

Cablefax Daily™

WHAT THE INDUSTRY READS FIRST

Our Turn: Broadcasters Loop in FCC on their Big 4 LPTV/Multicast Stance

With the **FCC** embarking on its congressionally required review of media ownership rules, the retransmission jabs are coming in hard and fast.

Many of the broadcast reply comments filed at the Commission this week focused on **NCTA's** assertion that station groups are [exploiting a loophole](#) in the rule prohibiting ownership of top-four broadcast stations in a DMA by using multicast streams and low power stations to broadcast a second—or even a third, or fourth—top-four affiliation.

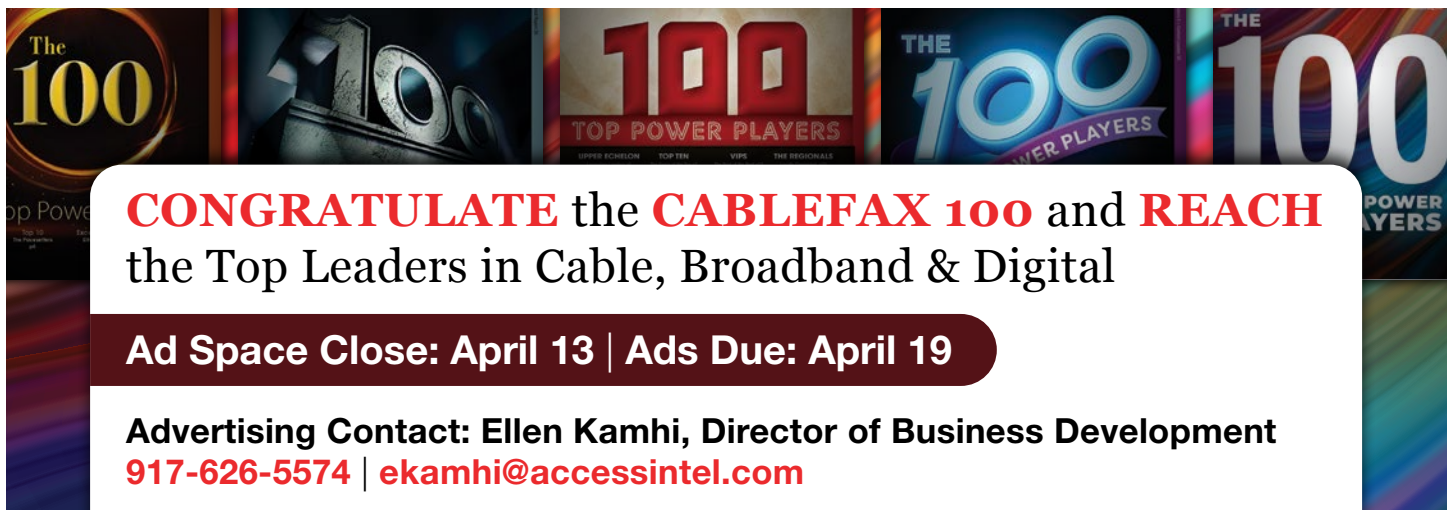
Gray TV—which NCTA identified as the top offender with LPTV or multicast broadcasting top-four network affiliations in 34 markets—argues that in many small markets the only way to make expensive news operations possible is through common ownership of more than one station. “While NCTA is quick to point out that Gray operates full power and low power stations that provide the Big 4 programming in Harrisonburg, NCTA fails to acknowledge that there is only one full power commercial station in the market so there is no other option other than to use low power television stations to provide local viewers with Big 4 programming. The same is true in Mankato where Gray operates the only full power station and low power stations in the market,” the broadcaster said. Gray said without its local operations in these markets, viewers would be left with news and weather from another market that wasn’t local at all.

“Despite the tired refrains from MVPD interests, broadcast-

ers simply do not gain leverage in retransmission consent negotiations because they operate stations with multiple Big 4 affiliations in a single market. Rather, broadcasters can gain more leverage over **ATVA's** and **NCTA's** members (which negotiate retransmission consent on a national level individually or through a buying cooperative) if they withhold retransmission consent with a single station in a larger market that affects a larger number of the MVPD's subscribers,” Gray said.

Gray argued that if you multiply the number of TV households in Mankato (55,890 TV homes) by three (the number of Big 4 affiliates in broadcasts in the market) you get 167,670. That makes Mankato the 145th largest DMA out of 210. “In other words, Gray would reach about 6% of the number of TV homes as Gray reaches in the Atlanta market (which has almost 2.7 million households). Clearly, Gray's assets in Mankato are not the driving factor, nor do they influence the result of retransmission consent agreements, for companies like Spectrum who operate in Mankato but operate on a national basis,” the company said.

Nexstar piled on, declaring that multicasting channels and using LPTV stations has led to additional programming choices and viewing options for underserved audiences. “Once again in this 2022 quadrennial review proceeding, the record in favor of repealing or relaxing the Local Television Ownership Rule is overwhelming and the arguments opposing such relief are self-interested, irrelevant, and/or meritless,” it said. “Nexstar again urges the Commission to bring its rules into the 21st



CONGRATULATE the CABLEFAX 100 and REACH
the Top Leaders in Cable, Broadband & Digital

Ad Space Close: April 13 | Ads Due: April 19

Advertising Contact: Ellen Kamhi, Director of Business Development
917-626-5574 | ekamhi@accessintel.com

WWW.CABLEFAX100.COM

Magazine Publish Date: May 15

THE FAXIES

RECOGNIZING EXCELLENCE IN PR & MARKETING

www.TheFAXIES.com

YOU CAN'T
WIN IT
IF YOU'RE
NOT IN IT!

Executives of the Year

- Digital Executive of the Year
- Innovator of the Year
- Marketing Executive of the Year
- PR Executive of the Year
- Sales Executive of the Year

Teams of the Year

- Digital Team of the Year
- Marketing Team of the Year
- PR Team of the Year
- Sales Team of the Year
- Tech Team of the Year



For the Best Price
Submit Your Entries
by **Friday, March 24!**

Final Deadline:
Friday, March 31

PR & Marketing

- Acquisition and Upgrade Marketing
- Affiliate Marketing
- Brand Image and Positioning Campaign
- **Campaign of the Year***
- Content & Sponsorship Marketing Campaign
- Community relations
- Corporate Social Responsibility Campaign
- **DEI Campaign***
- Digital Marketing Campaign
- Integrated Marketing Campaign
- Internal Communications
- Marketing of a Continuing Series
- Marketing of a New Series or Show
- Marketing of a Special or Documentary

Audience Engagement & Experience

- App
- Audience Engagement
- Contest/Sweepstakes/Promo
- Fan Base Cultivation
- New Product or Launch
- Online Game/Gamification
- Overall Social Media Presence
- Retail Store Experience & Engagement

View Full Category
Descriptions at
www.TheFAXIES.com

- Media event
- Media Relations Campaign
- Multicultural Marketing
- Partnership Marketing
- PR Stunt
- Press Kit
- Public Affairs Campaign
- **Sales Media Kit/Promo***
- Shoestring Marketing
- Sustainability Campaign
- Trade Show Marketing/PR
- Wireless/Mobile Sales Campaign

- Social Good Campaign
- Social Media (Organic) Campaign
- **Social Media (Paid) Campaign***
- Tchotchke or Corporate Gift
- Use of Video or VR/AR
- Virtual Customer Service/Chat/AI

** New Categories*

Century by eliminating the rule in its entirety or, at a minimum, removing the Top Four prohibition.”

Meanwhile, ATVA used the docket to point out **DirectTV's lawsuit** alleging Nexstar's sidecar arrangements are antitrust violations. “As the lawsuit progresses, it may provide additional valuable information to the Commission related to the enforcement of local ownership rules,” said ATVA, which has urged the FCC to clarify that any involvement by a principal in its sidecar's retransmission consent negotiations triggers station attribution. FCC media ownership rules prevent a station group from collectively reaching more than 39% of all U.S. TV households.

While MVPDs are hoping the FCC's quadrennial review will open the door to retransmission consent reforms, the broadcasters are looking to gain more retrans power. They argue that it's past time for vMVPDs to be classified as MVPDs and start paying their share of retrans fees, calling on the agency to complete the 2014 vMVPD proceeding or at least refresh the record. “The vMVPD problem is one the Commission has been aware of for more than eight years now. Local Affiliates of the Big Four Networks cannot offset dwindling retransmission consent revenues generated by cord-cutters with vMVPD subscription revenues as viewers move to streaming platforms like **YouTube TV**, **Hulu + Live TV**, and **DIRECTV Stream**, because they have no practical ability to negotiate directly with vMVPDs for genuinely fair, market-based compensation for distribution of their local programming,” said the affiliate associations for **ABC**, **CBS**, **FOX** and **NBC**.

PRIME VIDEO COULD GET FLEX SCHEDULING

The 2022-23 **NFL** season was a big test for streaming platforms hosting weekly primetime events as seen with **Prime Video** being home to “Thursday Night Football.” However, tweaks and changes are inevitable with it still being a fresh new offering, and flex scheduling could be on the cards for TNF in the upcoming 2023-24 season. Owners will [vote on the matter](#) at next week's league meetings, according to *Sports Business Journal*, also voting on the limitations regarding the number of short weeks teams can have per season. SBJ writes the potential changes could allow the league to move Sunday afternoon games to Thursday night in Weeks 14-17 with a 15-days' notice, and to schedule teams to play a Thursday game following a Sunday game twice as opposed to the current limit of one. If passed, the NFL would have the ability to shift the schedule and avoid having a primetime game with little or no playoff implication. It'd also potentially alleviate issues Prime Video had this year with lackluster games. After starting off the season [strong](#) with an audience of 15.3 million, that number declined each week for the next five games. Ultimately, Prime Video finished the season averaging 11.3 million viewers.

FIFTH CIRCUIT SAYS USF IS OK

The **U.S. Court of Appeals for the Fifth Circuit** denied a petition for review from **Consumers' Research** alleging the **FCC's** Universal Service Fund was unconstitutional. The petitioners argued Section 254 of the Telecommunications Act, which established the USF, violates the nondelegation doctrine as Congress did not supply the FCC with proper guidelines as to how it should exercise its authority over the industries it regulates. “In sum, Petitioners maintain that Congress has not articulated any guidance to the FCC in its administration of the USF—and that this failure violates the non-delegation doctrine. We disagree,” the court said in its published opinion. “Ultimately, in enacting Section 254, Congress chose to ‘confer substantial discretion’ over administration of the USF to the FCC... But if the FCC had a question about how to manage the USF, it need only look to Section 254 to find an answer.” The court also found that Section 254 only allows the FCC to raise enough revenue to satisfy its primary function, meaning there are limits built into the statute to limit the Commission's ability to raise revenue for the USF. **Public Knowledge** applauded the denial of the petition and expressed its hope that the Sixth and Eleventh Circuit rule consistently with the Fifth Circuit when considering ongoing cases tied to the constitutionality of the USF.

NTIA GREENLIGHTS MORE TRIBAL INTERNET GRANTS

NTIA awarded grants totaling \$25.7 million to two Tribal nations in Minnesota and New Mexico as part of the agency's Tribal Broadband Connectivity Program. The Mille Lacs Band of Ojibew in Minnesota will take home \$11.4 million of that to install fiber to directly connect 356 unserved Native American households, seven businesses and 10 community anchor institutions with service of at least 250/250 Mbps. New Mexico's Pueblo of Acoma will utilize the rest, using fiber to directly connect 1,167 unserved Native American households and anchor institutions with a minimum of 25/3 Mbps.

NO FLAGS ON NFL CBRS PLAY

Last year, the **FCC** granted the **NFL's** request for a waiver that allowed the League to continue to operate its coach-to-coach communications system in the limited circumstance of an internet outage in NFL stadiums during football games. It was a waiver of CBRS rules that are intended to prevent harmful interference to other CBRS operators. One of the conditions of the waiver was that the NFL file a report on its experience and that summary is now in. The bottom line: the League didn't need to invoke the waiver. The NFL uses a **Lumen** hardwired internet connection at

each NFL stadium, and Verizon LTE service as a backup internet connection. "As we have stated previously, the waiver was sought as an insurance policy against a complete internet outage, and so the fact that the waiver was not called upon simply means that no stadium experienced a complete outage—we submit it does not mean that the waiver was not necessary as a safeguard against that potential," the NFL said in its report. The League believes its experience may present some lessons that the FCC may want to apply as it considers a broader review of the rules in this space. Its message is the CBRS General Access spectrum model works, since it gives temporary users like the NFL access to spectrum when they need it and where they need it, and nothing more. At the time of the NFL's waiver request **DISH**, **Charter** and **NCTA** had asked the FCC to make sure any relief was narrowly tailored.

RATINGS

TLC's new series "MILF Manor" was the top unscripted freshman cable series to date among P25-54, P18-34 and W18-34. It's reached over 10 million viewers P2+ over the course of Season 1, helping the network remain the No. 1 primetime ad-supported cable net excluding sports for W25-54.

PROGRAMMING

BYUtv is rolling out a new scripted series featuring a 50% neurodivergent cast and crew. "A Kind of Spark," which is based on the novel written by the neurodivergent author *Elle McNicoll*, will premiere on April 2—World Autism Awareness Day—at 8pm. The first five episodes will be available to stream for free on the BYUtv app and at BYUtv.org. Additionally, the series will air on **BBC** in the U.K. – The emotions of a Game 7 can sometimes turn ugly, and it did in Vancouver 12 years ago. **ESPN** completed production of "I'm Just Here for the Riot," the network's latest "30 for 30" documentary on the events that followed Boston's defeat of Vancouver in Game 7 of the 2011 Stanley Cup Finals. Further details, including a release date, will be announced at a later time. – A new season of "Very Scary People" will return to **ID** April 16 at 9pm, available to stream the same day on **discovery+**.

CABLEFAX DASHBOARD

Twitter Hits



Research

(Source: Publishers Clearing House)

- 53% of Americans say they go to the movies less now, after restrictions have eased, than before lockdown. 83% said they went to a movie theater three or fewer times.
- The cost of movies, more than anything, is the biggest deterrent to watching a movie at the theater.
- 45% of Americans now prefer streaming (free or paid) to the theater, with 68% overall choosing options other than going to theaters for watching their movies.

Up Ahead

MARCH 28: [Free State Foundation's Annual Policy Conference](#); DC

APRIL 15-19: [NAB Show](#); Las Vegas

APRIL 18-19: [Mid-America Show](#); Omaha

APRIL 19-20: [Telecommunications Industry Association's BEAD Success Summit](#); Arlington

APRIL 26-27: [Pennsylvania Broadband Summit](#); Lancaster

APRIL 27: [Cable Hall of Fame](#); NYC

MAY 2: [WICT Network Signature Luncheon](#); L.A.

Quotable

"I am well aware that the fact that ByteDance has Chinese founders has prompted concerns that our platform could be used as or become a tool of China or the Chinese Communist Party... Bans are only appropriate when there are no alternatives. But we do have an alternative—one that we believe addresses the concerns we've heard from this Committee and others... Likewise, divestment doesn't address the fundamental concerns that I have heard, as a change in ownership would not impose any new restrictions on data flows or access. This is not an issue of nationality. All global companies face common challenges that need to be addressed through safeguards and transparency... To be clear, our commitment under Project Texas is for the data of all Americans to be stored in America, hosted by an American headquartered company, with access to the data controlled by USDS personnel." – TikTok CEO Shou Chew's witness testimony before House Commerce on Project Texas, its effort to safeguard U.S. user data