

Cablefax Daily™

WHAT THE INDUSTRY READS FIRST

He Said/She Said: DISH Claims TEGNA Violated Antitrust Laws

DISH dug in deeper this week to its bad faith complaint against **TEGNA** over retransmission consent negotiations, telling the **FCC** that the broadcaster failed to rebut the satellite provider's central claims in its attempt to defend itself.

TEGNA stations have been dark on DISH in 53 markets since Oct. 5, with the two unable to agree to terms for a carriage renewal. In mid-October, DISH filed a retransmission complaint at the FCC alleging that TEGNA violated rules regarding unilateral bargaining, failing to respond, and failing to set forth the parties' complete understanding as well as the FCC's totality of the circumstances test. TEGNA responded at the FCC earlier this month, filing a cross-complaint accusing DISH of obstructing negotiations and misrepresenting the process to the FCC and public.

A few weeks later, TEGNA filed its own good faith complaint against DISH, claiming the satellite provider violated the FCC's per se standards by refusing to negotiate retransmission consent with the intent of reaching a deal and by acting in a manner that unreasonably delays negotiations.

"Despite the hyperbolic language in TEGNA's substantively and procedurally defective answer and cross-complaint, the filing fails to specifically rebut the central claims of bad faith raised by DISH," the satellite provider told the FCC in a redacted filing Thursday.

With no sign of a deal on the horizon, this game of retrans-

mission could continue for a while. DISH claims TEGNA violated the per se good faith violations for retrans negotiations by demanding it pay for subs that don't buy local stations, tying other TEGNA affiliate stations to the four major networks by requiring DISH to purchase them and pay higher prices, refusing to set forth a complete agreement containing its proposals and refusing to answer basic questions.

"With respect to the all-or-nothing bundling demand, which TEGNA continues to insist on, [TEGNA] states that DISH objected to TEGNA's bundling demands too late. As a threshold matter, contrary to TEGNA's assertions, DISH did indeed object to TEGNA's requested terms for the unwanted stations early on in the negotiations. But, more fundamentally, TEGNA's assertion ignores that tying behavior violates the antitrust laws," DISH said in its filing. "This is true even when the victim coerced into buying the unwanted product at the extorted prices does not protest and is forced to succumb to the coercion."

The satellite provider goes on to say TEGNA doesn't assert that it has ever proposed an alternative to its bundling offer—compounding the conduct by making this offer an example of the broadcaster's take-it-or-leave-it bargaining. DISH also contends that TEGNA's answer to its complaint further backs up its claim of a failure to respond: "By its own admission, TEGNA waited until Nov. 1, 2021, after the screens of DISH customers went dark, to provide an 'itemized list summarizing its responses' to DISH's questions. In disregard of its good faith duties, TEGNA's pleading portrays this 13th (not even



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11th) hour response as a noble gesture.”

While there have been plenty of FCC retrans complaints filed over the years, most haven't been successful. AT&T's complaint against a group of broadcasters represented by **Max Retrans** (Duane Lammers) resulted last year in a forfeiture order of \$500,000 for each of the 18 stations involved. That was the first time (and so far only time) the FCC has ever issued a forfeiture order for a failure to negotiate retrans in good faith.

DISH's blackout with TEGNA might feel lengthy, but **Media-com** has it beat. The operator has been without TEGNA stations, including WOI ABC and KCWI CW (Des Moines) and WZDX FOX/My Network TV (Huntsville, AL), since late December.

HOUSE PASSES BUILD BACK BETTER

The House voted 220-213 to pass the \$1.9 trillion Build Back Better Act Friday, a reconciliation package that includes a number of social safety net and climate provisions. “Today, the House passed once-in-a-generation legislation that invests in the American people, responds to the great challenges of our time, and builds a better future for generations to come,” Rep *Frank Pallone* (D-NJ) said in a statement. The bill also allocates a meaningful chunk of change to broadband as well, albeit not quite to the scale that the infrastructure bill signed into law this week. One of the provisions would see the **FCC** receive an additional \$300 million for the Emergency Connectivity Fund, which supports schools and libraries offering devices and broadband connections to their students and patrons. Some \$295 million would also be given to the **NTIA** for grants to cover public-private partnerships for projects that would increase access to affordable broadband

service in urban communities through long-term solutions. All that and more is subject to change once the bill reaches the Senate. A number of Democrats have already expressed their desire for changes to the Build Back Better Act, and Sens *Joe Manchin* (D-WV) and *Kyrsten Sinema* (D-AZ) have yet to express their support for it.

DISNEY BUNDLES AGAIN, NOW WITH HULU + LIVE TV

Disney debuted a new bundle Friday with **Hulu + Live TV** at the center. Starting Dec 21, subscribers to the vMVPD service will receive access to **Disney+** and **ESPN+** for an extra \$5/month. That would put pricing for the ad-supported tier of Hulu + Live TV at \$69.99/month and Hulu (No Ads) + Live TV at \$75.99/month. The news comes after a disappointing 4Q21 for Disney+, which only added 2 million subscribers in the period. Its total subscriber count sat at 118 million at the end of September.

SPECTRUM ENTERPRISE SAYS 'BE UNREASONABLE'

Spectrum Enterprise has a new message for its customers: “Be Unreasonable.” The new brand identity is designed to communicate to the company's employees and clients that any ask is fair game, even if it is somewhat complex or unique. “Spectrum Enterprise has a deep commitment to our clients' goals, no matter how ‘unreasonable’ they might seem,” Spectrum Enterprise EVP & President *Bill Archer* said in a statement. **Charter** has also kicked off a marketing campaign with the new tagline that includes digital banners, video, paid social and search, cross-channel TV and media on publisher partner websites. The Spectrum Enterprise logo, color palette and typography will remain the same.

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QUESTIONS: Mary-Lou French at mfrench@accessintel.com

NOKIA, BELL CANADA TEST 25G

Nokia and **Bell Canada** revealed they completed the first successful test of 25G PON fiber broadband technology in North America this week. The test was performed at Bell's Advanced Technical Lab in Montreal, Quebec, and seems to confirm that current GPON and XGS-PON technology can work together seamlessly with 25G PON on the same fiber hardware.

NEWSON ADDS NEWS 12

Free local news streamer **NewsON** announced **Altice USA's News 12 New York** as its latest partner. The 24-hour digital news network will now be available across all NewsON-supported platforms including Roku, Amazon Fire TV, Apple TV, iOS and Android. With the addition of News 12 New York, NewsON now offers news content from 16 local television station ownership groups and 294 TV stations.

SLING INTRODUCES MX ONE

Sling TV added Indian streaming service **MX ONE** to its lineup. The streamer offers more than 650 hours of TV shows and web originals in languages including Hindi, Tamil, Telugu and Marathi. It will be available with the Desi Binge package, which also includes **SonyLIV** and **Voot**, for \$10/month. Customers may also purchase MX ONE as a standalone service for \$5/month.

PROGRAMMING

HBO Max competition series "Finding Magic Mike" debuts on Dec 16. – **Discovery** greenlit second seasons of anthology series "The Haunted Museum" and "Eli Roth Presents: A Ghost Ruined My Life." Both will debut next year on **discovery+**. – **truTV's** "Fast Foodies" is returning for a second season on Jan 27, 2022 at 10pm. The series features celebrity guests and a panel of chefs trying to recreate that person's favorite fast food dish.

PEOPLE

Michael Balmoris is bidding **AT&T** adieu. The longtime public affairs specialist is setting out on his own and will be launching his own public affairs and PR consultancy firm. Keep your eyes peeled for action from the **Balmoris Group** in 2022.

CABLEFAX DASHBOARD

Twitter Hits

MTV @MTV
Fully prepared for this new @Adele album to absolutely wreck me in the best way possible... so before we dive in, let's celebrate with a look back at all of her album eras.

- ★ '19' (2008)
- ★ '21' (2011)
- ★ '25' (2015)
- ★ '30' (2021)

Grant Wahl @GrantWahl
If you had told me 15 years ago that US TV companies would be spending this many billions of dollars on soccer in 2021, I would have started laughing maniacally until I had to be resuscitated.

3:33 PM · Nov 18, 2021 · Twitter for iPhone

Jim Maiella @jimmaiella
@JimMiller Just pre-ordered the book. Thought you would appreciate this, my family's introduction to @HBO, courtesy of a Cablevision salesman walking through our Long Island neighborhood in late 1975. I was able to convince my initially reluctant parents to subscribe.

Research

(Source: Kagan, the TMT research unit of S&P Global Market Intelligence)

- Traditional cable, telco and satellite video losses rose sequentially and year over year to nearly 1.7 million.
- In the meantime, virtual subscriptions increased by almost 1.4 million.
- Estimated traditional residential multichannel subscriptions slipped below 68.6 million, accounting for less than 53% of occupied households.
- The combined virtual and traditional multichannel households accounted for less than 64% of occupied households at 83.2 million residential subscriptions.

Up Ahead

- DECEMBER 7:** [Cablefax Most Powerful Women Celebration](#), NYC
- JANUARY 11-14:** [CES 2022](#), Las Vegas
- JANUARY 18-20:** [NATPE Miami](#)
- JANUARY 25-28:** [RealScreen Summit 2022](#), Austin
- FEBRUARY 13-16:** [NTCA Rural Telecom Industry Meeting + Expo](#), Dallas

Quotable

"The NHL was a great property. We had a wonderful run with them, and we certainly wish them well. Premier League does a lot of other things for us. The number of games, the number of fixtures and exposures and windows become very important, but I think that our strategy has been from day one, and it's something that we've been very consistent about, is that we are the network of the Premier League. We are not the network of soccer."

– **NBC Sports Programming President Jon Miller on the company's more than \$2 billion U.S. rights deal for the English Premier League**