

Cablefax Daily™

WHAT THE INDUSTRY READS FIRST

Misinformation in Media: First Amendment Takes Center Stage

Viewers are used to seeing political squabbling on the cable news networks, but on Wednesday, politicians were sparring over the cable news networks.

Wednesday's **House Communications**' subcommittee hearing on disinformation in the media was hijacked by a letter sent to **AT&T, Comcast, Cox, Hulu** and other operators and streamers earlier in the week by two Democratic members. The missive from *Anna Eshoo* (D-CA) and *Jerry McNerney* (D-CA) probed distributors on their carriage of **Fox News, Newsmax** and **One America News** and asked whether they plan to continue to carry them.

"The letter is not just chilling, it's positively glacial," said hearing witness *Jonathan Turley*, a George Washington Law professor who testified before **House Judiciary** in December and argued against a Trump impeachment on constitutional grounds. He took issue with the letter only focusing on conservative-leaning networks. "It's not advancing the interest of free speech. It's advancing the interest of a type of official speech or regulated speech," Turley said.

Republican committee members repeatedly hammered the letter with *Bill Johnson* (R-OH) comparing it to China banning **BBC World News** after Britain's media regulator withdrew the license for **China Global Television Network** to broadcast in the UK. "In all my time on this committee, there's never been a more direct, obvious attack on the First Amendment," said Commerce Ranking Republican *Cathy McMorris Rodgers* (WA). "Condemning the January 6 attack and upholding truth and fact, it's a shared

bipartisan goal. If the majority was really interested in a meaningful, bipartisan dialogue, you wouldn't schedule a hyper partisan hearing to shame and blame. You wouldn't be sending letters to private media companies to block conservative media outlets."

Eshoo took offense at those claiming the letter was an attack on free speech. She said it had been run by the nonpartisan Congressional Research Service, which provides legal analysis to Members of Congress, and it found no First Amendment issues. "We have a lot of misinformation going on right in the middle of this very hearing," Eshoo said. "The idea that members asking questions violates the First Amendment is absolutely absurd. It's our job to ask questions."

Commerce chair *Frank Pallone* opened the hearing by saying the committee is all staunch defenders of the First Amendment. "But that does not mean that we should ignore the spread of misinformation that causes public harm," he said.

McNerney, the letter's co-author, said he felt it was important to shine a light on traditional media's role in enabling disinformation since a lot of the focus has been on social media. He also raised the specter of a la carte, noting that MVPD customers can't opt out of paying for certain channels. The a la carte argument never seems to go away, with the US First Circuit Court of Appeals on Wednesday upholding a lower court ruling striking Maine's attempt to require cable operators to offer programming networks on a standalone basis.

Among those testifying Wednesday was *Kristin Danielle Urquiza* who co-founded **Marked By Covid** after her father died from the



Who Deserves to Rank Among Cablefax's Annual Top Power Players?

The Cablefax 100 salutes the most influential executives whose leadership continues to take the industry to new heights. We will rank the top professionals in the media, cable & broadband industry and publish the list in the June edition of Cablefax: The Magazine.

It's free to enter - but you must submit your entries by April 9!



Enter at www.Cablefax100.com | Questions: Mary-Lou French at mfrench@accessintel.com

virus. “To the media and in particular cable news, you are complicit... Cable news may not have pulled the gun’s trigger pointed at my father’s head, but it indeed drove the getaway car,” she said. Urquiza said she tried to combat misinformation about the virus with her father, but “there is no way that one person can compete with the microphone of the office of the President nor the propaganda machine that has become Fox News.”

She was joined at the witness table by journalist *Soledad O'Brien*, who called for media outlets not to put ratings and clicks ahead of facts and news, and Columbia journalism professor *Emily Bell*, who focused primarily on the spread of misinformation by the loss of local media.

Rep *Billy Long* (R-MO) asked the entire panel to answer yes or no to whether they support taking Fox News, Newsmax or One America News off the air. Everyone said no, though O’Brien added that when she asks a yes or no question, she’s trying to force someone into saying something without context.

Those who didn’t get enough of the topic at the three-hour plus hearing are in luck. Another hearing on misinformation is set for March 25 with the CEOs of **Facebook**, **Google** and **Twitter**.

PARAMOUNT+ COMING NEXT WEEK

Paramount+, the service formerly known as **CBS All Access**, is coming to the US and Latin America on March 4. Unveiled during an investor event Wednesday, the service promises to combine live sports, breaking news and a large content library at launch. **ViacomCBS** president/CEO *Bob Bakish* said the company will debut 36 original TV series on Paramount+ through 2021 with that number rising to 50 within two years

of the streamer’s launch. More than 2,500 movies from **Paramount Pictures** and **Miramax** will also be available on the streamer at its debut. Certain Paramount movies will be available on Paramount+ 30 to 45 days after theatrical release. All other new films from the studio will arrive on the service after their runs, as soon as 90 days after their release. In its earnings report, ViacomCBS counted nearly 30 million global streaming subscribers across CBS All Access and **Showtime** OTT. **AVOD Pluto TV** also saw significant gains, growing its monthly active users 80% YOY to 43 million. Overall revenues were up 3% YOY, hitting \$6.87 billion. Affiliate revenue rose 13% to \$2.4 billion, benefiting from streaming subscription revenues, higher reverse compensation and retransmission fees and expanded distribution. Cable networks revenue rose 11% thanks to growth in content licensing and affiliate and advertising revenue growth.

FIRST CIRCUIT SWATS MAINE A LA CARTE LAW

Maine’s attempt to force cable operators to make video channels (and individual programs) available to consumers on an a la carte basis received another blow. On Wednesday, the US Court Appeals of the First District upheld a lower court decision that blocked the state law from going into effect. **Comcast**, **C-SPAN**, **Disney**, **Discovery** and several other programmers challenged the law and won a preliminary injunction in December, with the state appealing to federal court. The parties agreed to stay further proceedings in the district court pending the outcome of the appeal. It’s now up to Maine to decide if it wants to continue to pursue the case, which seems likely. “Beyond

CFX EXECUTIVE ROUND UP

What is the number one cable/telecom priority that you hope the Biden administration tackles?



Catherine Bohigian
EVP, Government Affairs
Charter

“Every American should have access to the internet, which requires a

comprehensive solution to tackle deployment and adoption. We look forward to working with policymakers to improve the nation’s communications infrastructure by removing barriers to broadband expansion, to increase online privacy and security through comprehensive federal reform, and to modernize broadband support programs.”



Matthew M. Polka
President & CEO
ACA Connects

“ACA Connects hopes the Biden Administration recognizes smaller broadband providers’ contributions

during the pandemic and sees us as partners to deploy more broadband as we work together to remove deployment barriers and reform regulations to meet our customers’ and communities’ unique circumstances. We can fill any broadband gaps by working together!”



Michael Powell
President/CEO
NCTA - The Internet

“To accelerate progress in shrinking the digital divide, the Administration should both modernize

and expand existing support mechanisms that will promote broadband adoption among consumers through provider-neutral support programs, and direct resources for new infrastructure to communities that currently lack broadband service.”

Maine, this decision is helpful to us by pointing out to other legislatures that they have a significant burden to meet if they want to do the same thing,” C-SPAN corporate vp and general counsel *Bruce Collins* told **CFX**. In its opinion, the First Circuit wrote that the district court “correctly determined that [the law] triggers heightened First Amendment scrutiny because it ‘singles out’ cable operators. The state has acknowledged that it cannot meet any heightened level of scrutiny on this record.” The court added that the district court will ultimately need to decide what level of constitutional scrutiny is appropriate

CALIFORNIA'S NET NEUTRALITY GREENLIGHT

The door is open for California and Vermont net neutrality laws to take effect after a federal judge's bench ruling Tuesday. Judge *John Mendez* rejected broadband providers' attempt to block the law, which would give California the strongest net neutrality protections in the nation. The ruling still might be appealed. **NCTA, ACA Connects, CTIA** and **USTelecom** all said they are deciding on next steps. “A state-by-state approach to Internet regulation will confuse consumers and deter innovation, just as the importance of broadband for all has never been more apparent. We agree with the Court that a piecemeal approach is untenable and that Congress should codify rules for an open Internet,” the associations said in a joint statement. Public interest groups celebrated the news, with **Consumer Reports** saying it hopes other states will follow California's lead. Vermont already did, with its statewide net neutrality law put on hold pending resolution of the California case. It can go into effect in 30 days—unless there's an appeal. And of course, there's still the issue of whether the Biden Administration will look to revisit federal net neutrality rules.

SINCLAIR DISAPPOINTS IN DISTRIBUTION

Sinclair stock fell 3.75% Wednesday after a disappointing earnings report that included double digit distribution declines. Distribution revenues fell 16.9% to \$917 million, and that's in part due to the shortened professional sports season from 2020 and 2021. That distribution number reflects an accrual for estimated rebates to be paid to Sinclair's distribution partners based on the number of games delivered versus the minimum game number guaranteed in agreements. Full-year 2020 rebate accruals total approximately \$420 million. “Of that, approximately \$220 million is contracted to be paid over 2021 and the remaining \$200 million is contracted to be paid in the first half of 2022,” Sinclair evp/CFO *Lucy Rutishauser* said on the company's earnings call. Through the next year, pres/CEO *Chris Ripley* said the only major retrans contract coming up is **DISH** this summer (perhaps a chance to revisit DISH's decision to drop Sinclair's RSNs?). Media revenues came in at \$986 million, benefitting from \$204 million in political ad revenues. Sinclair remains optimistic about the interactive streaming app it is developing for its regional sports nets, and Ripley said the broadcaster's league partners are all supportive of its gamification efforts. Sinclair's primary hope is that the app will help grow younger audiences. “These viewers still have great affinity for these sports, but just don't consumer the games at nearly the same capacity as their parents. Having interactive engagement, having rewards, we believe in that being

a key to unlocking their fandom,” he said.

VERIZON OPENS WALLET FOR C-BAND

Verizon emerged as the big winner from the **FCC's** C-band auction, spending \$45.45 billion for 3,511 licenses. It spent nearly twice as much as the next highest bidder, **AT&T**, which put up nearly \$23.41 billion for 1,621 licenses and far more than **T-Mobile's** \$9.24 billion bid for 142 licenses. **US Cellular** and **NewLevel II** made up the rest of the top five bidders, putting forth \$1.282 billion and \$1.277 billion, respectively. Some 21 bidders won all of the available 5,684 licenses with gross winning bids totaling \$81.17 billion. **DISH**, bidding as Little Bear Wireless, won one bid for \$2.5 million, while **Comcast** and **Charter's** JV didn't come away with any bids. As for next steps, winners are required to make a 20% down payment within 10 business days, at which point the quiet period will end.

CABLE CENTER SETS HALL OF FAME DATE

The Cable Center rescheduled its 23rd annual Cable Hall of Fame celebration to Oct 20 at the Ziegfeld Ballroom in NYC. The event honoring the 2020 inductees was originally set for April 30 of last year, but was postponed due to the COVID-19 pandemic. The 2020 class features **CNBC** co-founder *Bridget Baker*, currently CEO of consulting firm **Baker Media**; *Jim Blackley*, an advisor to **Charter** CEO *Tom Rutledge*; *Cathy Hughes* and *Alfred Liggins*, who lead **Urban One** and **TV One**; cable pioneer *Jeff Marcus*; **Comcast Cable** pres/CEO *Dave Watson* and **WarnerMedia** News & Sports chmn/**CNN** Worldwide pres *Jeff Zucker*. The Bresnan Ethics in Business award will also be presented to *Ted Turner* during the event. If in-person gatherings are still ill-advised later in the year, the Cable Center will transition to a virtual celebration. It is still ironing out plans for its 2021 Cable Hall of Fame honorees.

HBO, HBO MAX MERGING BUSINESS UNITS

The production and business affairs teams across **HBO** and **HBO Max** are combining in WarnerMedia's latest efforts to de-silo the company. The move will see *Graham Borba's* role expand to evp, production for HBO and HBO Max. HBO's *Susanna Felleman* will rise to evp, business affairs for the two brands. With the streamlining, HBO Max and **Turner** execs *Pat Kelly* and *Sandra Dewey* are leaving. Dewey, a 20-year mainstay at the company who played a major role in HBO Max's creation, also oversaw the business side of **TBS**, **TNT** and **truTV**. Kelly led HBO Max business affairs under Dewey and will stay on with the company through a transitional period.

AMC NETWORKS IS ADDRESSABLE PIONEER

AMC Networks and **Omnicom Media** successfully completed two first-to-market national linear addressable ad campaigns. The November and December campaigns took advantage of AMCN's partnership with **Canoe Ventures** and saw spots running nationwide on **Comcast** and **Charter**, reaching nearly 25 million homes. Future executions will include **Cox** as well. AMCN plans to make addressable a major element of its upfront discussions. “Our goal for 2021 and beyond is to make 100% of our linear, VOD and digital inventory addressable, with advanced cross-platform reach, measurement and sophisticated data analytics with attribution,” AMCN pres, commercial revenue and partnerships *Kim Kelleher* said.

Think about that for a minute...

Wu Is Me!

Commentary by Steve Effros

No, I didn't mean to use the word "woe," although as you'll see, that may be accurate! I'm talking about Tim Wu, the Columbia University professor of antitrust law who was credited with coining the term "net neutrality." As most of you know, I've had my issues with the net neutrality crowd, and Tim in particular, since he has written so many columns in the *New York Times* and elsewhere demonizing the cable industry.

I didn't think that was necessary, and still don't. But Wu's underlying premise is one that I tend to now agree with: big companies, in many different sectors, have become uncontrollably big. Think Google and Facebook. Something has to be done. His solution tends to lean toward antitrust enforcement and utility regulation. That latter is essentially what he's been pushing on the cable industry for years: common carrier and public utility status.

My issue with that has long been that the presumed remedy to an infrastructure "monopoly" is to force the introduction of new competition, such as, in our business, municipal ownership and telco overbuilds. I think that's wrong. There are economic realities that have to be dealt with as a part of those alleged "fixes" that simply can't be ignored. In both cases those "solutions" include government subsidies.

In the case of municipal ownership, as we've witnessed time and time again, the hubris of a municipal entity thinking it can run a very complex and expensive private infrastructure, media and marketing enterprise has repeatedly proved wrong. Yes, the "rate" seems low, but consumers, even those not using the system, wind up paying for it through hidden taxes, lost revenue, and often sub-par systems. Many of those have now been sold to private entities in an effort to rehabilitate them.

In the case of telephone "competition," the reality is that the telcos wanted to rebuild their outdated plant and the theory that a second competitor in town would be a good thing allowed them to argue for major ... and we are now talking about billions of dollars... subsidies so they could rebuild

with someone else's money. You're going to see lots of that money proposed and thrown around over the next few years. But that "competition" isn't going to lower consumer prices, which was the objective. As I've repeatedly said, building two superhighways to a farmhouse instead of one will not lower the embedded cost that eventually is passed on to the farmer, it will increase it!

And as we all know, this isn't the "easy" business that either Google or the old telcos thought they would breeze into. "Google Fiber" dropped its cable offerings, and telcos are still trying to figure out how to profitably function in the media business, so far without much success. This history is about to be repeated with the OTT streaming folks. Google TV started, just a few years ago, at \$35 per month. Now it's \$65, and that's without delivery!

Anyway, back to Tim Wu. It's now rumored he will be named to the White House National Economic Council. As noted, he's a true antitrust advocate. After all, he wrote a book three years ago entitled "The Curse of Bigness!" While I take exception to his proposed utility/common carrier "solution" regarding cable (after all, we weren't made a common carrier back then yet we now have PLENTY of growing competition) I don't disagree that "big" has gotten too big, and possibly the only solution now is to not regulate, but break up those companies. Wu is likely to be in a position to push that bigger antitrust solution.

So reluctantly, I admit, in somewhat of a reversal, "Wu is me!"



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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