

Cablefax Daily™

WHAT THE INDUSTRY READS FIRST

Patent Battle: DISH Taken to Court Once Again Over Patent Suit

DISH and Sling TV had a day in court once again Tuesday, this time over a patent suit that has been ongoing since 2017.

The battle involves **Realtime Adaptive Streaming**, which has argued that DISH infringed on two of its patents involving systems and methods for video and audio data distribution. In particular, the company's accusations are around violations of patents related to data compression. In January 2022, the district court granted a motion by DISH and Sling TV to have the case deemed exceptional, and in September, it awarded the companies \$3.9 million in attorneys' fees. Realtime Adaptive Streaming filed an appeal to the **U.S. Court of Appeals for the Federal Circuit** for the exceptionality and fee award orders, and oral arguments were heard Tuesday.

The U.S. Supreme Court has previously ruled that an exceptional case is one that stands out from others with respect to the substantive strength of one party's litigating position or the difficult and unreasonable manner in which a case was litigated.

In the courtroom Tuesday, Chief Circuit Judge *Kimberly Moore* struggled with some of the fact findings that occurred at the district court level and how her complaints over how some of the facts were found should play into the appeals court's review. In its decision by judge R. Brooke Jackson, the District Court for the District of Colorado identified six red flags that it believed, when considered in totality, would deem the case

exceptional.

"My problem is one of them, I agree 100% on it. I think it alone would have justified what he did here. But... his fact finding was the collection of all of them, some of which I don't think are legitimate, support the conclusion. So I don't know what to do here," Moore said.

Judge Alan Albright also questioned what the court could do, taking a particular look at a red flag that was raised in regards to both sides presenting expert witnesses to support their cases.

"What do we do when the district judges said I find this case extraordinary for these six reasons, and it seems pretty clear to me it's the totality. It's a totality of all six, but if on many of them at least I don't think they would rise to the level of meriting an extraordinary case, what do we do now?" Albright said.

Adam Shartzter, council for DISH, argued that in times like these, the appeals court should turn "to the extreme discretion that is owed" to the district court over these types of fee determinations. The Supreme Court has previously ruled that appeals courts should be more deferential to district courts when reviewing awards of fees in patent cases.

Even with their questions around the complexities of the district court's decision, the judges of the appeals' court seemed unconvinced that they should do anything other than affirm that judgment around the fee award. *Philip Wang*, counsel for Realtime Adapting Streaming, argued that the district court abused its discretion in finding this case extraordinary, but



Cablefax TOP OPS AWARDS

Cablefax's Top Ops Awards recognize excellence in a variety of areas, including marketing, technology, finance, lifetime achievement, customer service and community involvement. Give credit where credit is due—Nominate the Top Operators of the year.

**NOMINATE
NOW**

the judges' reactions seemed incredulous.

DISH's legal team has plenty left on its to-do list following the conclusion of this case. The company still has a number of other patent suits pending related to the validity of a number of patents and related claims.

FCC WARNS OF IMPACTS OF ACP SHUTDOWN IN LETTER

We're officially in the final full month of the Affordable Connectivity Program before it shuts down in May, and FCC Chair Jessica Rosenworcel sent an update to Congress Tuesday on what is being done by the agency and ISPs ahead of the program's closure. In the letter, she noted that consumers are receiving written notices about the end of the program from the Universal Service Administrative Company as well as from their providers on ACP's closure. But her biggest message is that the impact of the shutdown will be anything but trivial. She included an attachment with updated data on the number of enrolled ACP households in each state, territory and congressional district. Based on estimates of state-by-state participation rates, Rosenworcel said more than 75% of the states, along with D.C. and Puerto Rico, have at least 30% of eligible households participating in the program. She also highlighted how the end of ACP will impact vulnerable communities, including senior citizens. Nearly half of ACP households are led by someone over the age of 50. Rosenworcel also highlighted how the shutdown could impact veterans (one study indicates more than four million ACP households have an active or former military member), school children that require broadband to complete their homework and Tribal areas that have historically had lower broadband subscription rates. "I want you to know that the agency remains ready to keep this program running, should Congress provide additional funding. We have come too far to allow this successful effort to promote internet access for all to end," Rosenworcel said.

OPTIMUM ROLLS OUT NEW MARKETING CAMPAIGN

Optimum is touting its hyperlocal focus in a new brand platform and marketing campaign. The platform, titled "Where local is big time," highlights the company's ability to offer connectivity services while meeting unique needs of various local communities. The media campaign will specifically target residential customers and businesses across TV, video, social media, radio and streaming audio, out-of-home advertising, digital displays and more. It'll feature a new modern visual identity for Optimum along with two hero ad spots "[Wrong Class](#)" and "[Investigation](#)."

SLING EXPANDING REWARDS PROGRAM TO ALL USERS

Sling TV is making its rewards program available to all viewers including both paid subscribers and Sling Freestream users. That means all users can participate in the provider's watch and win sweepstakes that have prizes totaling \$25,000 in worth. Users can earn up to 70 entries per day, with one winner set to bring home \$10,000, 20 users getting \$500 and 125 folks receiving a free month of Sling TV. Winners will begin to be notified on or around May 1.

QUARTERLY RATINGS

It was a dominant quarter for Fox News, which led to it claiming the total day and primetime crown among cable networks for 1Q24. It ended the quarter averaging 2.07 million viewers P2+ in prime. ESPN wasn't too far behind with 1.69 million viewers while MSNBC trailed in third with 1.25 million. TBS, which got its yearly boost from March Madness, checked in at No. 4 with 876,000. HGTV capped the top five with 808,000 viewers. Fox News' total day viewership came in at 1.3 million, followed by MSNBC with 814,000 and ESPN with 714,000. CNN and HGTV followed with 467,000 and 433,000, respectively. – On the business side of things, Fox Business ended the quarter with 204,000 viewers P2+ during business day hours (9:30am-5pm Monday-Friday). CNBC had 133,000 P2+ in the same timeframe, but did come out on top among A25-54 with 28,000 compared to Fox Business' 14,000. CNBC claimed the weekday market hours (9am-4pm) with 202,000 viewers P2+ and 36,000 A25-54, compared to Fox Business' 194,000 viewers P2+ and 11,000 A25-54.

SPORTS RATINGS

Iowa's win over defending national champions LSU on Monday became the most-watched women's college basketball game on record and on ESPN platforms as it garnered 12.3 million viewers. The game followed a weekend where the NCAA Women's Basketball Tournament continued on its record-breaking path as ESPN secured its most-watched Sweet 16 on record. The Sweet 16 averaged 2.4 million viewers—a massive 96% jump YOY—which brought the overall tournament average to 1.1 million viewers, good for a 104% improvement YOY. – On the men's side, TNT Sports and CBS Sports combined to have its most-watched Elite Eight day in five years Sunday. NC State vs Duke had 15.1 million viewers on CBS, while Purdue vs Tennessee came in with 10.4 million viewers. Men's tourna-

ment viewership through the Elite Eight is averaging 9.4 million viewers across **TBS**, **CBS**, **TNT** and **truTV**—up 4% compared to the same point in last year's tournament. – The 2024 **MLB** season is officially underway, and **ESPN's** Sunday Night Baseball telecast of the Cardinals vs Dodgers capped the Opening Weekend with an average of 1.82 million viewers. That's up 17% from last year, according to **Nielsen**, and the broadcast peaked with 2.36 million viewers at 9:45pm. Viewership among P18-49 was up 17% from last season's Sunday Night Baseball opener. – Sunday's Manchester City vs Arsenal match became the most-watched Premier League contest in U.S. history with 2.12 million viewers across **NBC**, **Peacock** and **NBC Sports Digital Platforms**. It's the first English-language match to break the two-million viewer mark, and if you include Spanish-language viewership on **Telemundo**, that number rises to 2.59 million. It also became the most-streamed simulcast match ever as Peacock recorded an average minute audience of 547,000 viewers.

DOING GOOD

Comcast and United Way of South Central Indiana are joining forces to help further bridge the digital divide. The two are donating 100 laptops to residents in the Bloomington, Indiana, area who participate in programming through the city's Banneker Community Center. The laptop donation is part of Comcast's 10-year, \$1 billion initiative Project UP. A survey in April 2020 conducted by the City of Bloomington found a pronounced skills gap for low-income and older residents, with 50% of respondents indicating they don't have the tools needed to use the internet effectively and efficiently. – **Verizon** awarded a \$50,000 disaster-preparedness grant to KIPP DC Public Schools, celebrating the partnership during an on-campus event in Washington, D.C. Tuesday. Verizon's support will allow KIPP DC Public Schools to provide disaster-relief education and resources to its students and surrounding communities through Verizon Frontline volunteers. The response team will conduct tabling events to showcase resources that showcase connectivity resources for first responders during emergencies, and other volunteers will distribute bilingual resources on flooding. The funding will also allow students to participate in disaster simulations related to blizzards, floods and earthquakes.

CBS STATIONS CONTRACT GRAY'S IN-HOUSE CONSULTING GROUP

CBS has retained **Gray's** in-house research and consulting group to provide market research and news consulting services to all 14 CBS owned and operated television stations. The partnership began on April 1. The team was created in Jan. 2023 and has completed almost 100 research projects exclusively for Gray's local newsrooms.

TIVO: CONSUMERS CUTTING BACK ON VIDEO SPENDING

Consumers are scaling back on video services or at least thinking about it, according to the **Tivo's** 4Q23 Video Trends Report. Some 20% of respondents shared that they feel they have too many services and 62.5% admitted to reducing their entertainment spend in light of recent economic inflation. Cost was the leading reason for SVOD cancellations (21.3%), but there's some good news for traditional MVPDs. Tivo said pay TV churn risk is on the decline as 63.7% of respondents are cord-revivers—resubscribing to pay TV in the last 6 months, with 33.8% reporting that they couldn't get all the entertainment they were looking for without it. The average total spending on video services in 4Q23 was \$176.84, a \$13 dip vs a 4Q22. During that same period, pay TV subs average spend dropped to \$216.22 from \$229.68, while broadband-only subscribers video spend has jumped to \$70.26 from \$61.79. The study is based on 4,436 adults living in the U.S. and Canada during the quarter.

PROGRAMMING

Get those solar glasses ready. **NewsNation** will have special coverage of the total solar eclipse on Monday. Senior national correspondent *Brian Entin* will co-anchor a special broadcast from 1-4:30pm alongside "NewsNation Now" anchors *Nichole Berlie* and *Connell McShane*. The network will have other correspondents scattered throughout areas of totality in the U.S. – **HBO's** documentary about the 1995 Oklahoma City bombing "An American Bombing: The Road to April 19th" will premiere April 16 at 9pm, available to stream on **Max**. – Production for Season 2 of **Paramount+'s** "Tulsa King" is underway. The comedy is set to film in Oklahoma and Atlanta. Premiere date is still to be announced. – "Music Mayhem," a new **AXS TV** original series that looks at feuds, secrets and infamous moments that live among rock enthusiasts, will premiere April 15 at 8pm. The series premiere will highlight rock icons from the U.K. as part of "Brits Behind Bars."

PEOPLE

Segra is making *Scott Roberts* its new CRO. Roberts—who will report to CEO *Kevin Hart*—joins from **TruVista Communications**, where he held the same position for more than two years and focused on driving revenue growth and new customer retention. Roberts also spent four years at **Hotwire Communications'** SVP/GM in addition to stints at Comcast Business as SVP/GM and at **Time Warner Cable** Business Class as its Midwest Regional VP, Business Services. – *John Brauer* was named SVP, Insights and Media Measurement for Fox Television Stations. He will manage all aspects of FTS's media data, insights and measurement across all divisions of FTS, with particular focus on ad sales. Most recently, Brauer served as VP, Insights and Analytics for **Effectv**, the advertising sales division of **Comcast Cable**.