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Do Over: DC Circuit Vacates Two Conditions Tied to Charter's TWC Acquisition

A federal appeals court Friday vacated two **FCC** conditions tied to interconnection and low-cost broadband that were part of the approval order for **Charter**'s May 2016 acquisition of **Time Warner Cable** and **Bright House**. The challenge came from three customers and the **Competitive Enterprise Institute**, who blamed the conditions for an increase in bills following the merger. In vacating the two conditions, the court said the FCC refused to defend their merits. The conditioned merger was approved when Democrat *Tom Wheeler* chaired the FCC. Current FCC chmn *Ajit Pai* voted to block the 2016 merger because he thought the agency's conditions were an overreach. *Michael O'Rielly*, the only other Republican commissioner at the time, voted to approve the deal, but dissented from the conditions. The first vacated condition prohibits Charter for seven years from charging programming suppliers for access to broadband subs; the second requires Charter to provide steeply discounted broadband service to low-income households. The three-judge DC Circuit panel in its 2-1 decision declined to intervene in the FCC's buildout requirement and broadband usage-based pricing conditions, saying there's scant evidence that the company would offer usage-based pricing if allowed to do so and that Charter's already sunk money into infrastructure expansion that it can't recover. Charter recently petitioned the FCC to get out of the data cap and interconnection conditions early, with the agency opening a proceeding on the issue. Charter's interconnection condition prohibits it from extracting payments from edge providers, such as **Netflix**, who provide content to consumers through the internet. The FCC and Senior Circuit Judge *David Sentelle*, who dissented from Friday's ruling, noted that Charter might not lower consumer prices even if the interconnection condition was set aside. "That is theoretically possible, but all we require is proof of a substantial likelihood," the court said. As for the low-income broadband condition, the court said the appellants have shown "a substantial likelihood that New Charter would narrow the Spectrum Internet Assist program if allowed to do so, which in turn would produce lower prices for subscribers..." The appellants had first filed at the FCC for reconsideration of the four conditions tied to the Charter merger. After two years, the FCC rejected their request, saying they forfeited a right to seek review by not filing comments in the initial proceeding. The court said it has held that even a non-party to FCC proceedings may seek judicial review if the Commission had an "opportunity to pass" on its claim.

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ACAC Seeks Stay in C-band Proceeding: **ACA Connects** asked the **FCC** Thursday to stay the Aug 31 deadline for incumbent earth station owners to indicate whether they will elect to receive the lump sum payment meant to compensate them for transitioning operations to the upper 200MHz of the C-band. ACAC said the stay would give earth station owners adequate time to demonstrate—in court, if necessary—that the Wireless Telecommunication Bureau's lump sum determination is inconsistent with the FCC's C-band order. The association's concern centers on the decision to exclude the cost of integrated receiver/decoders from the final cost catalogs for relocation expenses and lump sum elections. The inclusion of IRDs in the cost catalog would have allowed cable operators to more easily transition earth stations to fiber delivery, but the Bureau decided that the lump sums were only meant to estimate the cost of moving earth stations, not transitioning to a new type of distribution. Broadcasters and content companies were among those that asked the FCC not to include IRDs in the cost catalog, asserting that those expenses are properly assigned to programmers and satellite operators, not MVPDs. ACAC also said the Bureau failed to properly disclose its methodology and assumptions, denied ACAC's requests for a meeting and imposed a schedule that forced the Bureau to determine the final lump-sum amount before satellite operators filed final transition plans. ACAC has asked the FCC to rule on its stay request by Aug 20. Should the FCC decline to issue the stay, the association has asked that the Commission issue a limited 14-day stay of the lump-sum election deadline to allow ACAC time to seek a stay from an appeals court.

EPB Offers Fast, Free HSD for Students: There are several low-cost, and sometimes free, internet offers for low-income students, but **EPB** is taking things up a few notches. A new public-private partnership means that more than 28K students in the Hamilton County, TN, school district who qualify for free and reduced meals will receive EPB internet with speeds of at least 100Mbps at home and a WiFi router at no charge. The program is structured such that qualified students will maintain their free internet services for at least 10 years if the partnership reaches its full fundraising goal. Community partnerships have allowed Hamilton County Schools to raise $6mln toward the upfront infrastructure investment of $8.2mln needed at the outset of the project. Funding partners include the county, the City of Chattanooga, BlueCross BlueShield of Tennessee Foundation and the Smart City Venture Fund.

MSGN Sees Sub Slide: **MSG Networks** is seeing sub declines, but it still feels pretty good about doing deals with affiliates. **MSG** and **MSG Plus** reported that their combined average viewing subs fell 8.9% to 6mln as of May. "Our rate of subscriber decline has accelerated in recent quarters, a reflection of the changing media landscape. We also believe that our most recent monthly subscriber levels reflect COVID-19's impact on the economy," CEO *Andrea Greenberg* said during the company's fiscal 4Q20 earnings call this week. Yet she notes MSGN has renewed four of the top five distributors over the past three fiscal years (two of the deals came in the past fiscal year). "We're comfortable with the terms of renewals, including packaging and other protections," business affairs evp *Adam Levine* said, indicating the nets will continue to see expanded basic distribution vs tiering. Total rev for fiscal 2020 were $685.8mln, down 5% compared to the prior year, while revenue for the quarter fell 10% to $152.1mln. The quarterly decline was driven by an $8.3mln decrease in affiliate rev, primarily reflecting the decline in subs and to a lesser extent a $2mln unfavorable net affiliate adjustment (primarily reflecting accrued affiliate rebates). MSG Networks launched on the new **AT&T TV** service, but it doesn't sound like it feels the need to reach deals with all the vMVPDs. During the call, Levine described them as an "evolving, but small, segment of the pay television universe," adding that the price point when coupled with broadband is comparable and, in some instances, greater than the pricing from traditional distributors and with "substantially fewer channels."

People: **WarnerMedia** welcomes back *Marie Moore*, naming her svp, communications for **Warner Bros Global Kids, Young Adults and Classics**. She reports to Warner Bros' corp comm evp *Johanna Fuentes*. Moore most recently was svp, communications for **TNT**, **TBS**, **truTV** and **HBO Max**. She also spent eight years at **AMC Networks**.

Cablefax Dashboard

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Sumner Redstone Rest in Peace. I had the pleasure of meeting you on a few occasions. Thank you for all you did to lift up the world of entertainment.🙏🏾
#TrueLegend

The Cable Center
@TheCableCenter

Always fun catching up with our Cable Center Ambassadors on Zoom! Congrats to Shannon Saviers who is now chair of our local Rocky Mountain Connection! Notice we have perfected our congratulatory pageant waves 👋🎉 Learn more & find out how to join here: bit.ly/3fPE1GY

Research

➢ In total, 28% of consumers say they've signed up for at least one new TV service during the pandemic.

➢ Each of the big four SVOD services has seen a 3% or higher increase since just before the pandemic began in February.

➢ Consumers have turned to those services because they offer three benefits: exclusive shows, value for the money, and a deep library of content

➢ VOD viewing is up 6 points since February.
(Source: Hub)

Up Ahead

Sept 14-17: NATPE Streaming Plus

Sept 22: Cablefax's FAXIES Awards Celebration, Also Honoring the Cablefax 100, Top Ops and Work Culture List

Sept 29-Oct 1: NCTC's Independent Show

Oct 5: WICT Leadership Conference

Oct 6-9: NAMIC's 34th Annual Conference

Quotable

"If you take a look at the last 60 days by any measure, from my perspective, we're in a really good position... We just announced a couple weeks ago that we're actually north of 36mln already and obviously the number is going up everyday... I think, in hindsight, a mistake which we did have is a number of brands in the market that were ultimately confusing, which are HBO Now and HBO Go. We have sunsetted those brands and those services, so now we are left with, rightly so, HBO Max and HBO. So it's a much simpler proposition for consumers."
*– **WarnerMedia CEO Jason Kilar** on CNBC's "Squawk Alley"*