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What the Industry Reads First

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Dead Horse?: Judges Appear Skeptical of Maine A la Carte Law

Last week, a three-judge panel of the **US Court Appeals of the First District** heard Maine's appeal of a District Court judge decision that blocked the state from imposing a law that would require cable operators to make video channels—as well as individual programs—available to consumers on an a la carte basis. Based on their questioning, the judges don't sound too convinced that the state will prevail.

Comcast, C-SPAN, Disney, Discovery, Inc., and a host of other programmers [challenged the law](#) and won an injunction in December, with the state taking the case to the federal appeals court. During last Wednesday's arguments, First District Judge *Sandra Lynch* noted that under the Maine a la carte law, a subscriber could request access to Red Sox RSN **NESN**, but could also ask for just a single game a la carte.

Christopher Taub, the attorney representing Maine governor *Janet Mills* and the state, defended the individual programming portion by arguing that there's nothing limiting what price could be put on a single program. In other words, programmers and operators could make it more economically feasible for a customer to choose a channel vs a program via a la carte. Taub added that he thought it would be fair for the court to eliminate the individual program requirement from the provision if it saw fit.

While the state argued that the law doesn't present any First Amendment issues, the panel of judges didn't sound as convinced. Cable operators and programmers made the argument that they support smaller programs that they feel should get viewership, but the only way to make them commercially viable is to bundle them with more popular programs.

"It strikes me not only as going to their editorial discretion, but also directly to the First Amendment interest in expanding expression," said Lynch in an audio recording of the hearing. "That is a choice the cable operators are now making, which this statute would essentially prevent them from making."

Taub countered that the First Amendment isn't there to give niche programmers a leg up and said there wasn't evidence that it even would. Lynch and Judge *Kermit Lipez* noted Maine's law applies only to cable companies, and not direct competitors, such as satellite operators and streamers.

SUNDAY NIGHT ROCKS
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THE NEW SEASON KICKS OFF
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Hosted by AXS TV's own Katie Daryl, this season features a new panel of experts including KT Tunstall, Jack Osbourne, and Ahmet Zappa

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“It is too easy for government, pardon my basic First Amendment theory, to put a thumb on the scale when it doesn’t like a particular speaker and make them non-competitive in their particular marketplace,” Lynch said.

Attorney *Matthew Brill* of **Latham & Watkins** represented cable operators and programmers during the 49-minute oral argument. The state argues in essence that “only a mandate to carry particular programming, a channel or individual programs would implicate the First Amendment, and that’s simply not the case under the governing law,” Brill said. “The law makes clear that the First Amendment and our editorial discretion are implicated not only when we’re told what to carry, but how to carry that programming.”

A la carte was a hot topic in the early 2000s, but the emergence of streaming, on demand and virtual MVPDs that make it easier for consumers to cobble together video options had put it on the backburner until this law was passed. It was supposed to take effect last September, but was paused as cable mounted a challenge. In granting December’s injunction, US District Judge *Nancy Torresen* wrote that at this stage she couldn’t conclude Maine had carried its burden of showing the law would be likely to reduce prices and increase affordable access to cable.

DOJ Makes Suggestions on Section 230: The **Department of Justice** sent a legislative package to Congress with recommendations on how to amend Section 230 of the Communications Act. DOJ said the proposal addresses unclear and inconsistent moderation practices that limit speech and the proliferation of harmful content online. The department identified four areas that are “ripe” for reform: incentivizing online platforms to address illicit content, clarifying federal government enforcement capabilities to address unlawful content, promoting competition and promoting open discourse and greater transparency. “Taken together, the Department’s legislative package provides a clear path forward on modernizing Section 230 to encourage a safer and more open internet,” the DOJ said in a statement. The DOJ’s review of Section 230 included a public workshop, expert roundtable, written submissions and industry listening sessions.

MWC Barcelona Moved to June: **GSMA** announced Wednesday that it will push back **Mobile World Congress Barcelona** from the first week of March to June 28-July 1. **MWC Shanghai** will actually move up from June to Feb 23-25, while **MWC LA** is still set to take place in fall 2021. “The GSMA is committed and investing so that MWC21 Barcelona can go ahead safely and offer the unique, unmissable experience that has made it the world’s most important mobile ecosystem convening platform,” GSMA said. “MWC21 Barcelona will also have virtual elements to complement the overwhelming demand to convene physically.”

T-Mobile Defends Spectrum Portfolio Size: **T-Mobile** CEO *Mike Sievert* is fighting back against **AT&T** and **Verizon** af-

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ter the pair raised concerns with the **FCC** about T-Mobile's spectrum lease agreement with **Columbia Capital**. The lease agreement would give T-Mobile another 10-30MHz of spectrum in the 600MHz band in 204 counties. Verizon filed a petition of reconsideration with the Commission in August claiming that there is a high likelihood of competitive harms arising from the amount of low- and mid-band spectrum T-Mobile has accumulated. AT&T backed Verizon up with its own FCC filing Friday. "After holding massive spectrum advantages over T-Mobile and others for decades, Verizon and AT&T just can't stand the idea of anyone else being ahead of them or having a fair shot in an auction where they plan to use their financial might to do what they have always done—dominate," Sievert said in a blog post. "American consumers deserve the fair competition that will result in American broadband leadership, and greater access for all."

Public Knowledge Stands Against NCTA in Maine: **Public Knowledge** filed an amicus brief at the 1st US Circuit Court of Appeals Wednesday in **NCTA's** challenge to the PEG provisions of Maine's cable statute. Maine law requires cable operators to place PEG channels in their basic cable tier and on lower channels in the vicinity of broadcast stations. NCTA argued at the district court level that the mandate runs contrary to federal law in the Cable Act. "The District Court rejected NCTA's challenge to the PEG provisions of Maine's cable statute, finding that federal law did not preempt the state's regulation of consumer protection acting in its role as protecting the rights of subscribers to cable services to find and receive PEG channels," Public Knowledge said in the brief. "NCTA errs on all counts."

Digital Loves TV: Digital advertising campaigns may be more effective with the inclusion of TV than campaigns that are digital-only. A report from **Comcast Cable's Effectv** found that viewers spend three times more time with ads on TV and digital compared to digital alone, and there was a 15% lift in purchase intent when ads aired on TV and digital. Additionally, consumers' brand call more than doubled when a digital ad was accompanied by a TV ad for the same brand.

CommScope Adds WiFi 6 Gateways to Home Offerings: **CommScope** has released two WiFi 6 gateways for home networks—the Touchstone TG9452 and DG9450 DOCSIS 3.1 cable gateways. The TG9452, which served as part of **Mediacom's** recent 10G trial, enables the delivery of data, voice and video services while the DG9450 supports data and video. Both gateways are capable of up to 5Gbps downstream and 1Gbps upstream. CommScope will put its WiFi 6 capabilities on display during the **SCTE-ISBE Cable-Tec Expo 2020** virtual experience on Oct 12-15.

Sling Testing Watch Party Feature: **Sling TV** debuted a co-watching feature in beta Wednesday. Sling Watch Party allows customers to watch live programming with up to three other people while interacting via video and text chat. The service is available on Google Chrome browsers, and guests can join a party by creating a free Sling TV account.

CES Latest: **GM** chmn/CEO *Mary Barra* will present the opening keynote address during the all-digital **CES 2021**. Barra's presentation will take a closer look at GM's transformational strategy to advance mobility for communities around the globe. CES 2021, which will also feature keynotes from **Verizon** chmn/CEO *Hans Vestberg* and **AMD** pres/CEO *Lisa Su*, is taking place Jan 11-14.

Texas Community Embracing CBRS: The city of McAllen, TX, is deploying a CBRS network with technology from private network provider **Federated Wireless** and **Cambium Networks**. The network will connect the entire community, including more than 23K K-12 students in the independent school district.

ViacomCBS Launches Diverse Director Initiative: **ViacomCBS's** Entertainment & Youth Group announced its First Time Directors program as well as executive producer deals with *Angela Bassett*, *Idris Elba*, *Salma Hayek*, *Priyanka Chopra Jonas*, *John Leguizamo*, *Eva Longoria*, *Courtney B Vance* and their respective production companies. The deal calls for 50 films across **Paramount Network**, **MTV**, **Comedy Central** and the E&Y portfolio for first time BIPOC filmmakers and women directors to tell diverse stories through the lens of diverse storytellers. The executive producers will work with E&Y pres, content/chief creative officer *Nina Diaz* to identify the directors and match them with projects.

Distribution: **Accuweather TV Network** landed on **fuboTV** on Wednesday.

Programming: **Crown Media Family Networks** launched its 2020 holiday campaign, what it says is its most extensive seasonal experience yet. Beginning Oct 23 with "Countdown to Christmas" on **Hallmark Channel** and "Miracles of Christmas" on **Hallmark Movies & Mysteries**, the nets will have all new original movies, holiday-themed episodes of "Home & Family" and more. The company will also launch Hallmark Channel-branded gifts, fan sweepstakes and more. -- **Stadium** is set to produce 15 live Conference USA football games airing on **Sinclair's** RSNs, as well as Stadium Plus on select OTT platforms. Games kickoff Saturday.

People: **AMC Networks** upped *Carrie Gillogly* and *Emma Miller* to co-heads, AMC scripted series. Gillogly is also svp, scripted programming and Miller is svp, scripted development. Both will report to *Dan McDermott*, AMC Networks entertainment group pres, original programming and co-pres, **AMC Studios**.

Think about that for a minute...

Remember When

Commentary by Steve Effros

The Emmy awards, the annual self-congratulatory look at the “best” of television each year, aired this weekend. Sure, it was different. The “presenter/host” stood alone in a large auditorium filled with empty seats. The winners stayed home and there was video of them getting an “Emmy” from COVID-19 protective clad deliverers. It was strange. What wasn’t strange was the list of winners.

Netflix, HBO and the like walked away with the majority of the programming prizes. That wasn’t considered unusual or newsworthy. It’s become normal. Remember when that would have been the headline? That a “cable” channel, or even more unlikely a “streaming” service would be the one to deliver the award-winning programming to the viewing public?

Granted, this year was a little different because the overwhelming winner, *Schitt’s Creek*, actually started out on CBC, then was picked up by Pop TV in the United States (owned by CBS) and then, finally, got distribution on Netflix. It was that last move which resulted in viral recognition of the series and that, in turn, has led to its award-winning popularity. One wonders what would have happened if it had stayed on just the CBC or Pop TV platform.

I ask that because, remember when, the accepted wisdom was “content is king.” In other words, we all were convinced that folks didn’t really care about how they got their programming, whether it was over the air broadcasting or cable or now broadband streaming, it was the content that ruled. If you had the right content everything else followed. At least that was the claim.

Well, this year’s Emmy Awards may point in a slightly different direction. Not that content isn’t important, of course it is. But without the right distribution channel that content now may never be noticed, or at least not noticed enough



to land the big prizes and notoriety that comes with them. Especially with our rapidly fracturing plethora of often exclusive distribution channels, the right video supplier may now be just as important as the program itself.

We witnessed this years ago in the business (and I use that term specifically) of getting Academy Awards. The game of getting an Oscar became cutthroat, with millions of dollars and carefully crafted campaigns designed to put a given film in the right position to be seen, then honored, and then reap the rewards of recognition. Again, I’m not saying those winners aren’t good films or that the actors don’t deserve recognition for their wonderful work. But it sure helps if you have a distributor who knows how to play that game, and has lots of money to back up the effort. There are a whole lot of other great movies and actors out there who don’t get recognized, not because they aren’t good, but because they weren’t on the right platform.

The big Emmy winner this year is going to be available on multiple platforms. You can watch it on Netflix, Amazon Prime, Pop TV, and now the whole series will be on CBS/Viacom’s Comedy Central as well. Nothing like covering your bases! So yes, I remember when the mantra was “content is king,” but it’s also now a lot clearer that distribution and promotion in the era of exclusive aggregated channel offerings on a subscription basis is going to have a major impact on what we consider to be the “best” programming.

Remember when we all watched “the evening news” and had a shared understanding of what was happening around us? That’s gone too.

Steve

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(Steve Effros was President of CATA for 23 years and is now an advisor and consultant to the cable industry. His views do not necessarily reflect the views of Cablefax.)

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“The Cable-Tec Expo Show Dailies by Cablefax are a valuable resource for keeping attendees and exhibitors informed of upcoming events, as well as clear and concise coverage of the previous day’s highlights. Enlightening articles by its well-respected editors are also always a good read and round off the educational content.”

- David Atman, President, Lindsay Broadband

