

# Cablefax Daily™

WHAT THE INDUSTRY READS FIRST

## 2024 Outlook: NCTA Chief on BEAD, Title II & Why He's Not Retiring

With Round 2 of net neutrality comments due at the **FCC** tomorrow, **NCTA** President/CEO *Michael Powell* is casting a wary eye at Title II regulation as the government gears up to dole out historic broadband funding under the BEAD program. The conservative who served as **FCC** Chairman under President *George W. Bush*, is quoting a lot of *Ezra Klein* these days.

"I would point you to *Ezra Klein*, a great liberal commentator who's writing a whole book on the [idea](#) that liberals make a huge mistake when they have big build projects. They just can't resist the temptation to put all this other stuff on it—and then we don't get affordable housing, and we don't get chip factories, and we don't get bridges built and we don't get train stations and so on," Powell said in a recent interview from his Massachusetts Avenue office, a stone's throw from the U.S. Capitol. "This is what is in danger of happening here [with BEAD]. You throw on pricing, you throw on government contracting rules, you throw out a bunch of stuff that our objection to is that it just doesn't belong here. You're trying to do something that is going to make the core thing less attainable, and you're going to really regret this."

Under the \$42 billion BEAD program, states are directed by NTIA to establish what low-cost broadband will look like price wise or set out a formula to determine that price in order to meet the requirement for offering low-cost broadband to low-income households on BEAD-funded infrastructure. Powell suggested BEAD's affordability provision won't really move

the needle as such rules will only apply to a few areas of the country—often the most rural and sparsely populated. "It's a drop in the bucket, but yet you risk the big thing. It's a really irresponsible cost benefit analysis," he said. "The danger is you will disincentivize the build on the thing that matters. I tried to argue to the Commerce Secretary, to the President to anybody who would listen: you better be maniacally focused on the mission here; this mission cannot afford to be sidetracked with a whole bunch of other silly things."

And that gets him to net neutrality, a concept he's been wrestling with since his FCC days. Cable's arguments against a return to Title II regulation for broadband are well known—it's a solution in search of a problem, it could open the door to rate regulation, it hinders investment because of uncertainty and so on. But this latest net neutrality salvo hits especially hard given that it comes at the same time as the government's major push to bring broadband to the last of the unserved. "You cannot have the president calling ISPs to come to the White House and sit around the table and talk about how we're all partners and we're going to go do this for the country. And we're going to let the private market take the lead, and, oh, by the way, while this is happening, your regulatory agency over here is about to radically transform your regulatory environment and drop on you a massive universe of regulatory risk," said Powell.

The NCTA chief admits he doesn't have much hope the current FCC will reverse course when it comes to Title II, which will then trigger another legal challenge and possibly another

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FCC reversal if Republicans win the White House. After all, he's watched this song and dance multiple times since joining NCTA in 2011. That might lead one to wonder if he's entertained the idea of retirement or at least a change of jobs.

"That has not become a material question in my life yet. I think any 60-year-old starts thinking about what's next. At a minimum, I can tell you, I'm certainly here for the rest of 2024," Powell said. "I'm happy. We have great people to work with. We have a great culture. I think we work on intellectually interesting things. I'm not aching for any other job. I think the day I would retire here I probably will be really retiring. And I have a lot of other interests that are not about having a nine to five job. At some point, those things will become meaningful enough, satisfying enough, and I'll be tired enough to say I'd like to convert."

While BEAD and net neutrality are certainly big headlines for 2024, there's plenty more percolating. Cable's 10G initiative just hit the five-year anniversary of its launch at CES. Then there's cable's increasing interest in wireless services and what that means for the nation's spectrum policy. And don't forget artificial intelligence. "I think it was titillating in '23. I think it will be all in for '24," Powell said. "Everyone can sit around and wonder how that's going to change things, but all I'm convinced of is it will change everything. I think it's naive to not think this is a pretty tectonic shift in the world and one that can clearly have impacts on communication systems, good and bad."

## FCC SIDES WITH COMCAST IN GOOD FAITH FIGHT WITH MISSION

The **FCC** is siding with **Comcast** in the MVPD's complaint against **Mission Broadcasting** for failure to negotiate retransmission consent in good faith. In a Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture adopted Friday, the agency's **Media Bureau** said that Mission violated good faith negotiation requirements when Mission-owned station WPIX put forth renewal terms that would foreclose the filing of complaints with the FCC. **Nexstar**, which provides services to WPIX, argued that parties typically agree to withdraw good faith negotiation complaints once new retrans deals have been reached and that proposals that fail to meet good faith requirements don't violate FCC rules if they are not included in a final agreement. It added that a good faith complaint should not be considered by the Commission unless an objection was first raised with the other party in the negotiation. "On the contrary, a party may reasonably decide that, in order to prevent significant disruption to viewers, it must seek to reach agreement even with a counterparty it feels is not negotiating in good faith," the Media Bureau said in its ruling. "Our rules permit the filing of complaints even after an agreement is signed precisely because the process can be cor-

rupted without being totally derailed." Comcast filed a complaint alleging that Nexstar and Mission Broadcasting failed to negotiate retransmission consent in good faith in December 2022, and it didn't withdraw the complaint when the parties reached a renewal five days after the filing that included WPIX. Nexstar took issue with Comcast's decision not to withdraw the complaint, telling the FCC that Comcast's true intention was to force the agency to examine the attribution of WPIX. Comcast and **Charter** have both in recent years asked the agency to issue a ruling on whether Nexstar should be attributed ownership of WPIX. The Media Bureau ruled that for the failure to negotiate in good faith, Mission is liable for a forfeiture of \$150,000.

## DIRECTV, TEGNA SETTLE FIGHT

**DirectTV** and **TEGNA** put down their pitchforks over the weekend, reaching a new multi-year retrans consent deal covering the broadcaster's 64 owned stations in 51 Nielsen-designated markets. Stations returned before Saturday's **NFL** playoff game featuring the Cleveland Browns at Houston Texans at 4:30 p.m. ET. The agreement puts an end to a blackout that began on Nov. 30 and saw DirectTV putting forth proposals that included significant shifts in the retransmission consent model. In its discussions with TEGNA, DirectTV proposed that broadcasters should offer stations a la carte to customers or allow MVPDs to negotiate directly with ABC, CBS, Fox and NBC for national network coverage. TEGNA called the proposal "not productive."

## HBO/MAX LEAD EMMYS

The awards shows continued Monday with the 75th Annual Primetime Emmys, and it was **HBO** and **Max**'s time to shine as they led platforms with 31 wins. That included a sweep of all drama categories by HBO Originals thanks to "The Last of Us," "Succession" and "The White Lotus," which garnered eight, six and five wins, respectively. **Netflix**, led with eight wins by "Beef," came second among platforms with 22 total awards. "Wednesday" contributed four to that total and "I Think You Should Leave with *Tim Robinson*" tacked on two more. **FX**'s "The Bear" led programs with 10 victories after sweeping comedy categories. "Welcome to Wrexham" (five) and "Atlanta" (one) filled out the rest of FX's 16 awards. **Apple TV+** finished the night with 10 wins, followed closely by **Disney+**'s nine and **Prime Video**'s six. **Hulu** came in with four wins while **Peacock** and **The Roku Channel** each grabbed a pair of wins.

## PEACOCK'S PLAYOFF DEBUT

That certainly wasn't a bad start for the **NFL**'s first exclusively streamed playoff game. The Chiefs' 26-7 ice-cold win over the

Dolphins was the most-streamed live event in U.S. history with an average minute audience of 23 million viewers across **Peacock**, local **NBC** stations in Kansas City and Miami and **NFL+**, according to **Nielsen** custom fast national data. That's up from last year's primetime AFC Wild Card game that had a total audience delivery of 21.8 million across NBC, Peacock, NBC Sports Digital and NFL Digital. The Chiefs-Dolphins reached a total of 27.6 million viewers and peaked at an average of 24.6 million from 91:15-9:30pm, helping Peacock set a record for its largest single day ever in audience usage, engagement and time spent with 16.3 million concurrent devices. We'll see how other figures come in for comparison's sake, but so far **Fox Sports** revealed the Packers-Cowboys game Sunday had 40 million viewers and peaked with 43.4 million from 6:45-7pm. That's projected to be **Fox's** best Wild Card game since 2015.

P2+ and 402,391 A25-54. **MSNBC** trailed with 1.15 million P2+ (142,521 A25-54) and **CNN** was third with 688,006 P2+ (193,817 A25-54). In the 8pm hour—which included Fox News calling a win for former President *Donald Trump*—viewership reached 2.9 million P2+. Fox News capped the 10pm-midnight slot with 2.68 million viewers and 422,819 A25-54.

## CARRIAGE

**NBCUniversal** and **Roku** are teaming up to introduce nine new entertainment and sports FAST channels on **The Roku Channel**. The channels come from NBCU's portfolio of content ranging from **Bravo** to **Golf Channel**. Channels now available include **GolfPass**, **Universal Westerns**, **American Crimes**, **The Lone Ranger**, **Top Chef Vault**, **Made in Chelsea**, **Oxygen True Crime Archives**, **Bravo Vault** and **Lassie**.

## NCTC ADDS ACTIFAI AS AI PARTNER

**NCTC** signed a partnership deal with AI solution provider **Actifai** to provide its members access to the company's platform. Actifai's platform uses AI and machine learning to recommend an optimal mix of services for each consumer and household based on their individual needs and circumstances, and NCTC members will now be able to quickly deploy the solutions to increase sales numbers and drive adoption of broadband and other services.

## TV VIEWERSHIP UP IN DECEMBER

December checked in as the second-highest month for TV viewing in 2023, according to **Nielsen's** "The Gauge" report. All categories minus broadcast saw increases in usage, with broadcast falling 4.3% from November. Cable viewing was up 1.3% last month behind NCAA bowl games and NFL contests, helping cable and broadcast combine for 51.7% of TV usage. Streaming—up 1.2% in December—took 35.9% of viewing. **YouTube** led platforms with 8.5% with **Netflix** in second at 7.7%, "Other streaming" in third at 5.2% and **Prime Video** in fourth at 3.3%. Other highlights include **Tubi** achieving a 6.6% increase in viewing and Netflix also seeing a 6% bump.

## C-SPAN EARNS UPGRADE ON FIOS

**C-SPAN** networks are now available in HD nationwide on **Verizon Fios**, according to a [tweet](#) from C-SPAN co-CEO *Susan Swain*. She used the moment to call on other providers to make similar moves at the start of a busy election year. "Viewers will appreciate the improved picture quality during this important political season. @DirecTV and @Dish—isn't it time to upgrade C-SPAN to HD too?" she asked.

## RATINGS

Early data from **Nielsen** has **Fox News** in the lead among news networks for Monday's coverage of the 2024 Iowa Caucuses. Fox News led the night in primetime with 2.83 million viewers

## VIX LAUNCHING AD-SUPPORTED PREMIUM TIER

Spanish-language streaming service **Vix** is launching an ad-supported premium tier in the U.S. later this year. The tier will offer U.S. subscribers access to the service's exclusive original series, movies, live sports and more at a lower price point than the Premium tier with a moderate ad load. The monthly price of the Premium with Ads tier will be announced in the coming months. Vix also offers an ad-supported free tier called Vix Gratis.

## FIBER FRENZY

**Hawaiian Telcom** is expanding service to four additional areas on the island of Moloka'i. Nearly 4,500 residents and businesses in Ho'olehua, Kaunakakai, Kualapu'u and Maunaloa now have access to HT's 500 Mbps upload/1 Gbps download speeds, bringing the company's total locations for the state to 337,000. – **Ritter Communications** is slated to wrap up two infrastructure projects that'll bring its services to Russellville and Morrilton, Arkansas. The two projects combine for \$4.3 million and will provide residential customers with speeds of up to 5 Gbps.

## ON THE CIRCUIT

**C2HR** is calling all HR professionals to have their say on the 2024 Annual Compensation Surveys. The association will host two virtual meetings next week for this year's survey planning committee. They'll take place via Zoom on Jan 23 and 25 from 1-4:30pm. Those who wish to participate in either meeting should contact *Laurie Krashanoff* [here](#).

## EDITOR'S NOTE

Need a few more days to get those **Cablefax 100** nominations in? Your wish is granted. The [Cablefax100.com portal](#) will stay open until end of day Friday, Jan. 19.