

# Cablefax Daily™

Friday — October 16, 2020

What the Industry Reads First

Volume 31 / No. 201

## Charter Competition: Appeals Court Hears Plea to Keep Cable Rate Regulation

What happens if AT&T sells DirectTV? That was one of the questions asked last week by the three-judge federal appeals court panel hearing Massachusetts' challenge to an FCC ruling that streaming service AT&T TV Now constitutes effective competition for Charter in 32 Massachusetts communities.

The FCC made the unanimous decision last October that AT&T TV Now passed the Local Exchange Carrier (LEC) test, meaning that the Massachusetts communities and Hawaii are no longer allowed to regulate basic-tier cable rates. After the vote, Cox and Comcast promptly asked the FCC to also free them from rate regulation in Massachusetts. Their petitions have been on hold at the Commission as the Massachusetts Department of Telecommunications and Cable appeals the FCC ruling to the US Appeals Court for the First Circuit. Hawaii didn't challenge the FCC order, and the rest of the US is already presumed to have effective competition due to a change in FCC rules in 2015.

The crux of Massachusetts' argument is that AT&T fails to meet the LEC test's requirement that a LEC or its affiliate offer video programming services "directly" to subscribers by any means other than direct-to-home satellite. During oral arguments before the First Circuit, MA deputy state solicitor David Kravitz argued that AT&T TV Now fails that test because video is delivered via a separately purchased broadband service—most likely sold by Charter.

Appellate Judge Sandra Lynch didn't sound too convinced. "Nothing in the statute mandates it be read the way you're reading it. The FCC had issued regulations before this case which ... defined 'offer directly' in a different way than you are interpreting it," she said. "The FCC said that DirecTV offers service directly to subscribers because [AT&T TV Now] has a direct customer relationship with the subscriber in which [AT&T TV Now] markets directly to subscribers, directly bills subscribers and subscribers pay [AT&T TV Now] and they don't pay an intermediary. So, what is unreasonable about that definition?"

Kravitz argued that the FCC's definition of "offers" since 1993 has meant the delivery of video, but there's nothing in the regulation about forming a contractual or billing relationship. "If the FCC wants to incorporate those concepts into the word 'offers,' they're free to do so, but they have to amend the regulation through notice and comment. They have not done so here."

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.

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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-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 truce will last.

# Cablefax Daily™

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. Pledge.org is launching a "Pledge to Stay Home" campaign due to school closures. Topics include why thunder happens, how rainbows form and more. 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 coronavirus pandemic. Some notable names taking the pledge include Hotwire Communications, Midco and others.

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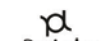
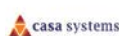
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During FCC general counsel *James Carr's* argument time, Lynch asked what would happen if AT&T sold off DirecTV and thus the AT&T TV Now streaming service. He said Massachusetts could then go back to the FCC and attempt to show that effective competition no longer exists. If the FCC agreed, rate regulation could resume.

"Your question really points out the problem with the interpretation offered by the FCC... the applicability of the LEC test is not supposed to turn on the happenstance of corporate relationships and whether AT&T owns or does not own DirecTV," Kravitz said. "It is supposed to turn on the competitive threat posed by telephone companies and entities like telephone companies that are wired into customers' homes."

Judge *Patti Saris* asked about whether the cost of broadband was an impediment for some basic tier consumers. Attorney *Jessica Ring Amunson*, who represented intervenor Charter, said approximately 100% of Charter's cable subscribers in the Massachusetts franchise areas have a broadband connection. **NCTA** filed a friend of the court brief in support of the FCC.

**Pai Pushing Forward on Section 230 Reform:** FCC chmn *Ajit Pai* announced his intention to move forward with a rulemaking to clarify the meaning of Section 230 Thursday after receiving the green light from the Commission's general counsel. "Throughout my tenure at the Federal Communications Commission, I have favored regulatory parity, transparency, and free expression. Social media companies have a First Amendment right to free speech," Pai said in a statement. "But they do not have a First Amendment right to a special immunity denied to other media outlets, such as newspapers and broadcasters." The fate of the rulemaking may be intrinsically tied to the outcomes of the 2020 general election. Democratic commissioners *Jessica Rosenworcel* and *Geoffrey Starks* both stood against Pai's decision, saying the FCC should not be doing President *Trump's* bidding. On the other side, commish *Brendan Carr* has long voiced his support for Section 230 reform. "We should bring a light touch approach to regulating big tech, but up until now, there has been a no touch approach," Carr said in an interview for **C-SPAN's** "The Communicators" series. "We've never had a gap between the size, scale and power of an institution like big tech and the absence or near absence of regulation." The Commission's fifth seat has been held by Republican *Michael O'Rielly* since 2013, but is now in question following *Trump's* withdrawal of O'Rielly's re-nomination for a third term. *Trump* has now nominated **NTIA** senior advisor *Nathan Simington*, who helped draft the NTIA's petition asking the **FCC** to take another look at Section 230, to fill O'Rielly's seat. Shortly after Pai's announcement, Sen Commerce announced plans to hold a hearing Nov 10 on the nomination of Simington. Should the Senate approve his nomination, Simington is likely to vote in favor of Pai's rulemaking.

**C-SPAN Suspends Scully:** The Debate That Didn't Happen went from a high point to a low for **C-SPAN**. The pro-

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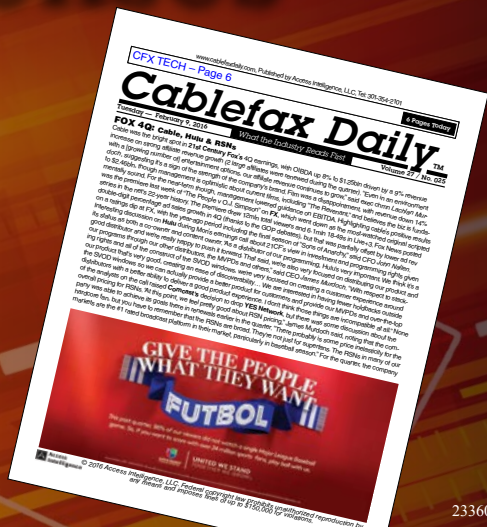
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grammer has placed longtime political editor *Steve Scully* on administrative leave after he falsely claimed his Twitter account had been hacked. “By not being immediately forthcoming to C-SPAN and the [Commission on Presidential Debates] about his tweet, he understands that he made a serious mistake. We were very saddened by this news and do not condone his actions,” C-SPAN said Thursday. “During his 30 years at C-SPAN, Steve consistently demonstrated his fairness and professionalism as a journalist. He has built a reservoir of goodwill among those he has interviewed, fellow journalists, our viewers, and with us. Starting immediately, we have placed Steve on administrative leave. After some distance from this episode, we believe in his ability to continue to contribute to C-SPAN.” After Trump had criticized Scully, who was supposed to moderate the now-canceled second presidential debate, the journalist sent a tweet directed to *Anthony Scaramucci* that said, “should I respond to Trump.” Scully said that when he saw the controversy the tweet had created the next morning he falsely claimed his account had been hacked. He apologized in a statement Thursday, saying his actions have let down a lot of people. “I ask for their forgiveness as I try to move forward in a moment of reflection and disappointment in myself,” he said.

**Expo Notebook:** Cable operators are emerging as competitive players in the mobile ecosystem, and a session Thursday at **SCTE-ISBE**'s Cable-Tec Expo highlighted everything those operators need to know about transport convergence between mobile networks and DOCSIS. “There’s no such thing as just a cable company anymore,” **CableLabs** distinguished technologist *Jennifer Andreoli-Fang* said. “Almost every cable operator is either renting airtime or becoming a mobile operator. We have converged customers, we have converged businesses and now we need a converged network.” The goal of her presentation was to spur the development of a common set of technologies that would successfully enable mobile deployments by cable operators. Cable operators are in a particularly good spot to enter the mobile industry because every great wireless network needs a great wireline network, Andreoli-Fang added. “Our premise here is really that the HFC plant itself is a great wireline network,” she said. “It connects everything together, it connects people together, it connects the homes together and, in the near future, small cells together, which would support a 5G radio access network.” And while mobile convergence can take many forms, she said most operators would begin by combining IP networks together. It’s less obvious what step they should take next. “What everyone is trying to figure out right now is the cloud—when to move to the cloud, where to move and how to move,” Andreoli-Fang said.

**Cohen, Clyburn Feted:** The Media Institute’s Free Speech America Virtual Gala Wednesday evening celebrated **Comcast** senior evp *David Cohen* and former **FCC** commish *Mignon Clyburn*. “In the 40 years since the Media Institute began, I don’t think this annual Free Speech America Gala has ever been held in a national environment quite like the one we’re in today. Basic principles of free speech are being challenged in multiple ways and by multiple forces,” Cohen said in accepting the American Horizon Award for his leadership of Comcast’s Internet Essentials program. “In today’s tech driven world, people without high-speed internet connections are left essentially voiceless,” he said, explaining why Comcast felt compelled to launch the low-income broadband program. “Contending with life in America without benefit of the internet is guaranteed marginalization.” Cohen, Comcast’s former chief diversity officer, said the country is facing two viruses—COVID-19 and the virus of racial inequity “that has been with us for over 400 years.” He spoke out in favor of the right to protest under the First Amendment, but said “unlawful destruction of property in the guise of protest” is not protected speech, “and I’m sure the peaceful majority of protesters feel the same way.” Clyburn received the Freedom of Speech Award for her efforts as an FCC commissioner to promote free speech by making broadband and technology accessible to all. She said it was fitting that she was paired with “media mogul” Cohen. “It reaffirms that in order to realize our goals and objectives when it comes to connecting communities, when it comes to empowering voices, when it comes to really giving individuals the tools they need to thrive and express themselves, you need to regulators and you need industry,” she said.

**Distribution:** **Evoca**, a subscription TV service delivered using ATSC 3.0, is carrying 4K UHD channel **Insight TV**. Boise is the first US market to offer the channel. The Evoca platform, which is less than \$50/month, soft launched in Boise in September. It will roll out to additional Boise residents later this year.

**Programming:** **Showtime** picked up “Black Monday” for a third season, beginning production next year for a 2021 debut. -- **MTV** will bring back “Jersey Shore Family Vacation” on Nov 19. Dubbed Jersey Shore “Bring the Family” Vacation, the stars are taking over an entire resort filming in a bubble. -- **NBCSN** is bringing boxing back in a deal with Ring City USA through 2021. The partnership consists of a series of two-hour match slates on Thursdays at 9pm, kicking off on Nov 19.

**People:** **Scripps** announced new roles for two of its senior leaders, contingent on the closing of the acquisition of **ION Media**. CFO, evp *Lisa Knutson* will lead the new Scripps national TV networks businesses, and evp, national media *Laura Tomlin* will become chief administrative officer. -- **Crown Media Family Networks** named *Robin Thomas* evp, consumer insights, strategy & analytics. She was most recently svp, research at **WGN America**.

# PROGRAMMER'S PAGE

## 'Mr. Mercedes' Gets Second Chance

Crime-thriller fans are in for a treat with the launch of the first two season of "Mr. Mercedes" on NBCU's Peacock Thursday. The series, based on Stephen King's Bill Hodges trilogy, first debuted on AT&T Audience Network, exclusive to DirectTV back in 2017. It failed to attract a broad audience, especially when AT&T pulled the plug on the net in January of this year. "AT&T was great to make the show for, but at the same time it had such a strange and small audience," said director and ep *Jack Bender*. "It's really great to be on Peacock now and finally, hopefully, get the audience that the show really deserves." The series follows retired detective Hodges, who is haunted by a serial killer who mowed down dozens of people in a stolen Mercedes, causing the detective to go on a dangerous crusade. "It was very frustrating for me that the actors didn't get the attention that their performances deserved," said Bender. "I didn't want to keep doing it on [Audience Network] because it was too frustrating. We were making a show that no one knew was on, and that was really painful because we were really proud." The show first came into possibility when King sent galley's of the book to Bender's mailbox. "I went 'oh my God' and looked around the street, I felt like I was in an old spy movie," said Bender. "I loved that Stephen was writing in the detective genre, and I really care about the characters. He was really writing and hanging his hat on the trope of the retired detective and the case and killer that got away that haunts him, and wrote a real damaged man." And while Bender and the team behind Mr. Mercedes knew they didn't want to make another season on Audience Network, don't count out the possibility of Season 4 now that it's at Peacock. "We had a plan for it, and it could be great," said Bender. "Peacock does have that possibility, and assuming it does well, and we all want to get together and go to the dance again, that's a real possibility." — *Mollie Cahillane*

**Reviews:** "Hightown," **Starz**. Unsure about you, but nearly every series we watch that shows throngs of people on screen reminds us of the pandemic, where many states and localities regulate or urge people to avoid gathering in crowds. Perhaps it's the rising case coronavirus case count. Regardless, there are many scenes, at least during the start of "Hightown," of crowds. It's summer and people are partying, with drugs and alcohol, in Provincetown, MA. The embodiment of this "high" atmosphere is Jackie Quinones (a believable *Monica Raymund*). A "fish cop," she's an officer for the National Marine Fisheries, monitoring coastal malfeasance. In addition to Raymund's gutty performance as an almost-perpetually loaded officer, the plotline is a plus. While not based on a true story, the plot is derived from cases related to the awful opioid problem that hampers the Bay State. Indeed, the cast of characters is not high society: junkies (current and recovering), prostitutes, strippers, police (state, federal and local) and drug dealers (in and out of jail). And everyone is troubled. The performances, though, are first rate. Out of character here"—he was good-guy Robert Leckie in HBO's "The Pacific"—but making a valiant effort to play a somewhat-crooked cop, is *James Badge Dale*. His Ray Abruzzo cuts corners to nab criminals, but we feel for him. — *Seth Arenstein*

Basic Cable P2+ Prime Rankings* (10/05/20-10/11/20)		
Mon-Sun	MC US AA%	MC US AA (000)
FNC	1.434	4,417
MSNBC	0.924	2,847
CNN	0.860	2,648
ESPN	0.792	2,438
TBSC	0.641	1,976
HGTV	0.374	1,153
TLC	0.348	1,072
HALL	0.320	987
FOOD	0.258	795
USA	0.250	769
DIS	0.216	665
FRFM	0.209	644
INSP	0.205	632
HIST	0.200	615
ID	0.191	590
FX	0.189	581
TNT	0.189	581
HMM	0.176	544
NFL	0.176	543
LIFE	0.174	536
AMC	0.173	532
TVLAND	0.172	529
A&E	0.167	514
FS1	0.153	471
NICK	0.153	471
ADSM	0.149	460
WETV	0.138	425
NAN	0.137	422
APL	0.132	407
NATGEO	0.122	377
E!	0.122	377
BRAVO	0.122	376
GSN	0.118	362
TRAVEL	0.105	322
COM	0.102	315
SYFY	0.101	312
MTV	0.098	301
BET	0.091	279
OXY	0.084	260
DSNY	0.084	257
NKJR	0.082	251

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



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