

Cablefax Daily™

WHAT THE INDUSTRY READS FIRST

Back and Forth: Nexstar Accuses Comcast of Holding Out on Retrans

Nexstar is firing back at **Comcast** after the MVPD asked the **FCC** to rule that the broadcaster is in violation of the national audience cap. In a complaint filed in the Supreme Court of the State of New York, Nexstar claimed Comcast is refusing to pay millions in retransmission consent fees for NYC station **WPIX**. It is seeking the award of its losses, liabilities, costs and expenses incurred as part of the proceeding, including attorneys' fees.

As part of Nexstar's \$4.1 billion acquisition of **Tribune**, it was required by the FCC to divest certain stations, including WPIX. When Nexstar and Comcast entered into a retrans consent agreement on Jan 1, 2020, WPIX was owned by **Scripps**. The NY station was then sold to **Mission Broadcasting** on Dec 30, 2020, with Nexstar entering into a local marketing agreement to offer programming to the station.

Nexstar claims that there was a provision in its Comcast retrans agreement that would allow it to contract with third-party stations to provide local programming and marketing. As a result, such stations would then be grandfathered into Nexstar's existing retrans deal with Comcast as an "additional station." Nexstar would handle the management of stations under that provision, including the negotiation of retrans fees. That is the situation Nexstar now says applies to WPIX.

"Nexstar initially notified Comcast on December 24, 2020, that WPIX would become an 'Additional Station' under the Comcast-Nexstar Agreement, and that Comcast would need

to begin paying at the contracted rates by January 1, 2021. Comcast did not do so and, on April 8, 2021, Nexstar followed up with a second letter informing Comcast that it was in breach of the Comcast-Nexstar Agreement, and requesting that Comcast cure the breach," the complaint said.

The broadcaster goes on to claim that Comcast repeatedly refused to pay Nexstar for WPIX. "In a series of letters spanning April through July 2021, Comcast stated that it would not comply with its obligations under the Comcast-Nexstar Agreement, and confirmed that it had not been (and would not be) paying the fees required under that agreement for WPIX," Nexstar said. "Even more shocking, when Nexstar reached out to Comcast to request that it pay the contractual fees, Comcast refused to negotiate and instead blindsided Nexstar by filing a post-hoc petition with the FCC, demanding that the agency reverse its prior approval of the WPIX LMA in order to nullify Comcast's contractual promises."

Comcast maintains that it has a separate retransmission consent agreement for WPIX with Mission Broadcasting, meaning it would pay twice for the station if it gave Nexstar what it wanted.

"The complaint filed by Nexstar is just an attempt to distract from the important issues that we have brought to the FCC's attention, including that Nexstar's control and influence of WPIX violates the national ownership cap and the FCC's merger conditions on its acquisition of Tribune Media," Comcast said in a statement.

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ALL IN ON O-RAN

DISH evp/chief commercial officer *Stephen Bye* was all smiles during a fireside chat Wednesday at the **FCC's** Open RAN Solutions Showcase, saying the company is well on its way to meeting its first wireless network deployment commitment from the agency: to serve 20% of the population by mid-2022. "We have not made too many public statements about the timing of when markets are coming on, but we have activity going underway nationwide right now—site acquisition, site development, getting sites deployed. We have radios coming. There's a whole pipeline of activity and a lot of that time is needed because it takes time to build networks," Bye said. "We are making terrific progress on the deployment... and it is an awful lot of fun, I can tell you that. It is fun to see the sites come on air." He added that there haven't been any unexpected challenges to DISH's buildout, just those you would usually account for when building and deploying a network. And while the road to meeting that first FCC deadline hasn't been easy, being able to focus solely on the newest technologies has eliminated a lot of the stress Bye has had when upgrading networks in prior roles. "The beauty of what we are doing is we are not bringing 3G and 4G along with us. We are really starting as 5G native... I used to work at traditional legacy carriers and you are always fighting that legacy. And you want to embrace the next step or next generation of technology, but you are having to sort of drag everything with you as you go," he said. It's that forward-looking approach that will also allow DISH's network to easily move forward to 6G, when the time comes. "Unfortunately,

you are still fighting physics with propagation, but I think that our architecture is spectrum flexible. As new bands become available and how we tie and stitch them together in our architecture is not that big of a lift," Bye said.

FCC SUPPORTING MORE 5G, ORAN INNOVATION

FCC acting chair *Jessica Rosenworcel* proposed Wednesday that Raleigh, North Carolina, and Boston be established as innovation zones for advanced wireless communications and network innovation. New York City and Salt Lake City have already received these designations, which ultimately help spur the development of 5G network technologies and open radio access networks. The public notice, if adopted, would also modify the New York City innovation zone to cover the three Columbia University and City College of New York campus areas. It will be voted on during the Commission's August open meeting.

ESPN REAFFIRMS DEI COMMITMENT

After last week's *New York Times* story detailing a leaked video of **ESPN** host *Rachel Nichols* suggesting "NBA Countdown" host *Maria Taylor* was chosen to host the NBA Finals because she was Black, chief *Jimmy Pitaro* sent a memo to staffers reaffirming the company's commitment to diversity, equity and inclusion. The memo summarized outcomes from last year's launch of the Black Employee and Consumer Experience initiative, designed to improve the experiences of Black employees at ESPN. He also assured staffers Taylor was selected to host the finals based on her merit. "Before I get into details, I do want to be clear on one thing: Maria Taylor was selected as NBA Countdown host last year because she

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DEADLINE: Friday, July 16

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earned it. Please know our commitment is that assignments and opportunities at ESPN are based on merit and any concerns, remarks or inferences that suggest otherwise have been and will continue to be addressed,” Pitaro wrote. His missive included data that shows that of the company’s 116 talent offers accepted year-to-date, 52% are people of color and 42% are female while 63% of ESPN’s executive leadership team are women and/or people of color. The company also began an “Inclusion & Belonging @ESPN” training in fall 2020, which has seen nearly 96% of people leaders and nearly 40% of individual contributors complete it. Meanwhile, ESPN’s PULSE employee resource group, which focuses on recruiting, mentoring, promoting and retaining Black employees across the company, saw nearly 200 new members join in the past year, growing it to 40% YOY.

CSG ACQUIRES KITEWHEEL

CSG acquired customer engagement solution **Kitewheel**. The deal builds on a partnership between the two companies that began in 2018. The pair hope to bring together CSG’s digital customer engagement technologies and Kitewheel’s journey orchestration expertise to build better customer experiences. The result is expected to be a real-time interaction management platform. The deal unlocks a \$10 billion global market growth opportunity for CSG in customer experience management.

AMG BUYS WRJT-TV

Byron Allen is continuing to grow his broadcast portfolio. **Gray Television** has reached a deal to divest **WJRT-TV** (ABC) in Flint-Saginaw, Michigan, to **Allen Media Group** for \$70 million in cash. The sale comes as Gray is waiting on regulatory approvals for its acquisition of **Meredith’s** Local Media Group division. Flint-Saginaw was the only market in which there was a market overlap between the television station portfolios of Gray and Meredith. The sale is expected to close in the third or fourth quarter, prior to the closing of the Gray/Meredith deal.

VERIZON, VIZIO, NIELSEN TEAM ON AD TECH

Verizon Media, **Nielsen** and **VIZIO** announced the launch of ad tech solution Unified TV Report Wednesday. The tool offers advertisers a number of analytics capabilities, such as the incremental reach achieved by CTV and other digital media through Verizon Media compared to their linear TV buy. Other data points include frequency across linear and digital and gross rating point and cost per household metrics. Verizon Media’s ConnectID will also be combined with VIZIO and Nielsen data to offer cross-platform analysis. Over one dozen advertisers beta tested the solution and the report says CTV advertisers have seen double-digit incremental reach versus linear TV in the last 30 days.

NEXTGEN TV EXPANDS IN PHOENIX

Another 11 Phoenix broadcast stations have adopted ATSC 3.0. Stations that have made the signal upgrade include **KASW** (CW), **KNXV** (ABC), **KSAZ** (FOX), **KUTP** (Fox10 Xtra), **KPHO** (CBS),

KTVK (Independent), **KTAZ** (Telemundo), **KAET** (PBS), **KPNX** (NBC), **KFPH-CD** (UniMas) and **KTVW** (Univision).

FOX, TiVO CONTINUE LICENSING AGREEMENT

Fox and **TiVo** have agreed to a long-term renewal and expansion of their existing patent license deal. Under the partnership, Fox will continue to have access to TiVo’s patent portfolios.

RATINGS

Hallmark Channel’s 2021 “Christmas in July” programming event brought the network to No 1 most-watched during weekend total day among households and W18+ in **Nielsen** L+SD ratings. Its Saturday night premiere of “Crashing Through the Snow” averaged 2 million total viewers, 1.7 million households and 216,000 W25-54, making it the No 1 most-watched entertainment cable program of the week among households and W18+.

PROGRAMMING

Telemundo and **Billboard** announced the 2021 Billboard Latin Music Awards will be held on Sept 23, starting with a one-hour red carpet special at 7pm ET. The awards show will broadcast live on Telemundo with a simulcast on **Universo** and **Telemundo Internacional**. – **Tennis Channel** will be the exclusive home of the entire U.S. Open Series. From now through Aug 28, Tennis Channel and **Tennis Channel Plus** will be the only places to view live and on-demand U.S. Open action. The network will deliver 270 hours of live matches, with at least 30 hours each tournament. An additional 365 hours of encore matches will air on the network throughout the summer. – **NBC Sports** will deliver more than 25 hours of live studio coverage on Golf Central Live from the Open for the 149th Open Championship. Coverage began Wednesday at 9am ET on **Golf Channel** and viewers can also stream coverage via the NBC Sports website or app. – A new season of “The Challenge: Spies, Lies and Allies” premieres Aug 11 at 8pm on **MTV**. The net’s “Cribs” also returns Aug 11 at 9:30pm. – **Comedy Central** is launching “The Daily Show with Trevor Noah” podcast series “Beyond the Scenes,” dropping weekly starting July 20. – Season Two of “The Other Two” launches on **HBO Max** with two episodes Aug 26. Each week, two new episodes will drop through Sept 23. The show originally aired on **Comedy Central**, but debuted as a Max Original in April. – Australian drama series “Wakefield” premieres in the U.S. Oct 18 at 9pm on **Showtime**. – **Epix** renewed dramedy series “Bridge and Tunnel” for a second season.

PEOPLE

Fox Marketing exec *Darren Shillace* is undergoing a role expansion to include marketing oversight for streamer **Tubi**. His new title is president, marketing, **Fox Entertainment**. – Influencer marketing platform **CreatorIQ** hired industry veteran *Bethany Ellis* as chief people officer. Before joining CreatorIQ, Ellis held similar roles at **Fandango**, **Comcast**, **NBCU** and **Boingo Wireless**.

Think about that for a minute...

Learn From History

Commentary by Steve Effros

It's often been said that history is written by the victors. We are certainly witnessing that these days as the battle rages over the statues of alleged Civil War "heroes" who were actually secessionists and "critical race theory" which attempts, among other things, to clarify and finally teach the historical accuracy of the long-term impact of hundreds of years of discrimination.

It turns out that very concerted efforts by various individuals and groups over many years resulted in "history" that has little to do with what actually happened. Why mention all this? Because the same thing happens all the time in the creation of new rules and laws. A much narrower, and probably less significant issue than the broad stroke histories being battled about on the national stage, but from the point of view of the telecommunications industry, however, the making of this history is going to be extremely important.

We have reached a "critical mass" point in the perception and regulation of our industry. Some argued years ago that cable should be considered a utility and regulated as a common carrier, like the railroads or telephone. That effort failed. The rejoinder was that cable was designed as a television delivery mechanism, and subsequently a creator of video programming, be it entertainment, news or whatever. That this was simply not the province of government, that competitive private enterprise was the best way to see it flourish.

I think that decision was correct. We did flourish, and the public got all sorts of new access and programming as a result. But things have now changed. Our technology enabled broadband, and broadband fostered the Internet and mass use of data. That looks a lot more like a utility, and that's where the argument has gone today. All of the debate about access, transparency, monitoring, privacy, editorial control and the like are now front and center. History is about to be made.

While there is a lot of talk about all those issues, the underlying battle is actually over (who could have guessed) money. How much should this product or utility or essential service cost? The problem is that no one can really even define what this "service"

is, or how it can be separated from the other integrated parts of the business that spawned it. This is where competing efforts at history writing will come into play.

Could "broadband" service have flourished if it had not been historically subsidized by cable television? Did "community antennas" with wires run to every home inevitably become the data network we have today, or did very creative entrepreneurs taking private financial risks and engineers see and foster that development? If broadband would not have existed without the spur of consumer acceptance and desire for CNN, ESPN, Discovery, C-SPAN and the like, then what "value" can you possibly ascribe to a "separated" stand-alone "broadband" service? Could it have originally "stood alone"?

I know this seems very murky right now. But trust me, we are about to engage in hot debate regarding rate regulation of broadband, with demands, again, for "net neutrality" and for "transparency" in billing, when in fact depending on your historical perspective you could assign values in vastly different ways to the various components of the infrastructure that has now developed. He who convinces the history writers of how and why those developments took place is going to control the next chapter in our development.

We've been here before. In the early '70s the issue was federal control of cable. In the '80s and '90s it was how to regulate that new medium. Now we are at the cusp of ultimately being considered a utility, or at least a part of our business is. How that "baby" gets split up is going to make history.



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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