

# Cablefax Daily™

WHAT THE INDUSTRY READS FIRST

## AWS-3 Spectrum: DISH, DEs Lose Another Appeal at D.C. Circuit Court

**DISH** and two of the company's Designated Entities lost an appeal at the D.C. Circuit Appeals Court Tuesday tied to a small business discount for AWS-3 spectrum licenses, marking what seems to be the end of a 7-year battle between the companies and the **FCC**.

In 2014 and 2015, **SNR Wireless LicenseCo** and **Northstar Wireless** placed more than \$13 billion in winning bids during the FCC's AWS-3 spectrum auction. Both companies claimed 25% discounts on the licenses they won due to their statuses as very small businesses. Once the auction was over, however, the FCC found that both SNR and Northstar were effectively controlled by DISH and were no longer eligible for the credits. They defaulted on 197 of the licenses they received in New York, Boston and Chicago as a result, giving the Commission back spectrum equal to the value of the nearly \$3.4 billion in billing credits SNR and Northstar hoped to receive.

DISH, SNR and Northstar elected to sue the Commission and seek a D.C. Circuit review. A 2017 D.C. Circuit ruling affirmed the Commission's order in part, finding that precedent required that the agency give Northstar and SNR a chance to cure the problems in their agreements with DISH before proceeding. Both DEs reworked their agreements with DISH and met with FCC staff, but the Commission still determined that the companies remained under DISH's de facto control. Northstar and SNR again asked the DC Circuit to review the

case, arguing that the FCC did not adequately work with the companies to find a solution that would have reduced DISH's control, was wrong in its determination that DISH still controlled both companies and penalized them without a fair degree of warning. Unfortunately for SNR and Northstar, the DC Circuit Court continues to side with the FCC.

"The Commission complied with our previous decision by affording the companies an opportunity to cure. The Commission also reasonably applied its precedent to the companies and gave them fair notice of the legal standards that it would apply in analyzing their claims to be very small companies," DC Circuit Judge *Patricia Millett* wrote in the opinion.

DISH does still have an opportunity to appeal and ask for a rehearing by the entire DC circuit or to file a petition for certiorari with the Supreme Court. It could also attempt to negotiate with the FCC to settle the issue outside of the courts. It seems more likely that the licenses on which SNR and Northstar chose to default will be auctioned. DISH has 30 days to seek a rehearing, after which the FCC will be given the go-ahead to reactivate the licenses in whatever timeframe is convenient for agency staff. While the decision is definitively a loss for DISH, **New Street Research** doesn't really see any downside for the company coming out of the announcement.

"We don't think there is any, other than that, among those investors who thought DISH would win, relative to status quo, there is now downside. As a legal matter, DISH remains on the hook for any shortfall in a reactivation of the licenses in

## THE FAXIES

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question,” the firm said in a note. “Based on spectrum values and the location of the licenses, there is unlikely to be any shortfall. Moreover, DISH itself could bid on the licenses, pay what New Street Research believes would be a fair market value and guarantee that there is no shortfall.”

LTD ENDS ETC FIGHT IN CALIFORNIA

LTD Broadband is abandoning its pursuits to reverse an FCC decision denying a petition for a limited waiver of RDOF program deadlines. LTD, one of the largest winners in the FCC auction, failed to achieve Eligible Telecommunications Carrier designation in California by the deadline set by the Commission for the census blocks it won in the state during the RDOF auction. It has continued fighting to achieve that status in California and get back on the FCC's good side, but to no avail. The California Public Utilities Commission issued an order last month denying rehearing of a December 2021 decision in which it had rejected LTD's request for ETC designation. “While LTD continues to believe that this decision was premised on errors of both fact and law, after carefully evaluating its options, it has determined that the broad discretion afforded to the CPUC by the California courts makes it unlikely that it could obtain reversal of that decision. It would therefore be an imprudent expenditure of time and money to continue litigating that case,” LTD said in a request for withdrawal of petition for partial reconsideration submitted Tuesday. The company is still waiting to hear back on a separate petition for reconsideration with respect to an order tied to a waiver of the ETC designation deadline for the states of Iowa, Nebraska and North Dakota.

NIELSEN GIVES LGBTQ+ MEDIA INSIGHT

LGBTQ+ consumers view streaming content as most inclusive to

their identity group, and 69% of those audiences believe efforts are being made to improve inclusivity, according to Nielsen's latest study. More than 1/3 of global respondents are comfortable with brands reaching out to them as members of the LGBTQ+ community, with Mexico checking in at 57% and the U.S. at 52%, but many also believe more work needs to be done to accurately present all sexual orientations. Some 80% of transgender men and 69% of bisexual and pansexual individuals found advertising to be very non-inclusive, and 6% of LGBTQ+ respondents in Canada believe inclusion in media has declined over the last two years. Titles within the LGBTQ+ genre declined from 50 titles to 36 from 2020 to 2021, and 51% of LGBTQ+ respondents believe avoiding stereotyping individuals in advertising and programming will help improve inclusion in media. For programs viewed by households led by same-sex couples, “Schitt's Creek” was No. 1 in P2+ by streaming minutes, followed by “Downton Abbey” and “Wentworth.” The survey included nearly 5,500 respondents from the U.S., Canada, Mexico, U.K., Brazil, Italy, Germany, France and Spain. The full report can be seen here.

BALLY SPORTS+ COMING THURSDAY

Bally Sports+, the RSN streaming service from Sinclair, is soft launching Thursday. SBJ was the first to reveal the news. Customers in the Detroit, Kansas City, Miami, Milwaukee and Tampa markets will be able to purchase the service for \$19.99/month or \$189.99/year. At launch, the service will offer games from the MLB teams for which Sinclair has streaming rights: the Kansas City Royals, Detroit Tigers, Miami Marlins, Milwaukee Brewers and the Tampa Bay Rays. Sinclair has struck streaming deals with the NBA and NHL, but it is still in active talks with

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the **MLB** to try and add more teams to its coverage.

#### FOX NEWS ON TOP FOR 70TH CONSECUTIVE WEEK

**Fox News** led cable networks in total viewers across primetime and total day for the 70th straight week, averaging under 2.2 million viewers P2+ in primetime and 1.36 million in total day. **MSNBC** was second in both categories, coming in at 1.42 million for prime and 882,000 for total day. **HGTV** saw 921,000 in primetime and 512,000 in total day—good for third in both categories—followed by **Hallmark Channel's** 792,000 in primetime and 478,000 in total day. **Discovery Channel** was No. 5 in primetime with 782,000, and **CNN** reached the same ranking for total day at 432,000.

#### KENTUCKY OKS MILLIONS IN BROADBAND GRANTS

Kentucky is going all in on broadband, giving out more than \$89.1 million in grant awards Monday to 12 ISPs and local governments for the expansion of reliable and affordable internet across 35 counties. **Charter** emerged as the biggest winner of the grants, earning 18 awards totaling nearly \$50 million to expand access to high-speed internet to 18,553 unserved households and businesses across 13 counties. Other grant recipients include **Frankfort Plant Board, Pennyrite Rural Electric Cooperative, West Kentucky Rural Telephone Co-op Corporation, Cumberland Cellular, South Central Telecom, Gibson Connect, Boone County Fiscal Court, Duo County Telephone Cooperative, Bardstown Connect, Crystal Broadband Networks and Tri-County Electric**. The awards were made using a competitive process managed by the state's Finance and Administration Cabinet, which issued a request for proposals in August and received nearly 100 proposals in response.

#### BIDEN TO NOMINATE PRABHAKAR

President *Joe Biden* intends to nominate *Arati Prabhakar* as Director of the **Office of Science and Technology Policy**. Once confirmed, Prabhakar will also be Assistant to the President for Science and Technology, making her the President's chief advisor for science and technology and a member of the President's cabinet. Prabhakar has already been confirmed by the Senate in a unanimous fashion before she took leadership of the National Institute of Standards and Technology. Previously, she was the Director of the Defense Advanced Research Projects Agency from 2012-17 and has worked with startups, universities, government labs and nonprofits across a range of sectors.

#### NBCU ENHANCES AD QUALITY

**NBCUniversal** is forming a new certification for emotion and ad quality as a category within its audience measurement framework. NBCU is working with **Dumbstruck**, a company that combines insights from psychology with facial coding and eye-tracking AI, to study the relationship between emotional responses related to an ad and its in-market performance.

#### SLING CUSTOMERS GET STREAMER PREVIEWS

**SlingTV** is giving paid subscribers free access to select standalone streaming services every weekend through August. Called "Free-view Weekends," customers will get the full suite of **Showtime** content starting June 24-27. Services currently slated to participate include **Epix, Hallmark Movies Now, Curiosity Stream** and

**AMC+**. Sling services begin at \$35/month, with new subscribers receiving half off their base services for the first month.

#### REACH, T-MOBILE SHAKE HANDS

**Reach Mobile** extended its Wholesale-as-a-Service agreement with **T-Mobile** so the latter can streamline how business customers bring network-based services to market. T-Mobile wholesale customers can use cloud-native platform Reach-NEXT for front-end customer care, back office operations and more. The revamped partnership also includes an extension of a multi-year MVNO agreement through which T-Mobile serves as the network for Reach Mobile's nationwide subscribers.

#### INCOMPAS SEARCHING FOR VENUES

The 2022 **INCOMPAS** Show is set to take place Oct. 24-46 in Denver, but the organization is already scoping out locations for its future events. In a survey distributed via email, INCOMPAS asked respondents to rank three cities in order of preference for future shows: Dallas, Phoenix and Tampa. It also asked if there were other cities or hotels it should consider as it establishes its long-term plans.

#### DISH, T-MOBILE TO UPDATE AGREEMENT FOR 5G

**DISH** and **T-Mobile** updated their master network services agreement Tuesday, signing an amendment that incorporates improved pricing and roaming solutions for DISH 5G customers. The new term sheet will not go into effect unless it is approved by the **Department of Justice** by Aug. 14, 2022.

#### RATINGS

**HGTV's** "Windy City Rehab" accumulated over 16.3 million total viewers since its premiere on April 21. The nine-episode first season averaged a .52 live plus-three day rating among P25-54 and .66 live plus-three day rating among W25-54. The show averaged a .61 L3 rating among upscale P25-54 and .79 L3 rating in upscale W25-54. – **YES Network** earned the top-rated sports programs in New York this past weekend for Friday, Saturday and Sunday, and had the most-viewed game since 2018. Furthermore, Monday's Yankees vs. Rays contest averaged 495,000 total viewers. Through Monday, YES' Yankees broadcasts are up 14% YOY with an average of 335,000 total viewers per game.

#### PEOPLE

*Karen Bennett* is moving from **Cox Communications** to **Cox Enterprises** as the company's new EVP and Chief People Officer. Current President and Chief People and Operations Officer *Jill Campbell* will retire at the end of the year. Bennett has been at Cox since 2015 and has over 25 years of HR experience. – **Warner Bros. Discovery** Chief U.S. Advertising Sales Officer *Jon Steinlauf* joined **Simulmedia's** board. – *Dara Leslie* was named **Shentel's** SVP of Sales & Marketing. Leslie—who previously spent 10 years at **Comcast**—will report to EVP and COO *Ed McKay*. – **Disney General Entertainment** tapped *Pamela Levine* as Head of Marketing for **Disney Branded Television** and **National Geographic Content**. She'll lead an internal agency across brand and creative marketing, strategy, media planning, digital and social events and talent relations and awards. Levine previously served as CMO at **HBO**.