

# Cablefax Daily™

Tuesday — September 1, 2020

What the Industry Reads First

Volume 31 / No. 169

## Retrans: DISH Continues to Battle Circle City, Scripps & Cox Media Group

DISH is telling the court to look at a racial discrimination suit **Circle City** filed [against AT&T](#) and **DirectTV** that is similar to the one the broadcaster filed against it in March. “The [AT&T] lawsuit speaks to the plausibility of Circle City’s claim that its demanded fee was the market rate, to which DISH would have acquiesced but for supposed racial animus,” said DISH, which is seeking to have Circle City’s [suit](#) dismissed.

In August, minority-owned broadcaster Circle City filed a racial discrimination suit against AT&T and DirectTV, claiming that it has refused to negotiate any retrans agreement for its stations. Circle City’s complaint centers on AT&T and DISH carrying the stations when **Nexstar** owned them, but not once ownership changed. Circle City told the court it agrees that its allegations against AT&T speak to the plausibility question—but not for the reasons DISH suggests. “In both the AT&T lawsuit and this case, Circle City has alleged that its non-minority owned predecessor received substantial retransmission fees, while DISH and AT&T have refused to contract with Circle City at or anywhere near those rates for the same or improved content,” the broadcaster said.

Last year, it was AT&T that was at the center of a bevy of retrans consent skirmishes. This year, DISH has stepped into the battle zone. As the Circle City case continues to wind its way through the courts, DISH still finds itself without **Scripps** stations in 42 markets. The stations have been dark since July 25, with the two unable to come to terms on a new retrans consent agreement. Scripps issued a statement Monday saying that after a five-week blackout, it’s frustrated. “Counter to DISH’s false narrative to its customers, Scripps has not asked for a 250% rate hike, and this negotiation is not related to the cost of expanding our station footprint in 2019,” Scripps said. “Scripps knows the appropriate industry terms, and we will not agree to a deal that gives DISH complete control over our local station signals and limits our ability to reach agreements with others.”

DISH’s stance: “Scripps has been on a station-buying spree, and to compensate for their newly acquired stations, they’re now demanding more than double the fees paid today.” Scripps stations along the Gulf Coast of Texas and Louisiana did return to DISH briefly last week as Hurricane Laura formed, with Corpus Christi stations available last Sunday through Thursday. Lafayette was available from Sunday through Aug 30.

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DISH has been without **Cox Media Group** stations in 10 markets since July 22. The two have ongoing litigation about whether DISH's carriage agreement for the Cox stations was prematurely terminated when **Apollo** acquired those stations, which have kept the Cox Media name. A temporary restraining order that had kept the stations on was dissolved in July. The former **Northwest Broadcasting** stations that Cox Media Group purchased have been warning for weeks that they could be removed from the DISH lineup "very soon." Those stations weren't part of the temporary restraining order and had been blacked out since mid-January. The two agreed to set aside the dispute in March so viewers could have access to them during the pandemic, but the hiatus appears to be nearing its end. Cox Media Group has until Sept 14 to respond to DISH's amended complaint that its carriage agreement for the Cox stations was prematurely terminated when Apollo acquired the channels.

**FCC Satellite Fee Creeps Up:** The **FCC** rejected **AT&T** and **DISH's** pleas against a fee increase, and adopted on Monday a proposal to continue to phase in a DBS regulatory fee increase of 12 cents a year. That will bring DBS' regulatory fee to 72 cents per sub for FY2020, while cable/IPTV will face a fee of 89 cents—up from 86 cents for FY2019. "We do not agree with the DBS providers' argument that MVPD issues are predominantly cable specific and that we should not continue to move closer to parity," the FCC order said. DBS providers had also argued that the FCC should use an MVPD sub count that's taken closer to the regulatory fee order release date due to declining subscriber numbers. The fee is currently based on sub counts as of December of the prior year. The Commission rejected the idea, noting that other quantity-based regulatory fees use the same timeframe, plus many companies use end of calendar year sub counts for their year-end official reports. "Use of a more recent customer data, such as in June or July, would preclude the Commission from retrieving, reviewing, and using the information while drafting the Notice of Proposed Rulemaking and seeking comment on proposed fees, a critical step in the annual regulatory fee process," the FCC said.

**Allen Wins in Most Recent Charter Court Showdown:** A federal district court judge has rejected **Charter's** effort to dismiss a \$10bln racial discrimination lawsuit filed by **Byron Allen** and **Entertainment Studios Networks**. Judge **George Wu** ruled in Allen's favor back in October 2016, but Charter appealed the decision to the US Court of Appeals for the Ninth Circuit. Wu's ruling was upheld by the Ninth Circuit in Nov 2018. Charter then appealed the Ninth Circuit's ruling to the **US Supreme Court**. Back in March, the Supreme Court sent Allen's case against Charter back to the Ninth Circuit, saying he needed to find more evidence of racial discrimination in order to prove his case against the MVPD. "Charter once again tried to claim in a court of law that the First Amendment gives them the right to discriminate against Black people. This is a despicable, racist legal position, and I'm highly confident Charter CEO **Tom Rutledge** and the Charter Board of Directors

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will be held fully accountable," Allen said in a statement. Charter has maintained that race played no role in its decision for ESN networks. "Promoting diversity and inclusion are core objectives across our company and a priority in our operations, including the products, services and the programming we offer. We regularly review the programming lineup to ensure our content appeals to our diverse audience. Charter offers programming services produced by minority-owned companies, including several owned by Byron Allen," Charter said in a statement. "Decisions on which networks to carry are based on business considerations, such as cost, quality, uniqueness of content, and customer demand. We are disappointed by today's ruling, and stand by our position that race played no role whatsoever in our programming decision regarding these networks and we will continue to vigorously defend against these false claims." Allen brought forth a similar racial bias suit against Comcast, but the pair reached a settlement in June that included carriage of the Weather Channel and 14 broadcast stations.

**ACA Connects C-band Stay Request Denied:** The FCC denied ACA Connects' request for stay of the deadline for earth station operators to make lump sum elections in the C-band proceeding Monday. ACA Connects was seeking the stay because the Wireless Telecommunications Bureau did not include the cost of integrated receiver/decoder equipment in the C-band order's preliminary cost catalog. Bureau chief Donald Stockdale wrote in the order that ACA Connects' fell far short of showing that its application was likely to prevail on the merits, and that the bureau was well within its authority to exclude those equipment costs from the MVPD lump sum amount. ACAC said it's disappointed, but not surprised, which is why it's already sought relief from the DC Circuit.

**Hurricane Laura:** Crews have been able to enter areas impacted by Hurricane Laura last week and damage assessments continue. The FCC's latest status report (as of 12pm ET Monday) had cable and wireline companies reporting 188,985 subscribers out of service. That's down from more than 260K in Sunday's report. Two broadcast stations (KBCA, KMLU) were reported without service. KARD had been down, but was back and running by Sunday.

**Be on the Lookout:** With several schools starting up virtual instruction, ISPs may experience an increase in customer calls that aren't related to their performance. Monday was the first day of all virtual school for Montgomery County, Maryland's largest school district. With all grades starting class at 9am ET, the school's servers were overwhelmed. However, some students had managed to log in, which prompted the 'is it my internet service' questions. Operators we spoke with Monday said they'd seen some uptick on customer care channels, but the network continued to perform well.

**CenturyLink Outage:** Internet providers and services, ranging from Atlantic Broadband to Hulu, suffered connectivity issues Sunday after a major outage for CenturyLink. Cloudflare said it saw a 3.5% drop in global traffic due to the outage CenturyLink said it restored all services by 11 am ET Sunday.

**Netflix Freebies:** Netflix is currently offering a number of its original movies and TV shows free for non-subscribers as an incentive to sign up for the service. The first episodes of "Stranger Things," "When They See Us" and "Love is Blind" are among those available to watch as well as films "Bird Box," "Murder Mystery" and "The Two Popes."

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.

The Cablefax Editorial Team is reporting on vital industry updates every day. We want to hear from you so please reach out to share your news and stories.

**Content. Community. Daily.**

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**The Collapse of Theatrical Windows?:** With theaters shuttering, will day-and-date releases become the norm? 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-demand from 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 in the US.

Tuesday — March 17, 2020 What the Industry Reads First Volume 31 / No. 050

**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 dispute 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 continues.

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 with students due to school closures. Topics include why thunder happens, how rainbows form and more. Pledge Day is scheduled for Friday at 2pm.

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