

# Cablefax Daily™

WHAT THE INDUSTRY READS FIRST

## Locast Limbo: Broadcasters Look to Push Trial to 2022

The battle over free, broadcast streaming app **Locast** continues—and may be delayed. **ABC, CBS, FOX** and **NBC** have asked the federal court hearing their copyright infringement suit against the service to delay the trial to 2022. But defendants **Sports Fans Coalition NY** and *David Goodfriend*, which operate Locast, are fighting a postponement.

The parties previously requested that the case remain eligible for a trial in the first three weeks of November 2021. This week, the broadcasters asked the court to set a 2022 trial date, noting that the case isn't among the currently scheduled 16 jury trials for the first two weeks of November (10 of those trials are criminal). Courts have a backlog of cases due to the pandemic.

"Plaintiffs have every interest in getting to trial and securing a judgment as quickly as possible, as Defendants continue to launch their service in more locations, but Plaintiffs are aware that the Court is unavailable in December, and a trial date in January would be challenging for counsel and witnesses, many of whom are planning to be with their families for the holidays during December, rather than preparing for trial," said the motion for delay. "Thus, for the aforementioned reasons, we request that, to the extent it is convenient for the Court, the trial date be set for early February 2022."

Counsel representing Sports Fan Coalition NY and Goodfriend responded Tuesday, telling the court that there's no guarantee

a February trial date would not be bumped into the future, creating even more delays. "Plaintiffs do not provide any indication that all trials that will be scheduled for November by the centralized calendaring system have been scheduled at this point—and it is our understanding from the clerk's office that more trials may be scheduled for that time frame going forward," they wrote. "If summary judgment is not granted, and a trial is needed, it should be held at the earliest possible time."

Locast's representatives said that if it's determined in September that there's no likelihood of a scheduled trial in December, defendants would support a joint request to schedule a trial as early as practical in 2022. "Plaintiffs' final argument for delaying trial by an additional three months is that they believe that it would be more convenient for their witnesses if they could have some certainty in their schedules, and Plaintiffs' attorneys would prefer not to spend time now doing the work to prepare for trial. Plaintiffs seem to forget, though, that they were the ones who brought this litigation," Locast's attorneys wrote.

The broadcasters filed their copyright infringement suit in July 2019, with Locast complaining that they waited a year and a half after Sports Fan Coalition launched the service before taking any action. With the lawsuit pending, Locast has continued to launch in new markets, adding Milwaukee as its 36th market late last month. The service delivers local TV channels via the internet for free to users, though it does solicit \$5 monthly donations. Interruptions appear every 15

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minutes requesting a donation, though Locast has launched a program called Locast Cares for those who can't afford to making a donation. It recently expanded its availability to 50,000 accounts from 25,000.

Locast argues that it is legal because it's a nonprofit digital translator service that fits under US Copyright law, which allows nonprofits to retransmit broadcasters' signals. Broadcasters contend the service is a thinly veiled nonprofit in violation of the Copyright Act and operating for the benefit of MVPDs such as **AT&T** and **DISH**.

**COMCAST, VIACOMCBS COLLAB ON SKYSHOWTIME**

The relationship between **Comcast** and **ViacomCBS** got a little bit deeper Wednesday, thanks to a partnership that will bring a new streaming service to more than 20 European territories next year. The service, dubbed **SkyShowtime**, will bring together the portfolios of **NBCU**, **Sky** and ViacomCBS and will also include titles from **Peacock** and **Paramount+**. The partnership will be structured as a joint venture with equal investment and joint control by ViacomCBS and Comcast. When all is said and done, the service will be available to consumers in Albania, Andorra, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Denmark, Finland, Hungary, Kosovo, Montenegro, Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain and Sweden. That footprint has no overlap with the one announced for ViacomCBS's previously-announced collaboration with Sky that will bring Paramount+ to the UK, Italy, Germany and more. Further details on the offering and its pricing are coming at a later date.

**NEARLY 50MLN AFFECTED BY T-MOBILE BREACH**

**T-Mobile** has more clarity on the impacts of a cyberattack on its network, with a preliminary analysis revealing that approximately 7.8 million current postpaid customer accounts' information was included in the stolen files. Additionally, more than 40 million records of former or prospective customers who had previously applied for credit with T-Mobile were stolen by the hacker. No phone numbers, account numbers, PINs, passwords or financial information from those user bases were compromised. At this time, the provider is also aware that approximately 850,000 active T-Mobile prepaid customer names, phone numbers and account PINS were exposed. No **Metro by T-Mobile**, former **Sprint** prepaid or **Boost Mobile** customers had their names or PINS exposed. T-Mobile is offering all individuals who may be at risk from the cyberattack two years of free identity protection services from McAfee's ID Theft Protection service. While **New Street Research** is sure there will be some negative backlash and potential fines aimed at T-Mobile as a result of the breach, it no longer thinks the situation is as dire as initial reports made it out to be. "On the announcement of the news, the stock dropped \$4/sh., giving up \$5.3B of market cap, which likely reflected the sum of expectations for a fine and the loss of value associated with increased unwillingness among consumers to become T-Mobile customers as a result of leak," the firm said. "If the fine was expected to be \$700MM when the number of customers affected wasn't known, the loss of \$5.3B in value seems to imply that T-Mobile will have 1-2MM fewer customers as a result of the reputational damage inflicted by the breach. This

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strikes us as extreme.”

### CABLE NOT JUMPING AT 3.45GHZ

We finally have a better idea of who is in (and who is out) for the FCC's 3.45GHz auction scheduled to kick off on Oct 5. **AT&T, T-Mobile** and **DISH** are all among the 26 applicants with completed applications for the auction, which will offer flexible use licenses in the 3.45-3.55GHz band. **Verizon** is among the 16 applicants that have submitted incomplete short-form applications. It must rectify any problems and re-submit its application by Sept 2 to be a qualified bidder. Notably missing from the participant lists are cable operators like **Comcast, Charter** or **Cox** that actively participated in last year's CBRS spectrum auction.

### EVENT CHANGES DUE TO DELTA VARIANT

The **NAB Show** joined **CES** in announcing that attendees must show proof of vaccination. The gathering is scheduled for October 9-13 in Vegas, overlapping with **SCTE's Cable-Tec Expo** in Atlanta, October 11-14. Expo is encouraging vaccination, but not requiring it at this time, though organizers continue to monitor the situation. – **The Alliance for Women in Media Foundation** decided to move the 46th annual Gracie Awards Gala, scheduled for Sept 27 at the Beverly Wilshire Hotel in LA, to a virtual experience. Details of the air date and streaming are being finalized.

### TBS NABS AUDIO DESCRIPTION WAIVER

The FCC's Media Bureau granted a limited waiver for **TBS** of the Commission's audio description rules for the top five non-broadcast networks. In any quarter in which TBS cannot meet the hours of content with audio description established in the Commission's rules, it will be subject to an alternative minimum audio description requirement that it airs at least 1,000 hours of audio described programming each quarter without regard to the number of repeats. TBS will also have to audio describe all newly produced, non-live programming aired between 6am and 11:59pm local time within three business days of its receipt from a production company. **WarnerMedia** will provide audio description for 100% of its newly produced, non-live programming on **TNT** and **truTV** aired between those times within three days of receipt.

### 2Q21 BROADBAND ADDS SLIP, BUT STILL STRONG

The largest cable and wireline phone providers in the U.S. (representing about 96% of the market) saw approximately 890,000 net broadband adds in 2Q21, down from a pro forma gain of about 1.26 million subscribers in 2Q20, according to an analysis by **Leichtman Research Group**. That's hardly surprising given the boom broadband saw during the early days of the COVID-19 pandemic. And with the exception of the unusual 2Q20 period, net broadband additions for 2Q21 were the most in any second quarter in the past decade, according to Leichtman. The top broadband providers account for approximately 107.4 million subscribers, with 74.7 million of those subs cable customers and the remaining 32.7 million belonging to wireline phone companies. **Charter** led net gains among cable operators, with 400,000 adds in 2Q21. **Verizon**

led wireline operators with 70,000 adds. Every cable operator followed by Leichtman posted quarterly net gains, while a few wireline providers saw losses, including **CenturyLink** (-62,000) and **Frontier** (-22,000).

### JACKSON ENERGY CHOOSES NAGRA FOR IP VIDEO

**Jackson Energy Authority** of Jackson, Tennessee, is launching an IP-based video streaming service powered by NAGRA. The product, called "E+ Premier," uses **NAGRA's** OpenTV Video Platform and **Harmonic's** VOS360 cloud streaming solution.

### CARRIAGE

**Tennis Channel's** SVOD launches in the U.K. Thursday and AVOD **Tennis Channel International** will arrive on Samsung TV Plus in India Aug 25. The network's DTC streaming platform is also available in Austria, Germany, Greece and Switzerland.

### TCA NOTEBOOK

**National Geographic** continued the parade of panels for the **TCA** summer tour Wednesday with the announcement of the programmer's first-look deal with **Will Smith's Westbrook Studios**. The agreement will consist of the development of all unscripted adventure, exploration, travel and science projects for all of National Geographic's TV platforms and National Geographic-produced **Disney+** Originals. The deal comes ahead of Smith's National Geographic adventure series for Disney+, "Welcome to Earth," set to premiere later this year. – **Disney Branded Television** drummed up anticipation for its upcoming movie, "From the Desk of Zoe Washington," based on the book by the same name from Janae Marks. The company also hosted virtual panel, "The DCOM Craze," featuring actors on the brink of their Disney Channel Original Movie debut and stars from some of the most beloved DCOMs, along with vp, original movies for Disney Branded Television Lauren Kisilevsky. The conversation focused on the DCOM library and what makes the movies examples of inclusive, entertaining and multigenerational programming. – **AMC Networks** kept the TCA summer tour rolling Tuesday with the unveiling of more content for its streamers. **Shudder** docuseries "Behind the Monsters," launches Oct 26 and **ALLBLK** renewed "Terror Lake Drive" for a second season. All told, AMC Networks released premiere dates for 28 additional new and returning series across its linear nets and streamers.

### PROGRAMMING

**Telemundo Deportes** will deliver exclusive coverage of the FIFA Beach Soccer World Cup Russia starting Thursday with four matches on **Universo** starting at 7:30 am ET. All matches will air live on Universo and the final rounds will begin with the semifinals on Aug 28 at 10:50am ET and the final match on Aug 29 starting at 10:30am ET.

### PEOPLE

**Todd Koetje** is joining **Cable One** as svp, business development & finance, effective Sept 1. He comes from **Truist Securities**, where he served as managing director & group head of the technology, media & telecommunications leveraged finance team.

## Think about that for a minute...

### Micropayments

Commentary by Steve Effros

If there's one thing no one who knows him has any doubt about, it's that John Malone is a very smart and forward-looking guy. His success at TCI, Liberty and all his other ventures proves that again and again. But what has always impressed me the most is his vision of how technology is likely to develop. I was reminded of that the other day remembering a breakfast we had together many years ago when he started talking about micropayments.

Micropayments are intended to either substitute or supplement the regular payment mechanisms we use. Rather than a subscription fee or a generalized utility charge a micropayment envisions the specific payment for use of a specific good or service on an "as used" basis. In the case of broadband, we could be thinking of two different types of micropayments. One for the use of the delivery system, presumably from the seller (i.e. Netflix pays a very small amount each time one of its subscribers calls up a movie on the system) to the broadband supplier.

The other payment, and the one getting some new attention these days, would be from the seller, such as Netflix or a radio station, to the "talent" that performs whatever it is the subscriber has called up or tuned in to. I know this gets complicated to even explain, so let's stick with the radio station for the moment.

There are competing bills being proposed in Congress right now dealing with micropayments for radio's use of music, and specifically the "performance rights" issue. Right now the composer of the music gets paid through ASCAP and BMI agreements. But the performer generally does not. As you could guess, the two bills go in opposite directions. One says the radio stations should start to pay micropayments to the performers as well as the composers. The other says they shouldn't, since radio stations provide a "service" to the sellers of those performances by publicizing and popularizing them.

That last theory worked well when the objective of widely distributing was to attract folks to buy a record or cd. But that's not where we are today. So things are going to have to change with the times.

Now, back to John's idea with broadband. He recognized long ago that the use of the pipe was going to be integral to the distribution of entertainment (as well as other data). Some folks would use more, some less and while the aggregator, the seller, like Netflix, bought the rights for distribution (presumably covering both creators and performers) different users, the subscribers, would put vastly different stresses on the delivery system depending on how much they used it. So how do you compensate the infrastructure provider for this variation? The answer was micropayments.

There was a problem, however. Tracking all this in the early days of the internet was not a possibility. It was way too complicated to monitor who was using how much of what (remember, while one person may be using Netflix, another may be using Spotify, and the bandwidth demand would be significantly different as well).

Malone told me that this would ultimately be worked out with faster processing speeds, and he, for instance, was delaying new set top boxes back then because he wanted to use "486" chips instead of the then-current "386" variety. As I said, ahead of his time!

So we are now a long way from when we talked, and the technology is finally here to do what he was talking about. But there are other problems, for instance security and privacy. For micropayments to work you have to know who is watching what and how much and you have to track it and bill for it. That could get very messy! John didn't focus on that.

I suspect Congress will.



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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