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WHAT THE INDUSTRY READS FIRST

Same Tune: Solicitor General Agrees SCOTUS Should Hear Cox-Sony Case

The U.S. Solicitor General agrees with **Cox Communications** that the U.S. Supreme Court should take a look at its long-running legal battle with music labels over the operator's liability as it relates to broadband customers pirating music over its network.

Specifically, the government supports Cox's request for SCOTUS to review whether an ISP materially contributes to copyright infringement by continuing to provide internet access to particular subscribers after receiving notice that copyright infringement has occurred on their accounts.

"If Cox had explicitly or implicitly marketed its service as being particularly useful for infringers, or if it had encouraged subscribers to use Cox's internet service to infringe, liability might be appropriate… But as the court of appeals acknowledged, Cox's business model was indifferent to whether its subscribers used the internet for lawful or unlawful purposes," the Solicitor General wrote in a brief filed late Tuesday with the high court.

Solicitor General *Dean John Sauer* and his team compare the case to SCOTUS' recent analysis of the common law of secondary liability in *Twitter, Inc. v. Taamneh* (2023), where the social media platform allegedly had failed to stop ISIS from using their platform, but the court found "there [we]re no allegations that defendants treated ISIS any differently from anyone else."

This case was brought against Cox by **Sony Corp.** and other music industry groups in 2018. Cox was found responsible in 2019 for its subscribers' actions, with a Virginia jury issuing $1 billion in damages. In February 2024, the Fourth Circuit threw out vicarious liability and the $1 billion judgment but upheld willful contributory infringement. Cox wants the Supreme Court to examine the questions around contributory liability and willfulness.

The operator views this lawsuit as something that will impact all ISPs, given that they are a frequent target of similar legal action by music labels. It remains hopeful SCOTUS will hear the case. "We are pleased the Solicitor General agrees the Supreme Court should review this significant copyright case that could jeopardize internet access for all Americans and fundamentally change how internet service providers manage their networks. Cox knows how critical reliable broadband services are for the communities we serve," a Cox spokesperson said.

The government supports Cox's argument that this decision could have a chilling effect, declaring, "Losing internet access is a serious consequence, as the internet has become an essential feature of modern life. And because a single internet connection might be used by an entire family—or, in the case of coffee shops, hospitals, universities and the like, by hundreds of downstream users—the decision… could cause numerous non-infringing users to lose their internet access."

The Solicitor General's brief also supports a review of the second question in Cox's petition, which concerns the circumstances under which a contributory infringer can be held liable for enhanced statutory damages based on a finding of "willful" infringement. "The jury in this case was instructed that it could find Cox's violations willful if Cox knew that its subscribers had committed infringement. That instruction was mistaken because it allowed the jury to award enhanced damages even if Cox reasonably believed that its own conduct in declining to terminate infringing subscribers' internet access was consistent with the Copyright Act," the brief concluded.

Sony has separately petitioned the court to review the court of appeals' holding that Cox could not be held vicariously liable for its customers' infringement because Cox did not financially benefit from that infringement. But the Solicitor General doesn't support such a move. "The court of appeals correctly held that a plaintiff alleging vicarious infringement must show that the defendant profited from the infringement. There is no disagreement among the courts of appeals on this question," the brief said.

TELECOM GROUPS CALL FOR STATES' RIGHTS IN BEAD

A group of telecom associations is teaming up to push President *Trump* to get the BEAD program for broadband deployment up and running—and to keep the states in control. "The BEAD program was designed for the States to carry out, and the States should remain in the driver's seat, empowered to use their expertise in determining the best broadband technology solutions for their residents," said the missive from **USTelecom, NTCA – The Rural Broadband Association, the Telecommunications Industry Association, National Rural Electric Cooperative Association** and **WTA – Advocates for Rural Broadband**. There's been talk of loosening program rules to give satellite broadband more funding. The groups acknowledged that every technology will have an important role to play, but added that BEAD is "a golden opportunity to drive as much fiber infrastructure as feasible into our country, which will help advance your Administration's important connectivity, AI and advanced manufacturing goals." At the same time, the coalition called on Trump to eliminate "unnecessary and burdensome program requirements imposed by the *Biden* Administration," decrying that not a single home has been connected in the 3.5 years since BEAD was established under the bipartisan Infrastructure Investment and Jobs Act. ISPs are awaiting further guidance on the BEAD program from NTIA. Last month, **Senate Commerce** advanced to the full Senate *Arielle Roth*'s nomination to head NTIA. While some have wondered if BEAD questions won't be answered until she's in place, **Nelson Mullins** Partner *John Heitmann* doesn't think the administration will wait. "I think the political heat on it will be too much," he said during a recent **INCOMPAS** webinar. "I think speculation is that they're going to do something in June. I don't quite see Arielle getting confirmed in June."

ECHOSTAR SAYS FCC INQUIRY THREATENS ITS VIABILITY

EchoStar is defending itself after **FCC** Chair *Brendan Carr* notified the company that it would investigate its compliance with buildout milestones for its nationwide 5G network as well as against an agency request for comment on its use of the 2000-2020 MHz (Earth-to-space) and 2180-2200 MHz (space-to-Earth) (2 GHz bands) for mobile-satellite service. "At no other time has the agency opened such inquiries after a company has invested billions into both acquiring spectrum and deploying a network in conformance with the agency's requirements," EchoStar said in an FCC filing posted online Wednesday. The company argued that the Commission's public notices are already threatening its viability as a wireless provider at a time when it's gaining momentum. It disclosed that Boost added 88,000 wireless subscribers in April alone, which it said extrapolated annually would represent over 1 million net adds. "If they maintained this pace in May and June, they would add 264,000 subscribers for the quarter. This is significantly better than the 110,000 that we were expecting, and we were well above consensus of 85,000," **New Street Research** said. "These [FCC] actions have created a dark cloud of uncertainty over EchoStar's spectrum rights and its Open Radio Access Network ("Open RAN") 5G network. This cloud has effectively frozen EchoStar's decision making—it cannot reasonably invest more capital into a buildout if the Commission indicates it may take away its licenses through unprecedented actions," EchoStar said. In 2019, EchoStar's predecessor, DISH, agreed to meet specific buildout obligations in connection with a number of spectrum licenses across several different bands. Last September, the previous FCC agreed to move a deadline for finishing deploying certain blocks of spectrum to Dec. 14, 2026 from June 14, 2025 in exchange for accelerated deployments in certain markets. EchoStar has said it has met the buildout requirements, but Carr raised questions around its submissions. EchoStar lashed out at **SpaceX**, saying it has made misleading statements on the facts and technical realities of the AWS-4 spectrum band and EchoStar's use of it for mobile satellite service. "This represents the fourth occasion in which SpaceX has made attempts to gain control of EchoStar's 2 GHz band, with the Commission denying the three previous efforts," EchoStar said. Of course, SpaceX sang a different tune, welcoming the FCC's probe. "The point is clear: an entity that claims to be a satellite operator must actually provide a service to retain its authorization, and EchoStar's failure to do so means its 2 GHz MSS authorization terminated years ago," said the **Starlink** operator.

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NY1-NEWS 12 BLACKOUT STILL COMING FOR CHARTER, OPTIMUM

Charter filed its official program notice that it will no longer carry **Altice USA**-owned **News 12** as of June 30 in systems in the New York and Connecticut area. ***CFX*** broke the news last week that Charter had terminated its reciprocal agreement with Altice USA, saying peer-to-peer collaboration no longer exists with the company. Spectrum customers will lose News 12 and Optimum subs will lose NY1 at the end of the month. Charter intends to put up a slate message on the channels for up to two weeks that says, "Important Programming Update. News 12 is no longer available through Spectrum. Spectrum News NY1 is now available on channel 1. Spectrum News NY1 provides the latest information and balanced news coverage 24 hours a day." NY1 wasn't available on Spectrum in Connecticut's Newtown/Fairfield County, Litchfield County and Winsted systems until May 8.

SORTING GCI'S FUTURE

While **Charter** and **Liberty Broadband** move closer to finalizing their all-stock transaction, **GCI** is preparing to be spun off into a new public company. The Alaskan operator will become **GCI Liberty** following its transition, which is expected to take place this summer. Once that occurs, it'll keep the Charter-Liberty deal on track to close June 30, 2027, though that date could be adjusted if agreed upon. Liberty will host an Investor Conference Call on June 3 to discuss the GCI business. GCI management will make remarks before *John Malone* and *Ron Duncan* host a Q&A session. Malone is set to serve as Chairman of the Board for GCI Liberty, while Duncan will hold the title of President/CEO.

GOMEZ, REPS URGE MOVEMENT WITH MULTILINGUAL ALERTS

FCC Commissioner *Anna Gomez* was among several legislators calling for *Brendan Carr* to expedite the rollout of multilingual Wireless Emergency Alerts (WEA). In October 2023, the FCC unanimously approved rules to augment the accessibility of emergency alerts by allowing them to be issued in the 13 most commonly spoken languages in the U.S., as well as English and American Sign Language. A Report and Order was released in early January that would've required commercial mobile providers to install templates on consumer devices for 18 time-sensitive alerts translated in the specified languages within 30 months. However, that was contingent on the rule being published in the Federal Register, which has yet to happen in the four months since. "We cannot play politics with public safety. It's time for the FCC to allow this process to move forward so that more people can receive the critical information they need in their chosen language," Gomez said at a press conference alongside Rep. *Nanette Barragán* (D-CA) and *Lula Davis-Holmes*, Mayor of Carson, California. The three referenced a false evacuation alert that was sent out in January as L.A. County dealt with wildfires. What was supposed to be sent to a single neighborhood was instead distributed to the entire county, sparking confusion in an area with 10 million residents—2.5 million of which being classified as having limited English proficiency. Earlier this week, Chairs of the Congressional Hispanic Caucus, Congressional Asian Pacific American Caucus and Congressional Black Caucus penned a letter urging Carr to submit the order and start the 30-month compliance clock. Beyond the wildfires, they pointed to recent hurricanes in North Carolina and Florida. "Your failure to complete this ministerial step—despite having supported the rule itself—has left this life-saving policy in limbo and significantly delayed access to multilingual alerts for millions of Americans," the letter read.

EVERSTREAM-BLUEBIRD DEAL

Business-only fiber provider **Everstream** has started voluntary Chapter 11 proceedings as part of an agreement to sell its Midwest operations to **Bluebird Fiber** in a stalking horse deal. If Bluebird's bid is successful, the comms infrastructure provider and data center operator will acquire Everstream's footprint, including operations in Michigan, Wisconsin, Illinois, Ohio and Indiana. The deal would expand Bluebird's own reach in the Rust Belt, adding to a fiber network that also serves Missouri, Kansas, Iowa, Oklahoma and Tennessee. Everstream and Bluebird expect the deal to close by EOY, subject to all closing conditions and regulatory approvals. Everstream sold select network assets in Illinois to **Midwest Fiber Networks** in April and its St. Louis metro operations to **Segra** in 2024. The telco also recently applied to end fiber services in Pennsylvania by June 30, but broadband, phone and emergency network service provider **Zito Media Communications** has asked the **FCC** to deny Everstream's request, arguing that the move would negatively impact the state's 911 call centers.

FOX WEATHER, WEATHER CHANNEL READY FOR HURRICANE SEASON

Fox Weather and **The Weather Channel** will both deliver "Hurricane Week" original programming the first week of June, timed to the start of Atlantic hurricane season. The Weather Channel confirmed to ***CFX*** that it plans to air a week of hurricane-focused original programming starting June 2, including a sneak peek of the network's upcoming documentary "Katrina 20." Throughout the week, TWC will also release short-form content about storm prep and what to expect this hurricane season. Meanwhile, the Fox Weather FAST channel will kick off its Hurricane Week on June 1 with "Hurricane HQ: Eye on the Season," a three-hour live special, a segment on recovery efforts in North Carolina after the destruction caused by Helene last year, a look into how coral reef deterioration is impacting protection against floods and a visit to New Orleans 20 years after Hurricane Katrina. On June 2, Fox Weather hurricane specialist *Bryan Norcross* will host an interactive special called "Hurricane HQ&a" to answer questions from viewers. Throughout the week, the channel will also feature programming centered on "heartfelt stories of survival," rebuilding efforts following last year's storms and predictions for the upcoming hurricane season.