

Cablefax Daily™

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What the Industry Reads First

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Retrans Ruckus: FCC Denies Nexstar Complaint, While Another Awaits Action

The FCC Media Bureau on Tuesday denied electric co-op **HolstonConnect's** retrans complaint against **Nexstar**, saying nothing in the record supports its claims that the broadcaster violated a good faith negotiation rule that prohibits putting forward a single, unilateral proposal. "While HolstonConnect alleges that Nexstar is engaging in prohibited 'take it or leave it' demands, the record does not support this claim," the Bureau wrote in its order. "The facts agreed upon by both parties indicate that Nexstar offered a reduction in price twice during the course of negotiations." The FCC is currently considering Nexstar's proposed \$4.1bn acquisition of **Tribune**. The **DOJ** signed off on the transaction in late July, with the FCC currently on Day 200 of its public interest review of the deal. It seemed unlikely the agency would approve the deal with a retrans complaint pending, so it's possible the move means it is getting closer to acting. Nexstar has said it remains on track to close the transaction in 3Q. HolstonConnect, a subsidiary of rural electric cooperative Holston Electric of Tennessee, filed the retrans complaint in **March**. A winning recipient of \$53K from the FCC Connect America Fund Phase II reverse auction, it claimed that Nexstar's negotiating tactics were holding up its plans to roll out fiber-based broadband, voice and TV to rural East Tennessee. The Media Bureau knocked down HolstonConnect's various claims of "per se violations," including allegations that Nexstar prevented negotiations from advancing and failed to respond to its proposals. The co-op had also argued Nexstar violated the totality of the circumstances test for good faith retransmission consent negotiations, primarily claiming the rates the broadcaster offered were "vastly higher" than other Big 4 broadcasters in the same markets. The Media Bureau wasn't convinced. "The record indicates that fundamentally, this dispute is a disagreement over price, which is the type of commonplace business disagreement that the Commission does not deem a violation of its rules," the order said. "HolstonConnect's status as a small cable operator and new market entrant affords it no differential treatment, as our good faith negotiation standards apply equally to broadcasters and cable operators of all sizes." The FCC Media Bureau closed by urging the parties to return to the bargaining table and recommence negotiations. Meanwhile, another retrans complaint continues to wind its way through the FCC, with both sides asking the agency to hurry things along. **AT&T** filed a retrans complaint in June against nine different broadcast station owners, each seemingly managed and controlled by **Sinclair** through a sharing agreement. The dispute has resulted in blackouts of 20 stations in

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20 cities for **DirecTV** and/or **U-verse** customers. Initially, the broadcasters (**Deerfield Media, GoCom Media of Illinois, Howard Stirk Holdings, Mercury Broadcast, MPS Media, Nashville License Holdings, Roberts Media, Second Generation of Iowa** and **Waitt Broadcasting**) had opposed AT&T's request for expedited treatment of the complaint. But late last week they changed their tune, urging the FCC to act swiftly now that it has been fully briefed by both sides. The broadcasters claim it's clear that AT&T won't resume negotiations unless they agree to its terms. "The Commission's decision on the complaint is necessary to resolve this fundamental and otherwise irreconcilable disagreement," they wrote. AT&T also has filed suit in federal court against retrans consulting company **Max Retrans**, with that dispute appearing to involve some of the same broadcasters. AT&T claims Max Retrans, whose principal is former Nexstar exec *Duane Lambers*, has violated a non-disclosure agreement preventing it from disclosing rates and contract terms with other clients. Max Retrans has objected to the allegations and asked the court to dismiss the complaint.

Altice USA, Dolans Reach News 12 Settlement: It turns out there will be no trial in Delaware tomorrow in the case of the *Dolans v. Altice USA*. The two entered into a settlement agreement as of Aug 29, with each party bearing its own costs and attorney's fees. That's all the info we have for now with more details to be released Wednesday. The settlement comes a year after the Dolans raised the suit, claiming that the **Optimum** and **Suddenlink** operator failed to fulfill a pledge as part of its **Cablevision** acquisition to operate News 12 in accordance with an established five-year business plan.

McElfresh, Stankey Upped With Donovan's AT&T Departure: *John Donovan* has a successor at **AT&T**. *Jeff McElfresh* will serve as AT&T Communications CEO starting Oct 1, replacing the retiring Donovan. McElfresh, who has nearly 25 years of experience with AT&T, most recently served as pres of AT&T Communications' technology and operations group, claiming responsibility over the company's network, technology data and labs operations. But winning an even larger promotion is *John Stankey* who has been named pres/COO of AT&T, also effective Oct 1. Stankey will continue to serve as **WarnerMedia** CEO while operating in his newly-created role and will report to AT&T chmn/CEO *Randall Stephenson*. McElfresh will report to Stankey as will the WarnerMedia executive team and **Xandr** CEO *Brian Lesser*. "It's the natural next step in bringing together the distinct and complementary capabilities of AT&T Communications, WarnerMedia and Xandr to deliver for consumers the benefits of a modern media company," Stephenson said in a statement.

Eutelsat Suddenly Leaves C-Band Alliance: The **C-Band Alliance** is one member down with **Eutelsat** formally notifying the CBA that it is withdrawing. The remaining C-Band Alliance are **Intelsat, SES** and **Telesat**. While no longer wishing to be a part of the CBA, Eutelsat said in a statement that it wishes to take a "direct active part in the discussions on C-band clearing and repurposing." The **FCC** is currently debating whether to use a plan from **ACA Connects**,

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Charter and the **Competitive Carriers Association** or one from the CBA to free up C-band spectrum. The CBA responded by saying Eutelsat's departure has not and will not affect its ability to deliver on its proposal for clearing C-band spectrum to the FCC. "The remaining members of the CBA, which represent approximately 95% of the affected revenues of the US C-band market, are aligned and committed to the process of engaging with the FCC on the proposal of rapidly clearing C-band spectrum to support the deployment of 5G services in the US," the CBA said.

17th State Moves to block T-Mobile, Sprint: Yet another state has joined in the battle to block the merger of **T-Mobile** and **Sprint**. Illinois Attorney General *Kwame Raoul* is the latest to join the multistate lawsuit, which now includes 17 attorneys general that represent more than half of the US population. "This merger would significantly decrease competition for mobile wireless telecommunications services in Illinois and across the country," Raoul said in a statement. "With fewer companies competing, customers would face fewer choices, higher prices, less innovation and lower quality service."

Vast Wraps NTS Buy: **Vast Broadband**, **Cablefax's** Independent Operator of 2019, completed its acquisition of broadband fiber company **NTS Communications**. NTS offers data, video and voice services to over 20K residential and business customers in Texas and Louisiana. Financial terms of the deal, Vast's first since its formation, were not disclosed. The senior management team at Vast will work together with NTS's local management to expand service offerings across the company's markets. **Oak Hill Capital Partners** and **Pamlico Capital** led a recapitalization of Vast and NTS designed to support their joint growth plans.

Xfinity Gets the Gold: **NBC Sports Gold** is rolling out starting Tuesday on **Comcast's** Xfinity X1 and Flex platforms. The DTC product offers 17 individual sports "passes" ranging from the Premier League to rugby to figure skating. NBC Sports Gold now provides 15 separate domestic subscriptions with live and on-demand ad-free events to those Xfinity customers. It can be found in the apps menu or through the Xfinity voice remote. NBC Sports Gold is powered by **Playmaker Media**, NBC Sports Digital's technology service which provides end-to-end support for companies in need of live streaming and video on demand solutions.

Viamedia and WOW! Work on Ad Sales: Cross-media local ad company **Viamedia** and provider **WOW!** signed a multi-year agreement. Viamedia will continue selling advertising on the MVPD's behalf in 10 nationwide markets. Viamedia and WOW! have been partners since Viamedia's founding in 2001.

Altitude Loses More Carriage: After going dark on **DISH** last week, **Altitude Sports** has now lost its place in the channel lineups of **Comcast** and **DirecTV**. Both deals expired Saturday night. "AT&T made a fair offer to keep the channel up, but Altitude reject it. Customers have made clear they want more choice over the channels they pay to receive in their home," AT&T said. Comcast agreed in a statement that the sticking point in negotiations has been the RSN's demands for significant annual price increases. Altitude is urging fans to contact their providers to complain. "The Big Three's hardball tactics are dumbfounding and disrespectful to their sports-loving customers. Altitude has been an exemplary partner since its launch in 2004, producing and airing thousands of Denver Nuggets, Colorado Avalanche, Colorado Rapids, Colorado Mammoth and DU games," the Colorado-based net said.

Advertising Growth Decelerating: Economic growth is decelerating in most countries, and that trend has implications for ad growth. According to research from advertising media company **GroupM**, ad growth for 2019 is looking neutral to negative vs last year's trends. The research looked at GDP and PCE trends and found that for all of 2018, they were generally the same or negative, indicating there is still growth but slower than previously observed. "Retail sales and industrial production appear more unambiguously negative versus last year's levels," the report reads. "These variables tend to be more tightly correlated with advertising because marketers spend on advertising in alignment with the pace at which they make things or sell things." The US saw accelerated ad growth in 2Q19, but that followed a relatively weak first quarter (retail sales rates at 2.8% and 3.4%, respectively). However, in other countries such as the UK and much of Europe, the deceleration is more pronounced.

Ratings: College football is officially here, and **ESPN Nets** finished the five-day slate up 31% over last year's similar kickoff weekend. Combined, ESPN and **ABC** have the top four highest-rated games this season (so far). Week 0's Miami vs Florida on ESPN pulled in a 4.1, and Monday's Notre-Dame vs Louisville brought in 3.7. -- US Open ratings on **ESPN** have continued its strong upward trend. Saturday night's third-round match on **ESPN2** between *Coco Gauff* and *Naomi Osaka* peaked at 2.155mln viewers. After four days of live coverage of the tournament, viewership is up 26%, from an average of 691K viewers to 870K YOY.

People: **AMC Networks** tapped *Kim Kelleher* as pres, ad sales and partnerships. She recently served as chief brand officer at **Condé Nast**. Prior to joining **Wired Media Group** (owned by Condé Nast), Kelleher was pres of **Say Media**.