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WHAT THE INDUSTRY READS FIRST

Franchise Friction: Courts Debate Whether Streamers Are Video Providers

Amazon, DISH, NBCU's and others are asking a court to dismiss a complaint from the City of East St. Louis that claims the streamers must compensate Illinois municipalities because they're using public rights-of-way to transmit their programming.

It's just one of many cases testing the waters on whether streamers can be classified as video providers. It's a potentially expensive question since local governments charge video service providers an annual fee for compensation for using public property. A growing number of cities are claiming that the streamers transmit their programming through wireline facilities located at least in part on public rights-of-way, thus they should pay their share of franchise fees.

The East St. Louis suit was originally filed in June. The defendants, which also include **Apple, HBO, Netflix, Hulu, CBS, YouTube, DirecTV, Disney Streaming** and **CuriosityStream**, sought to have it dismissed. Instead, the city filed an amended complaint in late December. Last week, the streamers issued their newest objections, claiming the city failed to state a claim.

East St. Louis argues that it's owed franchise fees under the Cable and Video Competition Law of 2007, which streamers balk at because they do not hold state-issued franchises and say they don't conduct business in the state that even qualifies them for one. "The franchise mandate is expressly limited to video service providers that must install or construct

facilities in the public rights-of-way," Disney and Hulu wrote in their motion to dismiss.

"Nowhere in the Amended Complaint does Plaintiff allege that DISH constructs or operates any ducts, poles, cables, equipment or anything else above, on or under any public right of way within Plaintiff's boundaries. Without this allegation, the Amended Complaint fails to state a claim," said DISH, which the city sued for franchise fees related to **Sling TV**.

It's a guessing game figuring out which way all these lawsuits will go. The U.S. Court of Appeals for the Eight Circuit is considering whether an Arkansas district court erred in granting Netflix and Hulu's motion to dismiss a similar case filed by the City of Ashdown.

The streamers were delivered a setback last month in Indiana, with the Indiana Commercial Court denying their motion to dismiss a suit brought by the cities of Fisher, Indianapolis, Evansville and Valparaiso. "Plaintiffs have provided a sufficient showing that determining whether Defendants are subject to the [Video Services Franchise Act] and whether they must pay franchise fees to Plaintiffs present issues that can be resolved by the Court via declaratory relief," the court said. Similar cases are pending in Tennessee Supreme Court and in Missouri Circuit Court, and there are likely others.

Netflix and Hulu scored a big win in September when a U.S. District Court in Nevada ruled in their favor after the City of Reno tried to declare them video providers. In her opinion, Judge *Miranda Mu* wrote that the city's argument that the streamers'

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Deadline: June 3
Final Deadline: June 10

Most Powerful Women Nominations

Deadline: August 12
Final Deadline: August 19

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Questions: Kate Schaeffer at kschaeffer@accessintel.com

“video content is the ‘entire’ and not ‘part of’ the services provided, and therefore not excluded, does not persuade the Court to agree that Defendants are video service providers.”

Reno tried to argue that paying a fee for a service delivered via the internet rendered the internet not public. But Mu agreed with a Netflix analogy that public parks are for the use and benefit of all, and requiring an individual to pay an entrance fee for park access does not make it less public. Netflix and Hulu scored a victory in Texas as well, with a federal judge ruling that New Boston can’t collect franchise fees from their use of public broadband wireline facilities to deliver their video offerings.

Other cases include a 2018 suit filed by Netflix against the Arizona Department of Revenue to challenge the state’s attempt to tax the online streaming service. In December, a notice of settlement was submitted to the tax court, with the case placed on the dismissal calendar last month.

ADVOCATES CALL FOR CANTWELL’S REMOVAL

Each day seems to bring more drama when it comes to *Gigi Sohn*’s nomination to the **FCC**. Net neutrality advocacy group **Fight for the Future** wants Sen. *Maria Cantwell* (D-WA) removed as chair of **Senate Commerce**, claiming she’s repeatedly “caved” to opposition from Republicans and lobbyists which has resulted in “inexcusable delays” in Sohn’s confirmation. “Additionally, her role in securing an unjustified recusal from Ms. Sohn sets a dangerous precedent for *President Biden*’s nominees across the government,” wrote group director *Evan Greer* in a letter to Senate Majority Leader *Chuck Schumer*. Senate Commerce will hold a second hearing on Sohn’s nomination next week—something Ranking Member *Roger Wicker* (R-MS)

has asked for. The hearing was announced the day after Sohn’s nomination was pulled from a committee markup because Dems lost the needed vote of Sen. *Ben Ray Lujan* (D-NM). “Holding a second hearing for *Gigi Sohn* is utterly unrelated to Sen. Lujan’s unfortunate health news. The timeline suggests Cantwell was considering this even before that,” Greer wrote on **Twitter**.

NBCU SMASHES SUPER BOWL AD NUMBERS

The numbers are in, and **NBCU** has sold out of every in-game unit across **NBC**, **Telemundo** and digital platforms like **Peacock** for Super Bowl LVI. A limited number of pre-game spots are remaining. The Feb. 13 showdown between the Cincinnati Bengals and the Los Angeles Rams will set a new unit rate average record for a Super Bowl with multiple 30-second spots having been sold for \$7 million. All in-game advertisers will also run on Telemundo’s Super Bowl telecast and NBC Sports streaming assets. More than 30 new advertisers are taking part in this year’s Super Bowl from last year’s game, making up 40% of the match’s total advertisers.

DISCOVERY PURSUES EUROPEAN SPORTS JV

Discovery isn’t twiddling its thumbs waiting for its merger with **WarnerMedia** to get approved. It has entered into exclusive discussions with **BT Group** to create a sports jv in the UK by combining **BT Sport** in Ireland and the **Eurosport** business within the UK. The venture would bring together the portfolios of BT Sports and Eurosport UK, which include the sports rights to the Olympics in the region, the Premier League, UEFA Champions League, Premiership Rugby and tennis Grand Slams. Their hope is that the jv will be fully operational within the year, but the deal is still pending regulatory approval.

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AMAZON PRIME TO SEE HIGHER PRICE TAG

Sports media rights are expensive. Just ask **Amazon** Prime subscribers, who will see their annual subscription rate increase to \$139 from \$119 in the coming weeks. Those who subscribe on a month-to-month basis will see their price jump from \$12.99 to \$14.99. The new rates go into effect Feb. 18 for new customers. Existing subs will see the rate hike on the date of their next renewal after March 25. To be fair, Amazon didn't fully blame the increase on the cost of its upcoming exclusive **NFL** Thursday night package, citing "the continued expansion" of Prime benefits as well as the rise in wages and transportation costs. Amazon last raised Prime's price in 2018.

S&P UPGRADES MEDIACOM

S&P upgraded **Mediacom** to "BBB+," noting it has reduced its debt-to-EBITDA metric to 1.4x as of the end of September 2021. That's below S&P's upgrade trigger of 2.5x. It put a "stable" outlook on the company, citing predictable earnings growth and cash flow generation. S&P estimates that about 20% of Mediacom's footprint faces fiber-based competition. "While this figure could grow over the next five to 10 years as **AT&T** and other telecom providers build out more fiber, we expect it will remain below 50%," S&P said, projecting that Mediacom will maintain its existing market share in new fiber markets rather than continue to take share.

HALLMARK HIGHLIGHTS

Hallmark Channel rang in 2022 in style with the "New Year New Movies!" stunt. Five original movie premieres debuted on Saturday nights across January, averaging 2.6 million total viewers and 266,000 W25-54. The premieres reached 9.1 million unduplicated total viewers. The programming event solidified Hallmark's position as the #1 most-watched entertainment cable network YTD among households and W18+. **Hallmark Drama** has also given Crown Media reason to celebrate with its distribution footprint passing the 50 million home milestone in February, according to **Nielsen** data. That's up 15% YOY. The network celebrated all-time viewership highs during the week before Christmas, recording its most-watched week among W18-49. W18-34 and W25-54.

JD POWER SETS WIRELESS WINNERS

T-Mobile emerged as the top mobile network operator (823) in **JD Power's** 2022 U.S. Wireless Customer Care Study, Volume 1. **Verizon** (796) and **AT&T** (783) snagged the second and third spots, falling just behind the segment average (797). **Cricket** (824) nabbed the highest rank in the mobile virtual network operators segment, but **Metro by T-Mobile** (812) wasn't far behind. Both surpassed the segment average (807). **Xfinity Mobile** and **Spectrum Mobile** fell just short of that benchmark with scores of 806 and 802, respectively. Across the value MVNO segment, **Consumer Cellular** dominated (855), rising far above the segment average (815). **Tracfone** (803) and **Straight Talk** (795) rounded out the category.

WINDSTREAM PLANS GEORGIA FIBER BUILDS

Kinetic by **Windstream** is partnering with 18 communities in Georgia to bring high-speed internet to residents. The build-

outs will be partially funded by the \$171 million in American Rescue Plan Act grants awarded to 18 counties within the state. Additionally, Kinetic is investing \$133 million in private capital to finish the projects. When the fiber deployments are complete, gigabit service will be made available to more than 83,000 homes and businesses. It'll take some time with a completion date currently being set for the end of 2026.

DOING GOOD

Folks across the industry are coming together to support Colorado communities impacted by December's Marshall fire. **Evolution Digital**, **Liberty Latin America**, **TDS**, **Xperi**, **NCTC** and **ACA Connects** have offered a "significant match fund donation" to help the Community Foundation Boulder County with its relief efforts. The organization works together with government and nonprofit partners to coordinate resources. The Marshall fire was the most destructive in the state's history, destroying nearly 1,000 homes in the area surrounding Boulder.

PROGRAMMING

ESPN is making broadcast history, announcing the first time an all-women crew will produce a nationally televised **NBA** game. The 33-person staff will be working both on- and off-camera for the Golden State Warriors vs. Utah Jazz on Wednesday as *Beth Mowins*, *Doris Burke* and *Lisa Salters* headline the broadcast of the Western Conference contest. Tip-off is at 10pm. – Crime scene investigator *Alina Burroughs* looks back at crimes that shocked the nation in **Investigation Discovery's** series "Crime Scene Confidential," premiering March 8 at 9pm. Episodes will be available to stream on the same day on **discovery+**. – "Murder Under the Friday Night Lights" has been renewed for a second season by Investigation Discovery. The series details notorious criminal cases that struck U.S. high school football towns. The Season 1 finale airs Tuesday at 10pm. – **HBO's** "Somebody Somewhere" was renewed for a sophomore season. Comedian and singer *Bridget Everett* stars as Sam, who struggles to fit the hometown Kansas mold. The seven-ep first season concludes on Feb. 27. – **discovery+** greenlit a docuseries on three-time gold medalist and snowboarder *Shaun White*. The three-part series, which explores his upbringing and his legacy, will launch exclusively on the streamer this year.

PEOPLE

A+E Networks promoted *Sharon Scott* to President of the programmer's Unscripted Division. She'll oversee the company's full-service nonfiction content creation unit. Scott joined A+E Networks in 2020 as EVP of **Category 6 Media**. She previously spent 27 years at **NBCUniversal**, most recently holding the position of President and General Manager of **Peacock Productions**. – *John Janedis* is joining **fuboTV** to serve as the company's CFO, effective Feb. 7. He'll be based out of NYC and replace *Simone Nardi*. Janedis has spent more than two decades in equity research, investor relations and M&A. He last acted as Managing Director/Senior Equity Research Analyst at **Wolfe Research**.

PROGRAMMER'S PAGE

Modern Tech Exposes New Secrets In Slavery


With most of what we know about the Underground Railroad being passed down orally, it has been difficult for historians to fully grasp how extensive this network for escaping slavery in the U.S. truly was. The four-part **Science Channel** series "The Underground Railroad: The Secret History" offers new clues through the use of cutting-edge technology, including thermal drones and GIS, to map and record hidden underground tunnels and remote caves. One of the sites series producer *Margot Daley* and her team uncovered was a previously unknown fort in Florida that existed in the early 1800s and acted as a stronghold for freedom seekers. The team set up stations of FARO scanners all over the fort, allowing sensors to take pictures and recreate the images in a digital landscape. Ground Penetration Radar (GPR) also aided the team in their discovery. "[GPR] was being used almost everywhere we went because for archeologists, this is how they were able to get information without having to first dig it up," Daley told CFX. "It has been a game-changer to help figure out whether it's burials or artifacts. It's the tool that really helps them place historical places in context." One surprise that Daley and the team uncovered was the sheer number of locations freedom seekers relocated to once they made it to the Canadian border. "When people made it here, they didn't just stay in one place," she said, describing how the team found remnants of communities in the Canadian city of London and other cities along the U.S. border. The crew's work also led them into what are known as "maroon communities" in American swampland. These sites get their names because runaway slaves would escape to geographically secluded regions that are hard to reach. While there are several well-known maroon communities in Jamaica, there's not a lot known about them in the U.S. It was difficult for the team to reach the maroon community and even more difficult to imagine anyone willing to live in these harsh environmental conditions, Daley said. She hopes this docuseries will lead viewers to re-examine the history and spark conversations and questions about Black slavery in America. Episode 1 of "The Underground Railroad: The Secret History" premiered Sunday and is available to stream on **Discovery+**. – *Goa Zhu*

REVIEWS

"We Need to Talk About Cosby," available on all **Showtime** streaming and VOD platforms. Add filmmaker to the resume of comedian and TV host *W. Kamau Bell*. His background exec producing and hosting the doc series "United Shades of America," on **CNN**, comes through in this excellent 4-part doc. *Bill Cosby*, particularly his alleged sex crimes, is a difficult subject. Pretty early in, Bell's view—that Cosby used his mild, family-man, intellectual persona to mask his sexual proclivities—is clear. From there, the filmmaker could have piled on Cosby, but does not. In addition, he might have fashioned the series as a fall-from-grace. Again, he resists. Instead, he assembles an eclectic buffet of articulate talking heads. He's also assembled a fine piece of cultural observation. It feels like a conversation, with viewers imagining it's directed at them. Like a master writer, Bell mixes footage, alternating short clips with longer ones. At about the 40-minute mark of ep 1, after a detailed examination of the Playboy phenomenon, Bell breaks from a series of short clips and allows a woman, a former Bunny, to go long. What she says about her encounter with a young Cosby is powerful. Perhaps unforgettable. – *Seth Arenstein*

BASIC CABLE		
P2+ PRIME RANKINGS*		
(01/24/22-01/30/22)		
MON-SUN	MC	MC
	US	US AA
	AA%	(000)
FNC	0.765	2382
MSNBC	0.404	1258
HGTV	0.390	1216
HALL	0.310	965
LIFE	0.286	892
ESPN	0.285	887
TLC	0.283	882
TNT	0.277	864
INSP	0.257	800
HIST	0.253	788
DISC	0.244	759
A&E	0.236	736
FOOD	0.235	733
TBSC	0.217	677
ID	0.197	612
TVLAND	0.187	582
CNN	0.169	528
USA	0.162	505
AMC	0.147	459
HMM	0.142	443
BRAVO	0.141	439
WETV	0.139	434
FX	0.139	433
GSN	0.135	421
NATGEO	0.121	376
OXYGEN	0.110	343
NAN	0.110	342
SYFY	0.108	336
BET	0.104	325
APL	0.101	313
TRAVEL	0.099	309
COM	0.099	307
NICK	0.097	302
SNDCN	0.092	287

*P2+ L+SD rankers are based on national Nielsen numbers, not coverage.



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