WEDNESDAY, MARCH 19, 2025 VOLUME 36 | NO.053

Cablefax Daily™

WHAT THE INDUSTRY READS FIRST

Fire Watch: FTC Oustings Raise Red Flags For Other Agencies

Washington observers are still reeling after a Tuesday that closed with news that *President Trump* had fired Democratic **FTC** Commissioners *Rebecca Slaughter* and *Alvaro Bedoya*. The ousted public servants intend to sue the Trump administration over the move, and they feel confident they have the grounds to be reinstated.

During an appearance on **CNBC**'s "Squawk on the Street" Wednesday, Slaughter spoke to how important it is for independent agencies to have both a majority and minority side to allow for bipartisan cooperation and to reflect a variety of perspectives. She expressed a number of concerns around how Slaughter and Bedoya's unexpected departures will impact agency operations, particularly when it comes to investigations that no other commissioners were involved in.

Perhaps most importantly, she raised concerns around how the outcome of the suit could impact other independent agencies that have a role to play in ensuring markets remain stable.

"If I can be fired, I don't know why [Chair of the Federal Reserve] *Jerome Powell* can't be fired," she said. "He was actually appointed by President Trump around the same time as me in early 2018. The markets that depend on the stability provided by government institutions should be very concerned."

Some agencies do seem to be safer than others for now due to the different benchmarks that define quorums in each setting. The Communications Act sets a quorum at the **FCC** at three commissioners. With Democratic Commissioner *Geoffrey Starks* set to resign in the coming weeks and no movement in the Senate on the confirmation of FCC nominee *Olivia Trusty*, FCC Chair *Brendan Carr* will need remaining Democratic Commissioner *Anna Gomez* to be present at meetings in order to conduct business. Of course, there are questions around how that changes if President Trump chooses to nominate another Republican or an Independent instead of a Democrat to replace Starks.

Bedoya also spoke out Wednesday during an appearance before Colorado's Joint House and Senate Judiciary Committees, noting he thought it was interesting that his firing came after he made a public statement criticizing **Amazon** CEO *Jeff Bezos* for workers' conditions in the company's warehouses. Bezos was a guest at President Trump's inauguration. He's also playing roles in efforts to tighten privacy protections for **Meta** users and to enforce a privacy consent decree against **X**.

"I think we need to take a step back and ask ourselves who will win from this effort to remove us. Is it going to be regular people struggling to make rent? Is it going to be regular people seeing higher and higher grocery bills, or is it going to be billionaires?" he said.

As for the legal grounds on which Slaughter and Bedoya stand, they point to the last and only time a president tried to remove a commissioner from the FTC. That was in 1935 when President *Franklin D. Roosevelt* fired Commissioner *William Humphrey* over disagreements over policy perspectives and Humphrey's refusal to resign.

However, Congress limited the president's ability to remove

commissioners to cases of inefficiency, neglect of duty or malfeasance. The case ultimately went to the **Supreme Court** and in Humphrey's Executor v. United States, it ruled unanimously that presidents cannot fire appointed leaders without cause.

There are those who believe that statute has been weakened over time, however. **TechFreedom** President *Berin Szóka* posted a thread on X with his interpretation of the situation, and he believes that in Seila Law LLC v. Consumer Financial Protection Bureau, SCOTUS said the statute only applies to agencies that are quasi-judicial. Former FTC Chair *Lina Khan*, he argues, transformed the Commission into a rulemaking agency during her term. That would mean it isn't protected by Humphrey's Executor.

Public Knowledge disagrees with that interpretation, ultimately believing that while the statute has ultimately been narrowed, it is still good law that should not be ignored. In a blog post last week, Public Knowledge Policy Counsel *Elise Phillips* argued that it remains the controlling precedent for removal proceedings when it comes to consumer protection agencies.

She also noted that Trump removing Democrat commissioners from the Commission could lead to the FTC struggling to conduct unbiased reviews of mergers and balanced investigations of anticompetitive conduct. "The FTC's enforcement actions are supposed to protect consumers like protecting children's data, curbing the inappropriate use of biometric technology and investigating anticompetitive conduct by quickly evolving market players—and it lacks perspective with a single-party majority," Phillips said. "The FTC must conduct business as it was designed; as a bipartisan, independent agency that addresses ongoing consumer harms created by consolidated industries like price gouging, supply chain shocks and overall product quality."

Gomez was one of those who publicly reacted to the news of the oustings at the FTC, saying she was sorry to see Slaughter and Bedoya treated this way.

"They've demonstrated unwavering dedication to public service and deserve to continue serving as Congress and the law intended," Gomez said in a post on X. "We all have a duty to keep speaking truth to power and to stand firm in our beliefs."

Even those that often opposed the positions of the pair questioned the decision to remove them from the FTC. **CTA** CEO *Gary Shapiro* noted in his own post on X that the association rarely agreed with Bedoya and Slaughter, but believed them to be good people and public servants. "I look forward to a greater understanding of the rationale for their dismissal," he said.

STARLINK LANDS AT WHITE HOUSE

Even the White House is looking to improve its internet connection, albeit with some skepticism. According to the *New York Times*, **Starlink** was installed across the White House property in a move that White House press secretary *Karoline Leavitt* said was "to improve WiFi connectivity on the complex." It's unclear when the area was fitted for installation, but the Starlink system is believed to be routed with existing fiber cables through a White House data center away from the property. Although the addition addresses connectivity concerns at the White House, there are worries of a possible conflict of interest considering *Elon Musk*'s role with Starlink and his designation as a special government employee through his work with the Department of Government Efficiency. Officials said Starlink donated the service and that it'd been vetted by the lawyer who oversees ethics issues in the White House Counsel's Office.

NOVAK TO CHAIR SPINCO

The title of board chair for **Comcast Corporation**'s **SpinCo** will go to *David Novak*, who previously served as Co-Founder/Chair/CEO of **YUM! Brands**, the company known for Taco Bell, KFC, Pizza Hut and more. He has sat on Comcast's board since Dec. 2016, but upon completion of the spin-off, he will vacate that position for his new role. Outside of those activities, he acts as Founder/CEO of David Novak Leadership, a leadership development platform designed to give individuals the skills they need to become better leaders.

EIGHTH CIRCUIT HEARS BROADCAST OWNERSHIP ORAL ARGUMENTS

The Eighth Circuit heard oral arguments Wednesday on a challenge brought by broadcasters against the **FCC**'s local television ownership restrictions. The case revolves around the Commission's December 2023 order keeping intact many of its existing ownership rules following the completion of the 2018 quadrennial review of those regulations. The broadcasters want to see those restrictions loosened given the intense competition they now face from the growing number of audio and video platforms that are taking not only audiences, but ad dollars as well. Given that the three judges on the panel hearing the case were appointed by Republicans, **New Street Research** feels the odds favor the panel being skeptical of arguments that were put forth by the FCC's then-Democratic majority. "The argument was not as easy for the broadcasters as it could have been, but we still believe the Court will likely remand the 2023 order to the FCC with instructions to redo the rules considering current market conditions," it said in a note to clients. The Commission was likely to take a fresh look at the rules anyway with Chair *Brendan Carr* leading the agency as he has previously indicated that he is in favor of more consolidation at the local and national levels.

Cablefax Daily (ISSN 1069-6644) is published daily by Access Intelligence, LLC | www.cablefax.com | 301.354.2101 | Editorial Director: Amy Maclean, 301.354.1760, amaclean@accessintel.com | SVP Media Group: Dave Colford, 631.786.9796, dcolford@accessintel.com | Managing Editor: Sara Winegardner, 301.354.1701, swinegardner@accessintel.com | Editor: Noah Ziegler, 301.354.1704, nziegler@accessintel.com | Sales Director Cable & Broadband Group: Amy Abbey, 410.979.0171, aabbey@accessintel.com | Senior Director of Marketing: Stephanie Cronk, scronk@accessintel.com | Production Manager: Joann Fato, jfato@accessintel.com | Kerry Smith, Divisional President, Marketing & Media Group, ksmith@accessintel.com | Group Subs/Subscription Questions, Client Services: 301.354.2101, clientservices@accessintel.com | Annual subscription price: $1,999.00/year | Access Intelligence, LLC, 9211 Corporate Blvd., 4th Floor, Rockville, MD 20850

In The WILD

A Cablefax feature highlighting industry doings spotted in the real world.

C-SPAN Celebrates 46th Anniversary

Every year, March 19 signifies a new milestone for C-SPAN. The date represents another year of providing an unedited window into the inner operations of the U.S. federal government, adding further credence to the network's "Democracy Unfiltered" motto. However, it also symbolizes resilience amid evolving (and quite interesting) times in both cable and news.

It's now been 46 years since C-SPAN went live from the House of Representatives for coverage of floor debates. The inaugural airing began with a short speech from then-Tennessee Rep. Al Gore, and C-SPAN only had four employees at the time: Brian Lamb, Jana Dabrowski Fay, Don Houle and Brian Lockman. They were responsible for transmitting the first TV feed to an initial reach of 3 million homes. Safe to say both C-SPAN and Gore weren't going away any time soon.

Since then, the nonprofit added C-SPAN2 to focus on the Senate, C-SPAN3 for additional public affairs programming, C-SPAN radio, a video library that now boasts nearly 300,000 hours of content and plenty more—all without a cent from the government. We'd be remiss to not mention the beloved C-SPAN Bus that hit the road in 1993 and traveled across the U.S. to educate communities and schools about what the public affairs network had to offer. It accomplished that task and then some, becoming C-SPAN's unofficial mascot and a familiar pillar in the cable industry before ultimately being parked for good in 2021.

The idea of not taking funds from government entities is something Lamb feels strongly about even after four decades. In a special that'll air tonight at 8pm on C-SPAN, current network chief Sam Feist asked Lamb if he'd ever thought about saying "Yes" to federal funding. Lamb was direct in his response: "Not only never thought about it, I would've never been involved in it. I think it's a very bad idea to have a government institution fund media in any way," the former C-SPAN CEO said.

While the commitment helps C-SPAN remain as unfiltered as possible, it means the network has to get money elsewhere. In addition to the license fees it gets from cable and satellite affiliates, C-SPAN recently started seeking donations from viewers. It also introduced limited advertising on digital platforms but has kept its linear options ad-free.

"We're going to go out into the patriotic philanthropy world and find support to augment the subscriber fees, and we think that will be the trick," Feist, who assumed C-SPAN's CEO seat in September, said earlier this month at ACA Connects Summit.

C-SPAN is joining that patriotic philanthropy with its Founders' Day celebrations, setting a goal to raise $46,000 by March 31. Find out more and how to donate here. – *Noah Ziegler*

PEACOCK ROLLS OUT NBC SPORTS RSN SUBSCRIPTIONS

Peacock is making four **NBC Sports** RSNs available as add-on subscriptions. **NBC Sports Bay Area** ($17.95/month), **NBC Sports Boston** ($14.95/month), **NBC Sports California** ($17.95/month) and **NBC Sports Philadelphia** ($24.95/month) can be purchased to access their respective live telecasts of **MLB**, **NBA** or **NHL** games in addition to other programming aired on the networks. Plans for Peacock to add the four RSNs first broke in October.

SUPER BOWL BOOSTS STREAMING IN NIELSEN'S GAUGE FOR FEBRUARY

While time spent watching television dropped from January to February, a record Super Bowl was a big factor for the streaming category in **Nielsen**'s monthly "The Gauge" report. Streaming took 43.5% of TV usage in February among P2+, led by **YouTube** main posting the highest share recorded in the streaming category overall with 11.6%. **Netflix** came second with 8.2% after owning the top streaming program in February with "The Night Agent." **Disney+** (4.8%), **Prime Video** (3.5%) and **The Roku Channel** (2.1%) trailed behind, but **Tubi** had its best month since July after having streamed the Super Bowl. Tubi represented 1/3 of all streaming usage as the game aired live, multiplying its audience by nearly 16X its January average. Cable and broadcast combined for 44.4% with 23.2% and 21.2%, respectively. Cable viewership was led by the **NHL**'s 4 Nations Face-Off garnering 9.3 million viewers on **ESPN**, but **Fox News** helped the cable news category gain 8% over January to take up 27% of all cable viewing in February. Broadcast had the aforementioned Super Bowl on **Fox** in addition to the "Saturday Night Live 50th Anniversary Special" on **NBC** and The Grammys on **CBS**.

NAD SIDES WITH T-MOBILE IN VERIZON CHALLENGE

T-Mobile's claim that it's the "first and only" U.S. wireless provider to keep consumers connected via satellite-powered text messaging in collaboration with **Starlink** was given an OK by the **National Advertising Division**. **Verizon** submitted a Fast-Track SWIFT challenge regarding an ad that appeared on T-Mobile's website and on LinkedIn. It included the statement "T-Mobile is the first and only U.S. wireless provider to keep you connected in places never thought possible with the world's largest satellite-to-cell constellation in partnership with Starlink." Verizon's belief was that it conveyed the message that T-Mobile is the only carrier that provides satellite-enabled messaging and that the references to Starlink don't sufficiently limit the exclusivity claim. Verizon also claimed the service's beta status indicates it's not widely available. NAD found that in context, the "first and only" claim is limited to the T-Mobile-Starlink partnership. The Division also determined T-Mobile's Starlink satellite-to-cell service is available to current T-Mobile customers, thus supporting the claim.

Think about that for a minute...

Which Way Is Up?

Commentary by Steve Effros

Things have gotten so "upside down" in Washington in the last few months that it's hard to tell "which way is up!" But it's not just Washington and the new administration, or even frantic efforts to "DO(d)GE the bullet." At some point we'll have to get into all of that because it definitely is going to have a direct effect on telecommunications, journalism, government policy and all the other things I write about. But for today I just want to give you some highlights (or lowlights) of the questions I think have to be addressed with what's going on.

Let's start outside of the "DC" issues. Can someone tell me what the "plus" means on the end of all the streaming channels these days? I always thought that "+" meant something was added. But that doesn't seem to be the case anymore. Take ESPN+ as an example. A potential subscriber might think that by subscribing they would be getting the well-regarded ESPN in addition to other good stuff! Not so. You don't get all the things that ESPN regularly provides, until, of course, they roll out the "direct to consumer" version of ESPN. Will that be "plus/plus"?

Oh, I might also add to this question the term "Premium," which in some cases, like "plus," apparently is meant to let us know that the streaming programming provided has added commercials! That's sort of the opposite of what one might expect. But I do understand why all this is happening. It's the old saying "follow the money!" I don't say that in a bad sense, I say it because all of these new services are finding it almost impossible, with a few exceptions, to make economic sense of their business plans without having more than one source of revenue.

In other words, subscription revenue alone will not cover the cost of all the programming being offered, now that we are not reliant on a few big providers. They need advertising revenue as well. Can't criticize them for that, but as a consumer you can see where it is all leading.

And that's not new. Broadcasters, after all, had to ram retransmission consent through Congress to get a second revenue stream when advertising, alone, did not cover the bill. You can also see what happens when ads are the single revenue stream. Just look at your search and social media apps. The ads are now so intrusive they constantly block the information you are looking for. How long do you think that will last?

Speaking of "upside down," I can't resist responding to my new column/colleague Mike O'Rielly's "TMT Whiteboard" column in these pages last week. His main premise: the past administration's restrictive view of mergers is now over, and most if not all merger proposals in telecom should go through unless there is some major policy or bad actor problem. Well, I can understand the theory, but suggesting that big mergers result in lower prices and more innovation simply is hard to prove in reality. Once the "big" are allowed to simply swallow up all the "little," as happened in computer operating systems, web browsers, search engines and the like, they tend to do whatever it is they want because there is no one to stop them! That has to be addressed too.

As to "which way is up," the new Chair of the FCC is suggesting that some mergers will be judged not on their business merits but on the way they have edited content! And while the new administration plans to cut funding for CPB/PBS, the FCC chair is suggesting they be blocked from ads as well. That's not only "upside down," it's backward! Hopefully we can have a friendly back-and-forth on all this.

Steve

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(Steve Effros was President of CATA for 23 years and is now an advisor and consultant to the cable industry. His views do not necessarily reflect the views of Cablefax.)