

# Cablefax Daily™

WHAT THE INDUSTRY READS FIRST

## LFA Showdown: 6th Circuit Denies FCC Request to Pause Franchise Fee Case

A federal appeals court Friday denied the **FCC's** request to place a challenge to the agency's franchise fee order in abeyance for 120 days.

This all dates back to the FCC's August 2019 order revamping cable franchise fees to make it clear that most in-kind contributions required by franchises, such as operational support of Public Educational and Governmental (PEG) access channels and free video service, are subject to the statutory 5% cap on franchise fees under the Communications Act. The FCC also reaffirmed that Local Franchise Authorities (LFAs) can't use their authority to regulate or impose costs on broadband and internet voice services delivered over a cable system.

In Friday's terse order, the Sixth Circuit simply said that the April 15 arguments will continue as scheduled via video conference. A slew of cities, including Pittsburgh and Chicago, appealed the FCC order to the Sixth Circuit. Last week, the Commission asked the federal court to postpone the argument and place the case in abeyance for 120 days from April 15 in light of the changes in leadership at the agency. Acting chair *Jessica Rosenworcel* voted against the LFA order in 2019, upset that it would hurt PEG channels.

At a press conference this week, Rosenworcel described the abeyance request as routine. "We're reviewing all the pending litigation positions of the agency. That is standard given the shift in agency leadership," she said. "We're just reviewing the cases

to make sure our legal positions are exactly what they should be. But we're doing it in this case and others—I wouldn't suggest that there's anything especially unique about this one here."

The FCC's request for abeyance has created some fallout. The City of Kirkland, Washington, informed **Comcast** that in light of the FCC suspension motion, it was unilaterally staying its franchise negotiation with the MVPD. Presumably, that will now move forward. Meanwhile, the US District Court for the District of Oregon recently stayed a challenge to the City of Beaverton's Right-of-Way ordinance pending the court's decision on the LFA appeal. Comcast sued Beaverton last fall, alleging that a fee its levying for use of city land to provide phone and internet service violates the FCC's determination that local government can't use their cable TV franchise fees to regulate anything other than video.

"The straightforward statutory interpretation issues presented by this case are ripe for resolution by this Court," **NCTA** said in a filing Wednesday that urged the court to keep the April 15 arguments. "Further delay in this more-than-decade-long set of rulemakings is unwarranted, especially in light of the ongoing effect on NCTA's members and consumers. And any future action by the FCC is too speculative to justify frustrating this Court's review of the order."

The court had asked NCTA if the FCC and petitioners were to jointly move to dismiss the appeal, whether the association would be treated as a plaintiff. NCTA said it could and would do so, explaining that its status as intervenor allows it to continue the proceeding. "Even if the petitioners were to withdraw their petitions, the order

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would remain in legal 'limbo' while the Commission determines whether to 'revisit' or 're-evaluate' the order," the association said. "NCTA would therefore object to abandonment of the appeal and be prepared to defend the order ... if the FCC chose not to do so."

### FRIDAY MORNING QUARTERBACKING

A day after the **NFL** announced its long-awaited media rights deals, analysts are dissecting what the \$100 billion+ 11-year contracts mean. **LightShed Research**, long not a fan of traditional pay TV, declared the new agreements as the final nail in the multichannel bundle coffin—starting with the fact **Amazon** took all the Thursday Night games and **NFL Network** cobbling together some Saturday games to satisfy carriage agreements. "Amazon is now the producer and sole broadcaster of what has consistently been the #2 TV series on linear TV (note: the Amazon games will be available in the two home teams market as a simulcast on a to-be-determined local TV station, similar to what happens with **ESPN** games). That huge earthquake you feel in the TV industry is linear TV viewership and, more importantly, ad dollars moving to connected TVs. And remember, Amazon does not share ad dollars with streaming tvOS platforms," the analysts wrote in a blog Friday. The firm also thinks the fact games will be simulcast on digital products like **Paramount+** and **Peacock** should result in a decline in retrans revenue for broadcasters. **ACA Connects** isn't so sure, issuing a statement Friday that it's concerned the massive price tag for games will see broadcast stations use retrans to help recoup the cost. "Broadcast networks and TV station owners like **Sinclair**, **Nexstar**, **Tegna** and **Apollo Global Management** will continue to leverage the broken retransmission consent rules to demand excessive fees from smaller cable operators, driving up the cost to watch what broadcasters like to call 'free TV.' In order to make up for their massive NFL obligations, broadcasters will hike their prices even higher—and, ironically, use blackouts of NFL games themselves in order to do so," ACAC chief **Matt Polka** said in a statement. "These broadcast giants have just asked Congress for stimulus funds in order to—as they claim—'preserve' local TV news. Perhaps they could have spent some of the \$95 billion they just committed to secure NFL rights instead." As for the still-to-be-decided NFL Sunday Ticket, **LightShed** anticipates it will end up at a vMVPD such as **Hulu Live** or **YouTube TV**, though it notes **ESPN+** is also interested. **Evercore ISI** said the existing \$1.6 billion/year price tag for the package may be too high. **AT&T/DirectTV** has exclusive rights to Sunday Ticket for two more seasons.

### NY-ALTICE SETTLE OVER STORM RESPONSE

The State of New York reached a nearly \$72 million settlement with **Altice USA** over August 2020 Tropical Storm Isaias. The state said the operator failed to properly prepare for and restore service to customers, with more than 400,000 experiencing outages and some for as long as 14 days. The governor's office said the apparent violations involved include failure to make

sufficient readiness plans and post-storm restoration, poor customer service and communications, and inadequate communication and coordination with government officials and electric utilities. It is NY's largest settlement ever for failure to follow an emergency response plan. Under the settlement, **Altice** must develop a more robust response program and enhance coordination with local government. **Altice** said it has been working with the NY PSC since Storm Isaias last summer to "jointly examine opportunities for enhancements in how we communicate and engage with our customers, communities, and public officials during severe weather events. We appreciate the dialogue with the NY PSC as we look to ensure that the long-term service investments we're making continue to improve the customer experience and benefit all our tri-state area customers."

### MARCH MADNESS SCORES BIG

Thursday night's First Four Men's NCAA Division 1 games delivered a gross audience of 7.6 million viewers across **TBS**, **truTV**, **NCAA March Madness Live** and **TV Everywhere** platforms. **TBS** and **truTV**'s telecasts were up 36% vs 2019, with an average of 7.3 million viewers based on **Nielsen** Fast Nationals. Those numbers are projected to increase once **Nielsen** Out of Home delivery becomes available. The **UCLA-Michigan State** game on **TBS** becoming the most-watched First Four game since the format was introduced in 2011, with an average of 3 million viewers. – **ESPN** received 16.2million brackets for its Men's Tournament Challenge, marking the fourth year the challenge surpassed 16 million. Last year is not counted since the tourney was canceled because of COVID-19.

### POWELL CAUTIONS CONGRESS ON BROADBAND

Congress is appropriating more and more on expanding broadband accessibility, and while **NCTA** pres/CEO **Michael Powell** welcomes the efforts, he believes safeguards must be put in place to ensure the funds aren't wasted. In a blog post Friday, the former **FCC** chairman urged Congress to focus on serving the neediest populations first. "While it seems obvious that we would want to feed those who have nothing before we serve seconds to those who already have broadband, too often Congress fails to erect guardrails to ensure public money is spent on communities that lack broadband," he wrote. "The result is all too predictable; money finds its way to more lucrative, already served markets, short-changing unserved areas where people need it the most." Powell also warned that attempts at future proofing networks can drain resources that could be used to expand access to broadband. "What is more advisable than guessing at future needs is to reward network investment that offers a logical path to continuous improvement over time and not networks that meet any given standard at a snapshot in time," Powell wrote. He also urged regulators to step back and let the engineers decide how to design networks, whether that means using fiber and coax or fixed wireless solutions.

**AMC NETWORKS' UPFRONT**

**AMC Networks** is doubling down on digital, announcing three new series for its platforms at its upfront Friday. A final fourth season of "Better Call Saul Employee Training" is also in the works. Following the current spinoff, AMCN is developing an animated series from the "Better Call Saul" universe called "Slippin Jimmy." "Fear the Walking Dead" is also getting a spinoff entitled "Dead in the Water." These series will first appear on the company's digital platforms, but could eventually appear on its AVOD and linear channels. AMC Networks welcomed four new content partners during the upfront: **SeeHer**, **Conservation International**, **Save Our Stages** and **Complex Networks**. The deal with Complex Networks will combine "The Walking Dead" universe with online magazine and YouTube channel "First We Feast" to create cooking program "Run The Dish," featuring dishes made by talent from The Walking Dead universe and Complex celebrity chefs.

**RATINGS**

**WE tv's** "Love After Lockup: Life After Lockup" ended its third season as the number one cable show on Friday nights in the W18-49 and W25-54 demos. Each episode in the second half of Season 3 garnered more than 1 million total viewers in **Nielsen** L+3 ratings. Viewership averages across 16 episodes were 1.14 million total viewers, 665K A25-54 and 500K W25-54.

**EDITOR'S NOTE**

You have until midnight tonight to get the best price on your **FAXIES** nomination. Categories include Best Press Kit, Content Marketing Campaign and Sales Executive of the Year. Enter at [www.theFAXIES.com](http://www.theFAXIES.com). Final deadline is March 26.

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**Howard Mortman** @HowardMortman

Today marks 42 years since the U.S. House went on TV (Day One of C-SPAN). Of the first nine speakers on March 19, 1979 -- during an opening span of ten minutes -- five House members wore three-piece suits. Here are four of them:

**ImOn Communications** @ImOn\_Comm

Today marks the start of our 5th Annual ImOn March Gladness Nonprofit Bracket Challenge. 8 local nonprofits are competing for community votes for a chance to win a \$500 donation from ImOn. Visit [ow.ly/e3QU50DZK2A](https://ow.ly/e3QU50DZK2A) to vote and help your favorite nonprofit move on to round 2.

**Up Ahead**

**MARCH 19: THE FAXIES ENTRY DEADLINE**

**MARCH 24: MEDIA INSTITUTE LUNCHEON WITH NATHAN SIMINGTON**

**APRIL 9: CABLEFAX 100 NOMINATION DEADLINE**

**MAY 13: WICT ROCKY MOUNTAIN VIRTUAL WALK OF FAME**

**Research**

> Netflix's 53.5% global share of demand for digital original series is the lowest in the history of the Global TV Demand Report, 6.3% lower than 2019.

> Amazon Prime Video ranked in second behind Netflix with 12.6% while Hulu followed with 6.3%.

> Looking at new entrants, Apple TV+ established 3.9% of global demand share for digital originals while HBO Max and Disney+ followed close behind at 3.6% each.

(Source: [Parrot Analytics](#))

**Quotable**

*"It's not Netflix that necessarily should be scared by Disney's prominence. It's all of the other streaming companies. Right now, with Paramount+ coming in a few weeks ago, now every single major media company is in the streaming business. And right now, we're all sampling. But I promise you there is going to be a musical chairs moment and there's not going to be chairs for everybody. And I think what consumers are going to do is have their Marie Kondo moment where they really ask themselves, is this service bringing me joy? And if it's not, they're going to dump it. And I certainly think that Netflix and Disney are both going to be left standing, and I wonder who else will be joining them."*

- Netflix co-founder Marc Randolph on Fox Business Network's "Varney & Co."



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