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Viacom for the Block: Suddenlink Spat Latest Case of Barring Online Video

Given the history, no one was surprised when **Suddenlink** subs lost online access to **Viacom** content Wed after the MSO dropped the channels. The programmer has pulled online video from **Cable One** and smaller distributors that dropped the Viacom suite back in Apr. Similarly, **CBS** wouldn't allow **Time Warner Cable** customers to access its online content during the companies' 2013 retrans showdown. While the move has some questioning whether blocking content is in the spirit of an open Internet, Viacom defends the action. "Viacom's content is available through hundreds of partners, including cable, satellite and many online destinations. Customers of these partners receive robust access to our programming, through a variety of audience-friendly distribution agreements that can include television, online and VOD offerings," the programmer said. "Suddenlink abruptly decided to end our relationship, which has resulted in the continued interruption of Viacom programming across platforms, including online, through Suddenlink." But it may not be the end of the matter. The **FCC** has solicited comments, which were due this week, on a petition from **Mediacom** to address wholesale unbundling and other issues, including the blocking of online content in a programming dispute. **ACA** told the FCC it should put a stop to the "relatively new practice" of blocking content that otherwise is made freely available on the Internet, suggesting it be addressed in the pending Open Internet proceeding. ACA also said it could be addressed under retrans consent rules and in part under program access rules. **Verizon** argues that the FCC could stop blocking of Internet content under the list of practices deemed not in good faith in negotiating under Sect 325 of the Communications Act. Content companies, including **CBS, Disney** and **Time Warner**, told the FCC that Mediacom's plea for the Commission to regulate what terms independent programmers make their content available online is outside the agency's jurisdiction. "Mediacom's petition asks the Commission to set off—again—down a well-trodden path littered with discredited proposals and arguments. The Commission should decline the invitation and deny or dismiss the petition," the content companies said. **Public Knowledge** wants the FCC to prohibit online blocking, but clarified in its comments that it doesn't view it as a net neutrality issue. "But that does not mean that [a] block of this kind is not anti-consumer, or that a large content provider might not have significant negotiating power over a smaller ISP/pay TV provider. While net neutrality might be limited to ISPs, the broader principles of consumer protection are not," PK said. "The most straightforward way for the FCC to ad-

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dress these concerns is by preventing such blackouts in the context of retransmission consent negotiations, where they have occurred and where the FCC has the clearest existing legal authority to put a stop to them."

DirecTV Keeps Sunday Ticket: If the **AT&T-DirecTV** deal doesn't happen, it won't be because the satellite provider didn't renew its **NFL** Sunday Ticket deal. The League and DirecTV announced a multi-year deal that keeps the package of out-of-market Sun games exclusive to the satellite provider and expands DirecTV's right to stream Sunday Ticket live on mobile devices and via broadband. It reportedly will cost DirecTV $1.5bln per year over 8 years. Fans will continue to receive the **Red Zone Channel** and **DirecTV Fantasy Zone**. AT&T had the right to back out of its planned acquisition if DirecTV didn't renew its contract with the NFL.

Charter Chat: **Charter** evp/CFO *Chris Winfrey* said the MSO doesn't have any plans to acquire additional interest in **GreatLand** (formerly **SpinCo**). "We're actually pretty pleased with the deal that we struck," he said at an investor conference Tues. "It gives GreatLand a chance to operate at a more efficient level than it would have otherwise have been able to do, to grow at a faster pace than we think it could have done otherwise." Plus, Charter can take advantage of contiguous and overlapping DMA markets to provide a better service and product in these marketplaces, he added. Charter has 1/3 interest in GreatLand and is prohibited from buying any shares for the first 2 years of its existence and then from year 2-4, it can't go above 49% ownership. What about additional M&A? "We have a relatively full plate today. But we also have a very different management team than we did 2 years ago, and we have a lot of bench strength," Winfrey said. "Ideally, you'd have a little bit of time to wait. But the reality is that the remaining cable operators out there are predominantly family-controlled. And so to the extent that we have a willing seller —which is a very big if" and if the asset makes sense and is at an attractive price, Charter will continue to look. The CFO also tackled the OTT question, saying he struggles to see an equation that provides consumers with a better product—ie, the content they want without having to flip between multiple authentications. "We just haven't seen a way that you could actually have a competitive product that provides incremental value to the customer at an attractive price point," he said, noting video is $30 under Charter's Triple Play and includes more than 200 HD channels and TV Everywhere. "And from a content provider standpoint, I struggle to understand, does this mean that they are going to stop tying? Does this mean that they are going to stop bundling in some respect?"

Verizon-Viacom Deal: Is this becoming a pattern? While **Time Warner Cable** was locked in blackout and public dispute with **CBS**, **Verizon** cut a deal with the broadcaster. On Wed, the same day **Suddenlink** dropped **Viacom** channels, the telco announced a renewal of its carriage deal with Viacom. Verizon said the programmer joins a growing list of content companies that have entered into deals granting national rights to distribute content to Verizon Wireless customers, promising more details in the near future.

Comcast-TWC's FCC Inbox: Folks have a lot to say about the possibility of **Comcast** merging with **Time Warner Cable**. So, just as the **FCC** did for the Open Internet proceeding, it's created an email address (ComcastTWCMerger@fcc.gov) for people to use to send comments. The FCC said it will make a full accounting of the number of comments received.

X1 Expansion: **Comcast** has rolled out its X1 network DVR service in the San Francisco Bay Area and Houston. And thanks to cloud technology, subs can access their recorded DVR programs from any Internet-connected device in and out of home using the Xfinity TV app. While in the home, subs can stream the entire channel line-up and Xfinity On Demand catalog. Before, subs could only stream content inside the home via WiFi network.

ESPN Classic on DISH: **ESPN** has converted its **ESPN Classic** to an on-demand channel with **DISH** as initial launch partner. Starting Oct 1, DISH subs with an ESPN subscription can access the channel. Digital access through WatchESPN is slated to launch in early 2015. Programming to be available through the end of the year includes college football (more than 200 games highlighted by the last 5 BCS Championship games) and college basketball (more than 50 games through 2014). It's unclear what if anything other MVPDs will carry on the VOD channel.

Top Security: *Joe Clancy*, exec dir of **Comcast Cable** Security since May, was tapped as the interim acting dir of the **US Secret Service** Wed following *Julia Pierson*'s resignation as dir. Clancy joined Comcast in 2011 after retiring from the Secret Service.

More Synacor Drama: The board of TV authentication firm **Synacor**'s battle with 2 dissident shareholders **JEC Capital Partners** and **Ratio Capital** continued. The board's numerous "good faith actions were each met with ex-

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cessive and inappropriate demands by JEC and Ratio, lacking the best interest of all Synacor stockholders, and abruptly JEC and Ratio have abandoned discussions," the company said in a release Wed. The move came after JEC and Ratio, which together own 10% of the company, urged the board to consider a potential sale and the resignation of chmn *Jordan Levy*. The company charged that the pair doesn't have its best interest at heart. The board will discuss the company's strategic plan during the 3Q earnings conference call on Oct 30. The company is working to streamline its business, announcing it will cut 70 jobs Tues.

Incentive Auctions: As promised, the **FCC** released info packages for broadcast stations about participation in the upcoming $45bln spectrum incentive auction. Said **NAB**: "We will work with our members to sort through this comprehensive report as they do their own homework on the upcoming auction opportunity," NAB pres/CEO *Gordon Smith* said.

News & Doc Emmys: **PBS** was the big winner at Tues' nights News & Doc Emmy ceremony, picking up 11 awards. Among the cable crowd, **BBC World News** and **HBO** each had 2 wins. Several nets picked up 1 win, including **Al Jazeera America, CNN**, **Discovery, H2, Investigation Discovery, Nat Geo** and **Nat Geo Wild**.

CableFAX Daily Stockwatch

Company	10/01 Close	1-Day Ch
BROADCASTERS/DBS/MMDS		
DIRECTV:	86.59	0.07
DISH:	63.60	(0.98)
ENTRAVISION:	3.93	(0.03)
GRAY TELEVISION:	7.71	(0.17)
MEDIA GENERAL:	12.72	(0.39)
NEXSTAR:	39.68	(0.74)
SINCLAIR:	25.79	(0.3)
MSOS		
CABLEVISION:	17.30	(0.21)
CHARTER:	148.32	(3.05)
COMCAST:	52.93	(0.85)
COMCAST SPCL:	52.72	(0.78)
GCI:	10.78	(0.13)
GRAHAM HOLDING:	695.19	(4.4)
LIBERTY GLOBAL:	42.51	(0.03)
LIBERTY INT:	27.90	(0.62)
SHAW COMM:	24.24	(0.23)
TIME WARNER CABLE:	141.90	(1.59)
PROGRAMMING		
21ST CENTURY FOX:	33.70	(0.59)
AMC NETWORKS:	56.54	(1.88)
CBS:	52.81	(0.69)
CROWN:	3.09	(0.11)
DISCOVERY:	36.31	(1.49)
DISNEY:	87.49	(1.54)
GRUPO TELEVISA:	33.32	(0.56)
HSN:	61.24	(0.13)
LIONSGATE:	32.09	(0.88)
MSG:	64.25	(1.87)
SCRIPPS INT:	77.99	(0.1)
STARZ:	32.27	(0.81)
TIME WARNER:	73.71	(1.5)
VALUEVISION:	4.97	(0.16)
VIACOM:	75.39	(1.62)
WWE:	13.37	(0.4)
TECHNOLOGY		
ADDVANTAGE:	2.32	(0.01)
AMDOCS:	45.52	(0.36)
AMPHENOL:	98.10	(1.76)
AOL:	43.47	(1.48)
APPLE:	99.18	(1.57)
ARRIS GROUP:	27.53	(0.82)
AVID TECH:	9.95	(0.15)
BLNDER TONGUE:	1.26	(0.06)
BROADCOM:	39.34	(1.08)
CISCO:	25.03	(0.14)
COMMSCOPE:	24.39	0.03
CONCURRENT:	7.30	0.02
CONVERGYS:	17.53	(0.29)
CSG SYSTEMS:	26.44	0.16
ECHOSTAR:	46.85	(1.91)
GOOGLE:	568.27	(9.09)
HARMONIC:	6.21	(0.13)
INTEL:	33.99	(0.83)
INTERACTIVE CORP:	64.05	(1.85)
JDSU:	13.15	0.35
LEVEL 3:	43.98	(1.75)
MICROSOFT:	45.90	(0.46)
NIELSEN:	43.83	(0.5)
RENTRAK:	59.08	(1.86)
SEACHANGE:	6.93	(0.03)
SONY:	17.77	(0.27)
SPRINT NEXTEL:	6.25	(0.09)
TIVO:	12.58	(0.21)
UNIVERSAL ELEC:	48.46	(0.91)
VONAGE:	3.18	(0.1)
YAHOO:	40.32	(0.43)
TELCOS		
AT&T:	34.96	(0.28)
CENTURYLINK:	40.42	(0.47)
TDS:	23.43	(0.53)
VERIZON:	49.43	(0.56)
MARKET INDICES		
DOW:	16804.71	(238.19)
NASDAQ:	4422.09	(71.31)
S&P 500:	1946.16	(26.13)

Think about that for a minute...

The Sky is Falling!

Commentary by Steve Effros

Not really, but the complex reality of the new telecommunications world we live in is about to come into sharp focus, and at the end of the day it's going to be clear we need a new Telecommunications Act.

The rumors started flying late last week that the FCC was about to put out a rulemaking notice related to the long-delayed "Sky Angel" case. Sky Angel, an OTT provider of video service, claimed to be an "MVPD" and wanted to avail itself of the "program access" rules, which apply to vertically integrated programmers. The Commission's Media Bureau originally suggested, but the Commission never formally decided, that to attain MVPD status and all that means (we'll get to that in a minute) you have to own the infrastructure that delivers the programs, thus Sky Angel could not get the benefit of the rules.

Now the Commission is suggesting the opposite; that if you offer linear video programming service of multiple channels you might be an "MVPD" even if your delivery mode is over broadband Internet. This makes some intuitive sense. It's sort of like the Supreme Court decision in the Aereo case; so far as the consumer is concerned, a duck is a duck. They don't really care how the programs are delivered to them, they just want to watch the programs. So if there are rules related to what companies must do regarding those program streams, they ought to apply to all companies selling those streams.

Thus, despite all the hooha about this "new" idea giving new life to Aereo, just the opposite is true. If the FCC goes this way, it means Aereo would have to get retransmission consent, the very thing it said it was unwilling to pay for in the first place. The whole idea behind Aereo was a gimmick to avoid those fees.

But more importantly, if the FCC goes this way it raises very basic, fundamental questions about what is being regulated and why. If the emergency alert rules, for instance, are really there to protect the public and assure they get notices of tornados, then does it make any difference if they are watching over a "cable" delivery channel or a broadband/Internet channel? And if that warning is critical, then what difference does it make if the programming is delivered on a "linear" basis or an "on demand" basis, like Netflix does? If more folks are watching a Netflix show than subscribe to rural cable in the United States, what sense does it make to say the rural cable subs get the emergency notices but the Netflix viewers don't?

This is very complicated stuff. It is the beginning of a conversation about whether we are trying to regulate communications by the nature of the content and its use or simply by the hardware and infrastructure that is used. Those are very important questions, and they touch on all sorts of other issues like the First Amendment, "net neutrality" and common carrier status, and whether the FCC even has the jurisdiction to engage in all this potential regulation. It also raises the question of whether existing rules can be applied selectively to only one group, or whether that would now be considered "arbitrary and capricious."

Don't blame the FCC for all this. We have all outgrown the current regulatory structure, and they are trying to fit everyone into pigeonholes that no longer make sense. Let the debate begin, but it's really about a new national telecommunications policy.

Steve

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