

Cablefax Daily™

WHAT THE INDUSTRY READS FIRST

Oral Arguments: 2nd Circuit Considers NY Affordable Broadband Law

The U.S. Court of Appeals for the 2nd Circuit heard arguments Thursday over a New York state law that would require ISPs to sell a \$15/month broadband plan to low-income households. The law has been challenged by a group of trade associations—**NY State Telecommunications Association, ACA Connects, CTIA, NTCA—The Rural Broadband Association, Satellite Broadcasting and Communications Association** and **USTelecom**.

Much of the argument centered on whether the state has the authority to regulate the price. “It does regulate the price of broadband for a certain class of vulnerable consumers. If by rate regulation, you mean does it touch on the price of broadband for some consumers? Yes. Is it a full common carrier regulation? No, we’d disagree with that,” Deputy Solicitor General *Judith Vale* said in response to questions from the three-judge panel.

Judge *Richard Sullivan* pressed the NY Attorney General’s Office on how the **FCC’s** repeal of Title II classification of broadband impacts the law. “You’re saying if it’s Title II, the feds get to regulate exclusively with effect to rates. But they pulled out of that because they were worried even the threat of that was going to undermine investment in broadband,” Sullivan said. “So, they go to Title I and you say, ‘ah, that opens the door and allows every state in America to do the kind of regulation.’”

Scott Angstreich of **Kellogg, Hansen, Todd, Figel & Frederick** appeared for the ISP trade groups, arguing that the FCC’s

2018 order repealing Title II was the agency concluding that broadband shouldn’t be subject to rate regulation and that the D.C. Circuit upheld the FCC’s action. “This is a law that by definition goes way outside the intrastate space that [Section 152b of the Communications Act] protects, and it’s a law that squarely conflicts with a statutory decision the D.C. Circuit ruled the FCC was empowered to make,” he said.

That question of rate regulation is really what this case is about for the ISPs, as most, if not all, already have a low-cost broadband offering available in New York that would fit the law’s requirement. New York passed the Affordable Broadband Act in 2021, requiring ISPs serving more than 20,000 subs to offer the low-cost tier to low-income households. A lower court prevented New York from enforcing the law, but the Court of Appeals could reverse that decision.

“The industry fear is that other states might impose requirements far more onerous than what New York requires, such as by further lowering the price, raising the speed requirements, or expanding the eligibility pool to make broadband ‘affordable’ for middle-class customers,” **New Street Research** said. The firm thinks the real danger is that if the Affordable Connectivity Program, which offers \$30/month stipends to low-income Americans for broadband, runs out of funds next year as some project, states could mandate similar programs to New York’s.

It’s dangerous (and difficult) to predict how the 2nd Circuit will rule. Case in point, a significant chunk of time Thursday was devoted to procedural questions, with Sullivan raising the specter



Who Deserves to Rank Among Cablefax’s Annual Top Power Players?

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It’s free to enter — but you must submit your entries by Jan. 21!



Nominate at www.Cablefax100.com | Questions: Kate Schaeffer at kschaeffer@accessintel.com

of no ruling from the federal court because of concerns over appellate jurisdiction. While each side was allotted only 10 minutes for oral arguments, the hearing went on for more than an hour.

“While we don’t have a strong conviction on the outcome and believe it could go either way (or be decided on procedural grounds), we think the odds favor the ISP Plaintiffs prevailing over the state. One judge clearly is on the plaintiff’s side, while it is hard to gauge the ultimate view of the two other judges,” concluded New Street.

DIRECTV LATEST TO FACE LAYOFFS

DirectTV is laying off roughly 10% of its management workforce, effective Jan. 20. The decision comes as the video provider is trying to cut costs across its business units. “The entire pay-TV industry is impacted by the secular decline and the increasing rates to secure and distribute programming. We’re adjusting our operations costs to align with these changes and will continue to invest in new entertainment products and service enhancements,” a DirecTV spokesperson said. Other efforts to reduce operating costs include transitioning more employees to remote environments and strategizing how to combat rising programming costs.

MLB WANTS TO IMPROVE GAME DISTRIBUTION

MLB has been trying to make its games easier for fans to watch, and its hiring of former **Sinclair** and **Fox Sports Media** exec *Billy Chambers* shows it’s taking the next steps toward that goal. Effective Feb. 1, he’ll become the league’s first EVP, Media and Business Development, where his responsibilities include overseeing MLB’s management and distribution of local media rights and working with all teams to determine the best way to distribute games to each market. The league also promoted *Kenny Gersh* to EVP, Media and Business Development. Both he and Chambers will report to Chief Revenue Officer *Noah Garden*. Chambers was most recently CFO/COO of the 21 RSNs that Sinclair acquired from **Disney**, and before that spent 20 years at Fox Sports Media Group. While there, he was CFO and oversaw Fox Sports Broadcast Network, its RSNs, **FS1**, **FS2**, **Big Ten Network** and **Fox Deportes**. In terms of how MLB can accomplish improving its distribution, *Sports Business Journal* writes one [potential way](#) could be to work directly with distributors such as **DISH** or **Comcast** and also launch a DTC offering with local and out-of-market broadcasts, which the MLB has already looked into doing so. If launched, it could also mean the end of games being blacked out from certain areas.

WARREN ASKS FCC TO BLOCK TEGNA DEAL

Senator *Elizabeth Warren* (D-MA) is asking the **FCC** to block **Standard General**’s proposed \$5.4 billion acquisition of **TEGNA**. In a letter to FCC Chair *Jessica Rosenworcel*, the

lawmaker argued that any remedies proposed by the Commission to get the deal done likely wouldn’t be able to mitigate the potential harms of the transaction. “By offering ‘a series of formal commitments’ that might address the FCC’s potential concerns about higher prices, worker layoffs and collusion, the parties themselves have acknowledged that this deal is likely to

Cablefax Executive Round Up

What was your favorite television advertisement from 2022?



Amy Leifer

Chief Advertising Sales Officer

DirectTV

“Last year, for me, one of the most impactful ads was the House of the Dragon pause ad that ran on DIRECTV. Building on the show’s drama, the ad brought a thrilling and non-intrusive experience to screens – sustaining interest among die-hard fans and piquing the interest of viewers eager to join the global conversation around the show. Creativity today is not only the art direction of ads, but also the format in which they’re presented. This one hit the mark.”



Adam Monaco

EVP, Sales

Disney Advertising

“When I think of impactful advertisements, I think of authentic and inclusive storytelling. One of my personal favorites was Dove’s sponsorship of docu-series ‘The Hair Tales,’ a unique collaboration between ONYX, OWN and Hulu. It’s a great example of a brand that believed in amplifying a cause it cares about as a champion of the CROWN Act, and leaned in – through a series of custom vignettes that celebrated the beauty of Black women and natural hairstyles.”



Chris Pizzurro

SVP, Global Sales & Marketing

Canoe Ventures

“I really liked this work from British Airways. The common question travelers fill out on landing forms when they travel international is ‘what is the purpose of your visit?’ The answers—not business or leisure, but a third, more intangible one –yielded 500 different ad executions. This is a great example of an inexpensive, yet powerful way to have multiple creatives playing out on multiple platforms.”



Kya Sainsbury-Carter

VP, Global Partner & Retail Media

Microsoft Advertising

“2022 was a critical turning point for CTV with Netflix and Disney+ introducing advertising offerings. One of my favorite ads was also one of the first to run on Netflix’s new ad-supported plan, L’Oréal’s Ever Pure Glossing Haircare product, during ‘Emily in Paris’ (one of my favorite not-guilty pleasures – please launch Season 4). It was both relevant to the content (female leads with amazing hair) and effective as it reached a highly engaged, new audience. And of course, being part of the Microsoft Advertising team that partnered on the launch of Basic with ads made it particularly notable for me.”

produce anticompetitive effects,” Warren said. “However, behavioral remedies like those offered by the parties are historically ineffective and should provide no comfort that these Wall Street firms will not engage in anticompetitive practices after the deal is completed.” The senator pointed to **T-Mobile’s** acquisition of **Sprint** as evidence that, despite good intentions, the FCC’s remedies don’t always work as intended. T-Mobile’s decision to turn off the network that **DISH’s** new prepaid customers relied on forced the latter to shift energy away from the buildout of its 5G network and toward a new solution. Warren asserted that the turn in events has become a threat to DISH’s ability to meet its FCC-determined 5G deployment deadlines. “At this point, however, there is little that can be done to force compliance with the imposed conditions, and this could have been avoided had the FCC simply blocked the acquisition,” Warren said.

LANDGRAF TALLIES 599 SCRIPTED SERIES FOR 2022

Could “peak TV” be nearing its summit? For **FX** that could be the case as Chairman *John Landgraf* revealed at the **Television Critics Association’s** Winter Tour that there were an estimated 599 adult scripted original series across broadcast, cable and streamers in 2022—up 7% from 2021. That bodes well for FX at a time when companies like **Warner Bros. Discovery** and **AMC Networks** are making a number of cancellations, though Landgraf said he wouldn’t rule out the possibility of canceling shows and pulling old seasons of shows. FX is already rolling out shows for 2023, announcing new and returning series Thursday. “Sin Eater,” a two-part doc on famous PI. *Anthony Pellicano*, will debut March 10 at 10pm simultaneously on FX and **Hulu**. Both parts will air back-to-back. “The Legacy of J Dilla” will also premiere simultaneously on FX and Hulu on April 7 at 10pm. Then, a docuseries on the lives and legacies of *Tupac Shakur* and his mother *Afeni* called “Dear Mama” will roll out on FX starting April 21 at 10pm, available to stream on Hulu the next day. Season 3 of “Dave” will begin April 5 at 10pm.

PRICE INCREASE FOR HBO MAX

Starting today, **HBO Max’s** ad-free subscription tier in the U.S. will rise from \$14.99/month to \$15.99/month. It’s the first time the streamer is raising its rates since May 2020, and current customers will see the increase on their next billing cycle on or after Feb. 11.

13 GHZ BAND NOT CBRS’S TWIN

The 13 GHz band is getting a lot of interest as a potential space for further experimentation with spectrum sharing arrangements to support wireless uses, but this band is far from a CBRS clone. Incumbent users include the **Department of Defense**, which uses it to operate its ground stations and leasing of commercial satellite services, and members of the **National Association of Broadcasters**, which use the spectrum to support broadcast auxiliary services. NAB told the **FCC** this week that it has no qualms with exploring the possible relocation of broadcasters to a smaller portion of the 13 GHz band, but it has a number of concerns about assertions that broadcasters could easily shift their operations to another spectrum band. They’re already being displaced from

the 2 and 6 GHz bands to avoid interference with AWS and WiFi 6E systems, and moving broadcaster operations onto 5G networks would force them to rely on systems that can suffer from network congestion or outages during emergency events. “Mobile service networks have multiple points of failure, offer no assurance of priority access to broadcasters, often have no backup power, can be overwhelmed by a large number of simultaneous users at breaking news events, and are not always resilient in disaster situations,” NAB said in its reply comments. “The Commission is well aware of the potential for network outages during disasters. But, as other commenters have noted, such events and emergencies are precisely the situations where reliable broadcast news and emergency coverage is most important.” **NCTA** agreed that spectrum sharing in the band should be explored, but warned other commenters to remember that its characteristics could lead to different results. “The propagation characteristics of this band make it more challenging for mobile use than the characteristics of the 3.1-3.45 GHz band,” the association said. “Further, efforts to make the 12.7 GHz band available for commercial wireless use have just begun, while efforts to enable such use in the 3.1-3.45 GHz band are well underway.”

CARRIAGE

Philo added **Smithsonian Channel** and **Pop TV** to its base package, putting it at over 70+ channels for its \$25. Philo’s lineup also includes **AMC**, **HGTV** and **Paramount Network**.

PROGRAMMING

The fourth season of *Guy Fieri’s* “Tournament of Champions” will premiere Feb. 19 at 8pm on **Food Network** and **discovery+**. The cooking competition will have 14 contestants compete for a \$100,000 cash prize. – **Starz** is picking up Seasons 1 and 2 of “Minx.” The comedy series was originally on **HBO Max** before being canceled, despite having been renewed for a second season. Season 2 will premiere exclusively on Starz. – **MTV’s** “Ex on the Beach” is getting an expansion. “Ex on the Beach Couples” will debut in the U.S. on Feb. 9 at 9pm, with its international premiere set for Feb. 16. – Season 10 of “Impractical Jokers” will be simulcast on both **truTV** and **TBS** starting Feb. 9 at 10pm.

PEOPLE

The **Broadband Communications Association of Pennsylvania** appointed *Jennifer Algoe Keaton* as Director of Communications. Keaton previously served in the Republican Caucus for the Pennsylvania House of Reps for 20 years, holding various management and communications positions. – **The WICT Network’s** 2023 global board was revealed Thursday. *Leigh Woisard* will enter the role of Chair, with last year’s chair *Sandra Howe* moving to Immediate Past Chair. **Charter** Chief Diversity Officer *Rhonda Crichlow* is joining the Executive Committee as Strategic Planning Co-Chair, where she’ll work with **TV One** and **CLEO TV** President *Michelle Rice*. New at-large members for this year’s board include **AWS** Director, Global Media *Samira Bakhtiar*; **AMC Networks** EVP, Distribution *Roy Cho*; **A+E Networks** SVP, Distribution & Strategy *Sara Hinzman* and **Cox** EVP/Chief People Officer *Kia Painter*.

PROGRAMMER'S PAGE

Soccer At a Crossroads in Apple TV+ Doc

For a sport rooted in tradition, the chase to maximize profits in soccer goes against some of the values that fans hold close to their hearts. In “Super League: The War for Football,” which premieres globally Friday on **Apple TV+** as a four-part series, soccer reaches a true crossroads. The idea of a breakaway competition called the European Soccer League was introduced in April 2021, pitting 12 of the top clubs across Europe against each other in a closed competition to help generate more money for the clubs. The ESL would rival the **UEFA Champions League**, which has undergone reforms to please top teams with better financial incentives. As leaders and executives battled, fans took to the streets and stadiums to make their voices heard. However, even with the public opinion protesting against the ESL, Director *Jeff Zimbalist* told **CFX** the crew wanted to tell both sides of the story. “We wanted to make sure that it was character-driven, that we were able to tell the story from the inside looking out through the points of view of the people who were most affected by it,” he said. As for talking to those high-ranking club officials, Zimbalist said they were some of the more guarded subjects that he’s had to earn the trust of, but the dedication to objectivity eased their hesitancy and their honesty adds a humanizing aspect to the show. In another shocking twist, the ESL collapsed just days after its introduction with clubs withdrawing in the face of scrutiny. For the fans that believe that soccer is much more than a sport to be monetized, it was a momentous win. “The fans claimed victory at the end of those four days,” Zimbalist said. “So it does show that there are parts of those original values that are still intact here.” – *Noah Ziegler*

REVIEWS

“Dirty Old Cars,” series premiere, 10pm, Wednesday, **History**. It’s incredible what these teams of car restorers can accomplish. (And, it’s equally as amazing how badly people treat their cars. The insects and other creatures who’ve made abandoned vehicles their home provide plenty of gross-out moments.) As such, this series, pitting detailing shops (two in the South, one up in the upper Midwest) is a good escape. – “Godfather of Harlem,” Season 3 premiere, 9pm, **MGM+**. If you’re a fan of **Starz**’s “Power Book III: Rising Kainin” and/or “Power Book IV: Force” and you’ve not started this terrific series, what are you waiting for? It’s another go-round about gangs of various ethnic factions who control the drug trade. “Harlem” is an historical series, taking place in the early 1960s. In addition, it’s based on a true character, crime boss *Bumpy Johnson*, who served 11 years in prison and then returned to his old neighborhood, which he’d ruled. The wonderful *Forest Whitaker* plays Johnson with a mix of fear and passion. – “Finding Your Roots,” season 9, Tuesday, **PBS.**, Eps of the heavy stars in this series, where celebs discover their family tree, are in the past. Yes, you missed *Julia Roberts*, *Jeff Daniels*, *Edward Norton* and *Claire Danes*. Still, *Niecy Nash*, *Carol Burnett*, *Brian Cox*, *Viola Davis* and *Cyndi Lauper* are upcoming. They ain’t chopped liver. – *Seth Arenstein*

BASIC CABLE		
P2+ PRIME RANKINGS*		
(01/02/23-01/08/23)		
MON-SUN	MC	MC
	US	US AA
	AA%	(000)
ESPN	0.830	2591
FNC	0.649	2026
MSNBC	0.424	1323
HALL	0.316	987
CNN	0.287	898
HGTV	0.266	829
HIST	0.230	718
TLC	0.217	678
INSP	0.213	664
TBSC	0.207	646
USA	0.184	574
DISC	0.183	570
FOOD	0.178	556
ESPN2	0.176	550
ID	0.163	510
LIFE	0.158	494
TNT	0.149	465
TVLAND	0.147	459
A&E	0.135	422
HMM	0.135	422
GSN	0.116	363
REELZ	0.115	358
WETV	0.113	353
BRAVO	0.108	338
NATGEO	0.104	326
AMC	0.101	314
PRMNT	0.098	306
FX	0.097	302
BET	0.087	273
OXY	0.087	272
COM	0.087	270
MTV	0.086	270
E!	0.086	269
SYFY	0.086	269
FXX	0.080	249

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

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