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Cablefax Daily™

Friday — May 22, 2020

What the Industry Reads First

Volume 31 / No. 100

Complaint Dept: Indie Programmers Worry FCC Rule Changes Will Favor MVPDs

The FCC's decision to open a proceeding to consider modifying rules governing program carriage disputes between programmers and MVPDs opened the door for some content companies to vent about the negotiation process. "Programmers not affiliated with a distributor routinely encounter demands to agree to rates, terms and conditions of carriage on that distributor's platform that place them at a disadvantage as compared to that distributor's affiliated networks," **AMC Networks** said in comments filed with the agency this week. The programmer said unfair demands can include using economic leverage to prevent unaffiliated programmers from launching or maintaining direct-to-consumer offerings. When a distributor offers broadband service, it can waive data fees for its own affiliated video product, but count time spent on non-affiliated OTT product against data caps. In addition to the much debated most-favored nations clauses, AMCN complained about SVOD "holdbacks," which prohibit programmers from licensing their programs to SVOD services that distribute content over the internet within a certain period following the premiere of an episode on its linear services.

A group of smaller independent programmers—**RIDE TV**, **Newsmax TV**, **AXS TV**, **Outdoor Sportsman Group** and **WeatherNation**—banded together to file joint comments that declare the rules skew in favor of MVPDs. "Even in the best case, independent programmers are often required to agree to one-sided carriage arrangements or provide direct, above market compensation to get carried on major MVPDs and vMVPDs," the wrote. Also weighing in is **beIN Sports**, which has filed multiple unsuccessful FCC carriage complaints against **Comcast**. "The Commission has not granted a single program carriage complaint since its **Tennis Channel I** decision, nearly eight years ago," beIN wrote. "One of the primary reasons is that the program carriage rules have been applied by the Commission in a way that hampers or prevents meaningful fact finding... That misreading has produced a 'get out of jail free' card for any vertically integrated distributor, who can get away with saying: I may have discriminated, but it made business sense, and you should take my word for it." The FCC's inquiry is much narrower than some of the issues programmers are raising. It has proposed modifying the time limit requirements for filing carriage complaints to make them more consistent with limits on other types of complaints. Under current rules, the clock for filing a complaint is tied to the complainant notifying an MVPD of their intent to file with the FCC—not when the offending action occurred. Clarifying the statute of limitations as proposed by the FCC

We are so proud of our industry and the many ways companies are responding to the pandemic. Free internet, fresh content, employee safety and much more.

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The Collapse of Theatrical Windows?: With theaters shuttering, will day-and-date releases become a thing? **Universal Pictures** is the first out of the gate, announcing "Trolls World Tour" will be available April 10 for a rental. Other in-release movie titles are set to be available as soon as this Friday. The movies will be available on **Comcast**, **Sky** and a "broad range of on-demand partners." Titles to be made available include "The Man" and "Emma" with a suggested retail price of \$19.99 for the US.

Tuesday — March 17, 2020 What the Industry Reads First Volume 31 / No. 097

For Now: Providers Set Aside Disputes During Coronavirus Outbreak

As they face the common enemy that is the coronavirus pandemic, **Cox Media Group** and **DISH** have set aside their retrans dispute for now so that **DISH** can resume its carriage of 10 CMG stations in New York, Oregon, Washington, Arizona, Louisiana, California, Mississippi and Idaho. No word on how long the truce will last.

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Friday — March 13, 2020 What the Industry Reads First Volume 31 / No. 050

New Normal: Companies Roll Out Contingency Plans in Face of Covid-19

With a growing number of students and employees working from home, it's mission critical for the nation's broadband providers during the Covid-19 pandemic. Operators big and small are up-ending their day-to-day operations to ensure service to their customers.

Wednesday — March 18, 2020 What the Industry Reads First

Covering Covid-19: Content Companies Step Up Efforts

Programmers are shuffling schedules to respond to the coronavirus crisis. **The Weather Channel** is airing live programming at 50 minutes past the hour to share educational content during the school closure. **Topic** is airing why thunder happens, how rainbows form and other science topics scheduled for Friday at 2pm.

From the Commission: Another 116 broadband and telephone service providers have taken the **Partners Keep Americans Connected Pledge**, agreeing to take specific steps to keep Americans connected during the 60 days. Some notable names taking the pledge include **Hotwire Communications**, **Mild**

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“would remove uncertainty that MVPDs face in being subject to potential litigation risk years after making carriage decisions or negotiating contracts,” Comcast said. The joint independent programmer filing from RIDE TV and others opposes the change, arguing that it’s close impossible to ascertain a date when an MVPD declines carriage or refuses to negotiate because the providers generally just ignore carriage proposals. AMC Networks agreed the current statute of limitations is very open-ended. But it fretted the proposed revision doesn’t account for situations where a contract provision may be consistent with the rules at the time it is entered into, but the distributor later exercises that right in a manner that advantages its affiliate. The FCC also has proposed staying initial Administrative Law Judge decisions on carriage complaints until parties have pursued all challenges. Comcast fully supports the change, saying the current process can be disruptive by requiring carriage of programming that subsequently could be removed upon reversal of an ALJ decision. The joint filing from independent programmers called the ALJ shift a “radical change” that would force three levels of administrative review that would “exhaust the resources of all but the very largest, most well-heeled independents.”

Daytime Emmys, BET Awards Continue: With 57 nominations, **CBS** leads the Daytime Emmys nominations. But **Amazon Prime Video** isn’t far behind, scoring 55 noms. Syndicated has 52 nominations, followed by **NBC** (43) and **Netflix** (40). Others receiving double-digit noms are: **ABC** (38), **PBS** (28), **Disney Junior** (25), **Disney Channel** (23), **Apple TV+** (17) and **HBO** (14), **YouTube** (12), **Food Network** (11) and **Nickelodeon** (11). The awards will be presented in a two-hour CBS primetime telecast on June 26. Awards will be presented in leading categories, with recipients and other special guests appearing from home in light of the COVID-19 pandemic. -- **BET** is moving forward with the annual BET Awards on June 28, 8pm. It’ll rely on artist-generated content and some creative production work to keep the show going during COVID-19. 2020 marks the 20th anniversary of the awards. BET is canceling the “BET Experience,” the three-day event that leads up to the awards and issuing refunds for VIP packages.

Netflix Shutting Down Unused Accounts: Netflix is asking anyone who has not watched content on the platform for a year to confirm they want to keep their membership. Members will start seeing emails or in-app notifications this week. If they don’t confirm the subscription, Netflix will automatically cancel their subscription. Anyone who cancels their account and then rejoins within 10 months will retain their favorites, profiles, viewing preferences and account details. “These inactive accounts represent less than half of one percent of our overall member base, only a few hundred thousand, and are already factored into our financial guidance,” Netflix director, product innovation *Eddy Wu* said. “We hope this new approach saves people some hard earned cash.”

Microsoft Calls For More Broadband: Microsoft CEO *Brad Smith* published a blog post Thursday calling on the



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White House and Congress to immediately provide funding to close the broadband gap as part of a COVID-19 relief bill. He also called for Congress to provide the FCC with funding to implement the Broadband DATA Act, legislation that will allow the Commission to gather more accurate data on which areas of the country remain underserved.

“Broadband has become the electricity of the 21st century. Well before the end of the 20th century, we recognized that no American should live without electricity,” Smith said. “As we embark on the third decade of the 21st century, every American deserves the opportunity to access broadband.”

Net Neutrality Order And Pole Attachments: Reply comments came pouring in to the FCC’s net neutrality docket this week with folks arguing on both sides whether the 2017 Restoring Internet Freedom Order has affected public safety. **ACA Connects** said virtually all broadband providers have experienced no impact to their pole attachment rights as a result of the FCC order because they tend to commingle broadband with either or both a cable or telecom service over the same network. It added that while returning to Title II regulations would offer pole attachment rights to broadband-only providers, it would dampen broadband investment incentives to a degree that would far outweigh that gain. **NCTA** also believes pole attachment talks have not been negatively affected by the order and fought back against claims made by **Google Fiber** that the FCC’s Restoring Internet Freedom order impeded its access to protections under the Pole Attachment Act. “Google Fiber hypothesizes that barriers to broadband-only pole attachments could arise under the current regulatory regime, but it notably does not claim to have had any actual difficulty in accessing poles as a result of the RIF Order,” NCTA wrote. “And in any event, Google has long been able to avail itself of pole attachment rights under Section 224, since, as NCTA has explained previously, Google Fiber’s video offering is properly classified as a Title VI cable service.” On the public safety front, **USTelecom** chimed in to point out that public safety entities should not be directly impacted by the FCC’s order because they do not typically subscribe to mass-market broadband. While there are some public safety personnel like volunteers and those working remotely that sometimes perform their duties on mass-market broadband, USTelecom says there is no evidence that those end users have experienced any harm from conduct that would have been proscribed by the Title II Order. “Some commenters, desperate to manufacture some evidence of harm, continue to point to an issue experienced by the Santa Clara Fire Department during California wildfires in 2018. But... the plans at issue did not involve broadband that was covered by the Title II Order, would have been wholly permissible if the plans were covered by the Title II Order, and, regardless, market forces led to a swift resolution of the issue,” USTelecom said.

No DirecTV in Venezuela: **AT&T** announced Thursday the closure of its **DirecTV Latin America** operations in Venezuela, effective immediately. AT&T said the US government’s sanctions on Venezuela prohibit the broadcast of Globovision and PDVSA’s channels, both of which are required under DirecTV’s license to provide pay TV service to Venezuela.

Doing Good: **Grande, Wave** and **RCN** will pledge \$100K to Feeding America to support local food banks in their service areas. Additionally, Grande will be running Feeding America ads on its cable net free of charge to support further fundraising efforts. -- **Comcast Business** partnered with **NBCU Telemundo** to provide a \$50K grant to the US Hispanic Chamber of Commerce, which represents over 4.37mln Hispanic-owned SMBs. The grant will support Hispanic-owned businesses impacted by COVID-19. Telemundo is also providing resources and guidelines to businesses in the language of their choice and tips on how to navigate the Small Business Debt Relief Program. -- The **Scripps Family Impact Fund** is donating \$1.6mln to help **E.W. Scripps** employees and communities where the company does business. -- **The Oprah Winfrey Charitable Foundation’s** \$12mln COVID-19 Relief Fund is giving support to organizations in Oprah’s “home cities” of Nashville, Chicago, Milwaukee, Baltimore and Kosciusko, Mississippi. One of the orgs is **SaintA**, which is outfitting up to 150 students, families and adults in Milwaukee with telehealth devices and internet access for a year.

Ratings: **ESPN** saw the audience of *Michael Jordan* docuseries “The Last Dance” skyrocket with time-shifted and on-demand viewing. The series is now averaging more than 12.8mln viewers per episode.

Programming: **Nat Geo** unveiled its lineup of content for the 2020-21 season, which includes the next installment of limited series “Genius.” Also on the schedule is a revival of docuseries “Explorer,” natural history series “Planet of the Whales” and a competition series from the creators of “The Amazing Race.” -- **MTV** and **When We All Vote Today** announced the lineup of performers and guests for “MTV’s Prom-athon,” a virtual prom event streaming live Friday at 9pm on MTV’s YouTube page. The event, which will feature *DJ Khaled* and *Bebe Rexha*, will also be featured on MTV’s platforms globally.

People: *Jake Ryan* was promoted to CFO of **ImOn Communications**. He most recently was vp, finance.

Editor’s Note: Don’t forget to join the **Cablefax** editors at 4pm ET Friday (5/22) for our virtual happy hour. Reach out to amaclean@accessintel.com if you need help registering.

PROGRAMMER'S PAGE

Ambitious Beauty...

Nat Geo's "Barkskins" may take place in 1690s "New France" in what's now part of Quebec, but this tale of outcasts, rogues, indentured servants and young women sent to help populate the land with Europeans resonates today on many levels. Not only is the 8-part limited series premiering Monday an immigrant story of sorts, but it lays bare the tension between "progress" and living in safety and harmony with nature. As the settlers cut down trees to build fortresses, the Native Americans fight to preserve their way of life. And while the series wrapped long before we all started the debating the balance between safety and economic progress during this pandemic, it's easy to find the parallels if you try. "We all think about the fact that we're stuck at home right now," says *Carolyn Bernstein*, Nat Geo's evp, Global Scripted Content & Documentary Films. "Think about L.A. The air is so clear... It's not what the series is overtly about... but I think there are messages and themes that resonate today." Indeed, this is a series about survival and ambition as people with little to lose fight to make their way in a dangerous and cut-throat land of opportunity. While largely an ensemble cast, standouts like *Marcia Gay Harden* and *Zahn McClaran* turn in solid performances despite the looming shadow of *David Thewlis*, whose delightfully unhinged Claude Trepagny binds the series together. He's one man with a dream, damn the consequences. And that's largely the hue of this world as these characters plot and scheme against each other while trying to co-exist against their perception of a common enemy—the native tribes whose land they are slowly stealing. Meanwhile, **Disney's** recent acquisition of Nat Geo from **Fox** means the show's back-to-back episodes over four weeks will appear on **Hulu** the next day. "Airing two episodes at a time, we really felt made sense because it's a show that's heavily serialized, and you want to know what happens," says Bernstein. To be sure, *Barkskins* centers around a murder mystery that will ultimately expose many secrets among this close-knit but competitive band of individualists. And who knows where their collective ambition will lead them. — *Michael Grebb*

Reviews: "Barkskins," 9pm, Monday, **National Geographic**. This series based on the *Annie Proulx* novel of the same name is a great escape from the issues of the day. First, this tale of colonists in New France in the 1690s is partly a man vs nature story. Appropriately, it's filmed entirely outdoors, in the gorgeous Canadian wilderness. The story of colonists from France, English traders and the Iroquois attempting to coexist is deliciously nasty. Especially strong cast members include *David Thewlis* as a ruthless Frenchman and *Marcia Gay Harden* as a hotelier. An actor who generates a lot of repressed anger is *Zahn McClaron*, who was so good in **FX's** "Fargo." He's terrific here, too. — "Lance," 9pm, Sunday, **ESPN**. The opening moments of this 2-part film from *Marina Zenovich* does a great job of getting the viewer inside the personality of *Lance Armstrong*. He tells a story about a confrontation with fans at a restaurant. Right away you know who he is, like him or not. You also know he has a magnetic personality. The same goes for *Zenovich*. Her first question to *Armstrong* and his teammates is, "When did you first start doping?" Let's not mince words. — *Seth Arenstein*

Basic Cable P2+ Prime Rankings* (05/11/20-05/17/20)		
Mon-Sun	MC US	MC US AA
	AA%	(000)
FNC	1.103	3,390
MSNBC	0.653	2,007
CNN	0.474	1,457
HGTV	0.419	1,287
TLC	0.412	1,267
TBSC	0.361	1,110
A&E	0.330	1,015
DISC	0.282	867
ESPN	0.281	864
HALL	0.281	863
FOOD	0.280	860
HIST	0.269	826
USA	0.261	802
HMM	0.231	709
ID	0.225	692
INSP	0.218	670
BRAVO	0.205	629
TNT	0.196	602
TVLAND	0.185	570
ADSM	0.165	508
GSN	0.159	488
SYFY	0.150	462
WETV	0.148	455
FX	0.148	454
NICK	0.145	445
NAN	0.139	428
LIFE	0.136	418
AMC	0.135	415
APL	0.133	409
MTV	0.132	404
VH1	0.118	364
DSJR	0.117	361
TRAVEL	0.116	355
FRFM	0.113	346
SUN	0.112	343
NKJR	0.111	342
OXY	0.111	341
NATGEO	0.109	334
DSNY	0.107	330
BRAVO	0.105	323
E!	0.102	312

*P2+ L+SD rankers are based on national Nielsen numbers, not coverage.

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