're watching. Customers with a DISH voice remote and a broadband-connected Hopper, Joey or Wally will be able to use Google Assistant once they receive the software update. DISH has also introduced a Google-branded DISH voice remote for new customers and existing customers lacking a voice remote which features a button dedicated to accessing the Assistant.

**Fox News Tops July Ratings:** FNC's "Hannity" at 9pm was once again cable news' most watched show in July. The show was up 4% from June with 3.3mln total viewers and 527K in A25-54 news demographic. In that demo, the show was down 21% YOY and up 6% from last month. "Tucker Carlson Tonight" came in second with 3.14mln total viewers, followed by "The Ingraham Angle" (2.59mln), "The Five" (2.5mln) and **MSNBC's** "Rachel Maddow Show" with 2.49mln. In primetime overall, FNC reached 2.438mln total viewers, up 1%. MSNBC came in with 1.503mln, down 10%, and **CNN** came in with 797K, down 11%. However, CNN pulled strong numbers from Tuesday night's Democratic debates. Across CNN and **CNN en Español**, 8.693mln total viewers watched 10 candidates live from Detroit. This is CNN's second highest Dem debate on record (Las Vegas, Oct 2015). CNN's digital live stream pulled in 2.8mln live starts on CNN's owned platforms, making it the second highest CNN democratic primary debate day ever for live streams, in the top 10 of all events for 2018/19.

## Think about that for a minute...

### Aereo Redux?

Commentary by Steve Effros

The major broadcast networks filed a lawsuit against Locast, the organization that offers free streaming video of local broadcast channels. Not a surprise. You knew that if Locast ever really got a following, the networks and local stations would go after it because it creates a potentially significant workaround and erosion of their retransmission consent business plan.

In other words, for those of us who have been urging for years that digital broadcast signals should be married with cable channel service to avoid the increasingly onerous retransmission consent fees, a service like Locast could work just as well. Why “carry” local broadcast signals and have to pay retrans fees when your customers can just as easily get those signals either by using a digital antenna (remember, once you “get” a digital signal, it’s a perfect signal!) or they could get it “free” via broadband.

That’s what Locast offers. A digital retransmission of a local broadcast signal in some major markets around the country via broadband streaming. The difference, however, between Locast and earlier services such as Aereo is that Locast is a non-profit entity, it’s not a for-profit subscription service. It accepts “donations” for the service, and some major companies, like AT&T have given major donations, but the non-profit designation is a major distinction in this case.

As you may remember, my analysis of the Aereo offering, with its allegedly “individual” remote tiny antennas and a broadband delivery service for a fee was pretty clear; you could not legitimately distinguish what Aereo was doing from a cable system, and copyright and FCC laws and regulations made it clear that such a service had to get retransmission consent. With retrans fees expected to exceed \$11 Billion this year, you can under-



stand that the networks and local stations have a very direct interest in making sure their current retrans business model stays in place!

So is this just another Aereo case? Has Locast finally become enough of a thorn in the side of the broadcasters that they are going to have the courts shut it down? Well, I said yes in the case of Aereo, and sure enough, the Supreme Court said in essence the same thing I did; “...if it looks like a duck and quacks like a duck, it must be a duck!”

But that’s not the case here. Locast doesn’t claim not to be that proverbial “duck.” It says that because it is non-profit, there is a specific exemption in the way the laws are written that allows it to do what it is doing. A totally different argument that the broadcasters, at least in their public comments, seem to have missed. Yes, Locast accomplishes the same thing. Yes, it is potentially a major loophole that other companies such as satellite and cable operators can support to avoid retransmission consent fees. But, but... it’s also true that there is a specific exemption written into the law that may allow them to do what they are doing!

True, if allowed to continue Locast could trigger a major shift in how local broadcast signals are received by viewers. The broadcasters might not be able to charge Billions for “free tv.” But is Locast violating current law, even if it is at the behest and with the help of commercial companies? Possibly not. This may be a case where the broadcaster “remedy” has got to be sought through Congress, not the courts. That would be a very interesting development and one we should all watch very carefully.

*Steve*

T:202-630-2099  
steve@effros.com

*(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.)*

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