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WHAT THE INDUSTRY READS FIRST

On Deck: Comcast Awaiting FCC Action on Nexstar Complaint

It's been four months since **Comcast** filed its **FCC** petition asking the agency to look at whether **Nexstar** is in violation of the 39% broadcast audience cap, and so far, it has been crickets.

The Commission hasn't acted on the request or sought comment on the issue, which boils down to Comcast arguing that Nexstar's sidecar agreement with **WPIX** owner **Mission Broadcasting** really means it controls the NYC station and thus is over the 39% ownership cap. In 2019, Nexstar was required to divest WPIX to stay under the cap following its \$4.1 billion acquisition of **Tribune**. It sold the station to **Scripps**, retaining a purchase option presumably in case the FCC increased the ownership cap. When it became clear the cap wasn't budging, it assigned its purchase option to Mission, which bought the station in December 2020. Sinclair's agreement with Mission allows its to program the station, sell ad time and receive 100% of station revenues, according to Comcast.

A full-five commissioner FCC may be what's needed to get the docket going on this given that the FCC is currently split with 2 Dems and 2 Republicans. And there are some signs Dems might be open to Comcast's argument. The FCC's current Democratic members, Acting Chair *Jessica Rosenworcel* and *Geoffrey Starks*, both objected to the FCC approval of the transaction in 2019. Rosenworcel, who Biden has nominated to serve as permanent chair of the FCC, noted the deal gave

Nexstar "unprecedented reach" and slammed the agency for not doing more to understand the consequences for localism, competition and diversity.

While the FCC has been mum on the complaint thus far, a lawsuit Nexstar filed in return against Comcast continues to make its way through a federal court. Nexstar claims Comcast has refused to pay millions in retrans fees for WPIX. Over the past few weeks, Comcast has argued in court filings that the breach of contract suit should be dismissed or stayed until the FCC acts. If the agency agrees with Comcast, the case disappears, the operator said.

Nexstar claims the FCC petition is irrelevant to its breach of contract claim. "Neither Comcast's motion nor its agency petition cites a single case, statute, regulation, or FCC decision suggesting that exceeding the ownership cap would deprive Nexstar of the right to negotiate for retransmission consent on behalf of other stations, or that the Ownership Cap Rules have anything to do with retransmission consent negotiation rights," Nexstar said. "In fact, exceeding the ownership cap simply means that an entity must reduce its station ownership within two years pursuant to a rule that is fixed by statute."

Comcast sees it differently, telling the US District Court for NY's Southern District last week that absent Commission guidance, "the Court cannot adjudicate Nexstar's claim without risking a ruling inconsistent with the FCC's or the remedies it may fashion in response to Comcast's first-filed petition."

Of course, this isn't the only MVPD-broadcast complaint



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awaiting FCC action. **DISH** filed a retransmission good faith complaint against **TEGNA** on Oct. 18. DISH lost 65 TEGNA stations in 53 markets nationwide on Oct. 6. Those stations remain off the satellite provider. TEGNA also has an ongoing retrans blackout with **Mediacom**, which has been without 16 TEGNA stations since Dec. 31.

CHARTER'S BROADBAND, MOBILE HAPPILY MARRIED

Charter continued the broadband slowdown trend, reporting 265,000 residential and SMB internet net adds in 3Q21. That's a 4.4% increase YOY, but down significantly from the 365,000 it added in 2Q21. While the slowdowns of both **Comcast** and Charter's broadband net adds has some investors questioning whether the industry's longtime boom is coming to an end, Charter Chairman/CEO *Tom Rutledge* reminded everyone on Friday's earnings call that every addition at a time of low move activity is incredibly valuable. At **Spectrum Mobile**, total residential and SMB mobile lines rose by 244,000. As of Sept 30, Charter served a total of 3.2 million mobile lines, with 1.1 million being added over the last 12 months. Approximately 2 million customers have taken advantage of Charter's bundling of its broadband and mobile services thus far, and the operator hopes to see that number keep growing. There's been talk of whether operators might one day offer households something of an all-in-one plan where they would pay a single price for broadband service in the home and their mobile service out of the home. Charter CFO *Chris Winfrey* acknowledged that it is an interesting concept, and convergence makes a lot of sense from a technical perspective. But right now, the business case isn't strong enough for someone like

Charter to pursue. "There are not that many markets where, from a marketing and sales machine, it's been fully proven out yet of how you combine that together when lines are often sold at a personal level and broadband subscription wireline is sold at a household level," he said. "But I think those types of models and taking a look at how to fully get convergence also from marketing and sales and solve the difference between per line versus per household is interesting."

COMCAST WANTS CLARIFICATION ON LIFT ZONE

Comcast is asking the **FCC's Wireline Competition Bureau** for clarification on how an order extending the pandemic-related waiver of the E-Rate gift rule through June 30, 2022, affects its Lift Zone initiative. In October, the Bureau extended its waiver of the FCC's gift rule applicable to the E-Rate program through June 30, 2022, in light of the ongoing pandemic. That also gave Comcast the greenlight to kick off a pilot program to expand its Lift Zone projects by providing seven library systems with free WiFi, but the operator wants greater clarity around what happens to those library locations should that waiver expire on June 30. Its contracts with Lift Zone location partners are generally for three-year deals, and Comcast argues that libraries' participation in the Lift Zone initiative is completely separate from those locations' participation in the E-Rate program. Therefore, it wants the Bureau to clarify that those Lift Zone locations may continue to operate subject to the waiver for a three-year period. "Lift Zones are located in specific rooms or areas on the premises of a library, community center, or other facility, so participation in the Lift Zone initiative does not convert an entire library into a Lift Zone. As a result, a library may need

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E-rate supported services (such as Internet access) for areas of the library outside of the Lift Zone,” Comcast said in an ex parte. “The requested waiver will allow Comcast to provide Internet access, educational content, and other goods and services for the Lift Zone without affecting the library’s (or Comcast’s) ability to participate in E-rate if it chooses to do so.”

JUENGER’S BACK

Bernstein analyst Todd Juenger returned from sabbatical Monday with a bang. He had plenty of questions about the pending merger of WarnerMedia and Discovery, calling the combination a “massive, complicated, daunting” task for management to complete and rationalize globally. “How do they intend to package their streaming services? They certainly cannot just bundle \$15-ARPU HBO Max and \$10-ARPU Discovery+ together,” he said in a note. “They are already a late entrant in streaming, with the highest existing US retail price point among streaming services.” Even with those considerations, it is too early to characterize this merger as a positive or negative for both sides, and he acknowledged that Discovery and WarnerMedia have a lot more information to go off of than Wall Street does. “The global streaming market is huge,” Juenger said. “There are a lot of assets Newco can bring to bear.”

NORTHERN (BROADBAND) EXPOSURE

GCI said more than 27,000 Alaskans in 17 communities have benefitted from its 2021 rural internet and wireless network projects. Six communities—Nikolai, Lime Village, Rampart, Central, Takotna, and Lake Minchumina— have terrestrial internet service for the first time, while 11 now have faster wireless service through LTE upgrades. The upgrades are part of “The Alaska Plan,” which was adopted by the FCC in 2016 to provide federal funds to Alaska’s telecommunications providers in order to augment investment in rural wireless and internet service upgrades. GCI and other Alaska providers receive a portion of Alaska Plan funding each year.

ANOTHER CABLE AMBASSADOR

President Biden on Friday announced his intent to nominate Marc Nathanson as US Ambassador to Norway. Nathanson is the Founder of Falcon Cable. He became Vice Chair of Charter, following its purchase of Falcon, and served on its board until 2008. He’s the second well-known cable exec to get an ambassador nod from the Commander in Chief, with former Comcast Senior EVP David Cohen nominated as Ambassador to Canada earlier this year. Last month, the Senate Foreign Relations Committee gave Cohen its approval, but he still needs a vote by the full Senate.

WOW! WRAPS SALES TO ASTOUND

WOW! completed the \$661 million sale of its Chicago; Evansville, Indiana; and Anne Arundel, Maryland, service areas to Radiate HoldCo, LLC. That’s a telecommunications holding company tied to RCN, Grande and Wave, collectively known as Astound Broadband. Combined with its previously completed sale of its Cleveland and Columbus, Ohio, service areas to Atlantic Broadband, WOW! generated gross proceeds of \$1.8 billion from the transactions. It intends to use the proceeds to significantly lower its debt and continue investing in its broadband product portfolio.

PEOPLE

Pamela Wolfe is joining Crown Media Family Networks to serve as its Chief People Officer, effective Nov 15. She’ll replace EVP, HR Gene Hawkins who is retiring after 22 years with Crown Media. Wolfe currently serves as principal and executive HR consultant at PMW Consulting, her own firm. She also spent time at Starz as the programmer’s EVP, HR. – CTAM’s board is getting new leadership. ViacomCBS EVP, U.S. Networks Distribution Marketing Deena Demasi will serve as chair while Comcast SVP, Growth Operations Jason Wicht has been named vice-chair. – Showtime upped Jessie Dicoivitsky to SVP, Original Programming. She’ll report to EVP, Scripted Programming Amy Israel and continue to be based in the company’s West Hollywood offices.

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