

Cablefax Daily™

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What the Industry Reads First

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Case Goes On: Max Retrans Says FCC Complaint Isn't About It

As the new year approaches, bringing with it a flurry of end-of-year retrans negotiations, it's worth noting that 2019 retrans fighter **AT&T** is still looking for some legal intervention. When AT&T won its [retrans complaint](#) at the **FCC** against several independent broadcasters earlier this month, it took the victory to a federal appeals court and said it was a finding that **Max Retrans** had failed to negotiate in good faith on behalf of the station groups it represents. Shortly after filing the FCC complaint in June, AT&T filed a lawsuit in the Eastern Missouri Circuit against retrans consulting firm Max Retrans, whose principal is former **Nexstar** exec *Duane Lammers*. AT&T claims it has suffered damages by Max Retrans breaching a 2016 non-disclosure agreement that prevents it from disclosing AT&T's confidential rates and contract terms with any client other than the specific station group engaged in the specific negotiation. The nine broadcast groups in AT&T's complaint were all represented by Max Retrans and all had shared services agreements with Sinclair. While AT&T sees the FCC Media Bureau's finding in its favor as ammunition against Max Retrans, the consulting firm told a court Friday that the complaint has nothing to do with it. "Max Retrans was not a party to the Media Bureau proceeding, and the Media Bureau did not purport to make any findings against Max Retrans. To the contrary, the Media Bureau expressly refused to decide whether Max Retrans breached its NDA with AT&T," the firm said. The FCC Media Bureau found that the station groups acted in bad faith by refusing to negotiate with AT&T, unreasonably delaying negotiations, and refusing to respond to AT&T's proposals—but it declined to rule on AT&T's alleged "totality of the circumstances" violation at the time. The question of whether Max Retrans violated the NDA falls under the totality of circumstances test. "We decline to prejudge the court's decision on the contractual questions in that case, and we need not reach this issue in order to resolve AT&T's Complaint," the Media Bureau concluded. And so, the Missouri case goes on with Max Retrans hoping the court will dismiss the complaint. It has argued that AT&T has failed to state a claim of breached contract. As for the nine stations groups that were part of the FCC complaint, all but one have now reached retrans renewals with AT&T/**DirectTV**. The most recent came late Friday with **Waitt Broadcasting's** CBS affil in Sioux City, IA, returning to AT&T. The remaining blackout is **Nashville License Holdings'** CW affiliate in Nashville. When AT&T filed the FCC complaint and Max

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retrans lawsuit, it had lost 20 stations.

Viacom and CBS Announce Expected Close Date: After years of anticipation, the merger between **Viacom** and **CBS** finally has a date. The two companies expect to close the all-stock transaction after market hours on Dec 4. Beginning Dec 5, the single company **ViacomCBS** will trade on the Nasdaq under ticker symbols VIACA and VIAC. The companies said the new company will then be eligible to be included in the Nasdaq 100 index.

Comcast Fee Hike: Tis the season... **Comcast** revealed in recent billing notices that its broadcast fee would jump to \$14.95/month from \$10, the latest MVPD to raise prices while blaming increased programming costs. “Rising programming costs—most notably for broadcast TV and sports—continue to be the biggest factors driving price increases for all content distributors and their customers,” a Comcast spokesperson said. “While we absorb some of the increased programming costs, they have a significant impact on the cost of our services. We’re giving customers more choices and better value in all of our products including X1, xFi, Stream, and now Flex, the only free streaming TV device with voice remote that’s included with broadband service.” Prices all vary by market, but in general, Comcast is raising data-only tiers by about \$3/month across its footprint, while modem fees are going up \$1/month.

FCC Approves Apollo Purchases of Cox, Northwest Stations: The **FCC** approved the sales of **Cox** and **Northwest** TV and radio stations to **Apollo Global Management’s Terrier Media** in light of an October amendment to the deal and the Third Circuit decision striking down the FCC’s 2017 changes to ownership rules. The October filing saw Cox Enterprises’ stake drop to a 19.9% voting interest and barred it from appointing someone to the new company’s board until it was allowed to do so under FCC rules. Three Cox-owned newspapers will shift their publishing schedule to three days a week, and Northwest will surrender the licenses for one of its stations in Syracuse and Yuma not acquired by Terrier and will transfer all programming to the corresponding acquired station in each market. “We recognize that the Television Applicants may be in violation of certain of the broadcast multiple and cross-ownership rules following consummation as a result of the Prometheus IV decision,” FCC Media Bureau chief *Michelle Carey* wrote in the order. “However, we believe in the unique circumstances of this case, specifically the Television Applicants’ specific commitments in the October 2019 Amendment and the timing of the Third Circuit’s decision, justify a brief 30-day period from consummation to come into compliance with these revised rules.” The Commission, in a separate filing, also approved a petition from Terrier Media to allow foreign investors to own up to 100% of both Terrier Media’s equity and voting interests. “We find that a grant will provide the companies greater access to foreign

Cablefax: What’s Happening... November & December

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NOVEMBER

Cablefax: The Magazine – November Issue Most Powerful Women

Cablefax’s annual Most Powerful Women magazine honors the female executives and media influencers whose outstanding leadership, innovation and community continues to change the industry for the better.

Holiday Programming

With unprecedented amounts of holiday programming in 2018, what are the lessons learned for 2019? We’ll look at how programmers are carving out a space in the crowded seasonal programming environment.

Get SMART

From smart homes to smart cities, Cablefax has you covered. We’ll examine the latest developments in the space and how the industry is playing a pivotal role.

DECEMBER

Augmented & Virtual Reality

Is it really happening this time? We’ll take a look at VR and AR, as well as the opportunities (and pitfalls) for distributors, programmers and vendors.

Events

**Most Powerful Women Luncheon
December 5
NYC**

capital thereby strengthening the broadcast industry,” Carey said in a separate declaratory ruling. In its review of the deal, the Commission threw out **ATVA’s** concerns that if the station portfolios of Cox and Northwest were combined, Northwest would be able to raise retransmission rates in all markets to match the rates it achieves in markets where it owns multiple top-four stations. “Instead, the Commission noted the lack of evidence in the record to establish whether, on balance, an increase in retransmission consent rates would reduce consumer welfare or rather just shift surplus between MVPDs and broadcast stations,” Carey wrote. In a statement Monday, ATVA said the FCC approval of the deal demonstrates why Congress needs to reform retransmission consent. “Although Apollo won’t technically violate the rules, the harm remains the same,” ATVA said. “They will own two ‘top-four’ broadcasts in these markets, which will lead to higher prices for consumers. It is far past time for Congress to intervene on behalf of consumers. We urge it to do so as it considers STELAR renewal.” The Commission also fought back against **Common Cause’s** argument that the transaction would harm localism and viewpoint diversity in the Dayton, OH, market, saying that giving those stations increased access to a DC, news bureau is a public interest benefit at the local level.

Texas AG Onboard with T-Mobile/Sprint Merger: Texas Attorney General *Ken Paxton* is the latest to switch sides and stand with **T-Mobile** and **Sprint** in their fight to merge after negotiating a deal that resolves his antitrust concerns in regard to the state’s residents. The deal struck with New T-Mobile is designed to prevent price increases on unlimited talk, text and data rate plans for Texans for five years after the merger closes. New T-Mobile also committed to providing 5G wireless broadband coverage to areas where most Texans live, including many rural areas, within the next three years and to expand that coverage significantly within the next six years. Under the agreement, Texas residents that are currently employed by Sprint and T-Mobile will receive substantially similar employment with New T-Mobile. T-Mobile, Sprint and the state AGs still looking to block the deal are set to meet in court on Dec 9.

BET Networks Lands NAACP Image Awards: The 51st annual **NAACP** Image Awards will air on **BET Networks** for the first time. The exclusive broadcast partnership includes a two-hour telecast live from Pasadena, CA, on Feb 22 at 8pm. The awards honor people of color in TV, music, literature and film as well as individuals and groups who promote social justice through creative endeavors. The Image Awards previously aired on **TV One**, who had a five-year deal that expired after the 2019 event. Before TV One, the event aired on **NBC**. The broadcast deal coincides with BET’s 40th anniversary. Nominations for the 51st NAACP Image Awards will be announced on January 9.

Stream On: **Starz** is expanding its mobile streaming app to 20 countries in 2020 after its rollout in areas of Europe and Latin America. The app is now available in Brazil, France, Germany, Mexico and the UK. -- **Universal Kids** has expanded its TV Everywhere app with a relaunch on iOS, Android and Apple TV. The app features full episodes, digital shorts and more. The app will soon be available on **Roku** and **FireTV**.

Public Affairs: **ESPN** is celebrating its 13th annual V Week for Cancer Research starting on Giving Tuesday, Dec 3, running through Dec 14. ESPN aims to drive awareness and funds through initiatives and programming for the **V Foundation for Cancer Research**, and all proceeds go directly to cancer research and related programs. Last year, the week raised a record \$8.3mln, bringing the 12-year total to more than \$30.5mln.

Programming: **Science Channel** is bringing back “Impossible Engineering” for Season 7 on Jan 1 at 9pm. -- The next chapter of the Hallmark Hall of Fame series premieres Dec 7 at 8pm on **Hallmark Channel** as part of the net’s “Countdown to Christmas” event. “A Christmas Love Story” stars *Kristin Chenoweth* and *Scott Wolf*.

People: *Noel Manzano* joined **AMC Networks** as vp, international programming. He most recently served as director, development for **Hoodlum Entertainment**, where he ran the US content development slate and drove internationally produced projects. -- **Newsmax TV** named *Sam Moser* CRO/evp, national sales for its cable news channel. Moser has spent more than 30 years at companies including **Fox**, **MTV**, **Comedy Central**, **Nickelodeon** and the **Game Show Network**. -- Video game entertainment and news network **VENN** named *Neal Kirsch* COO/CFO ahead of its mid-2020 launch. Kirsch comes to VENN from **OWN** where he served as COO/CFO for five years. Also joining the VENN team are *David Eichenstein* as vp, business development and *James Lee* as svp, real estate and facilities. Eichenstein has held positions at **Fox**, **Buzzfeed**, **Bleacher Report** and, most recently, **Facebook** and **Instagram**. Lee formerly served as director, media at **Gensler** where he directed and designed sports and television facilities including those for **Netflix** and **Apple**. -- **WarnerMedia** upped both *Claudia Coles* and *Jenn Toner* to svp, communications, WarnerMedia Sales & International. Coles will head communications for the businesses across the EMEA and APAC regions, while Toner will be the day-to-day communications liaison for **Xandr** and **AT&T Business**. *Lauren McCabe* was promoted to vp, communications, distribution, placing all WarnerMedia distribution communications under her umbrella.