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WHAT THE INDUSTRY READS FIRST

Head Scratcher: Congress Struggles Over How to Address Blackouts

Wednesday's **House Communications** Subcommittee hearing on the video marketplace hit on enough topics to fill several issues of this publication, but one common theme Rep. *Anna Eshoo* (D-CA) thinks everyone present could agree on: the U.S. has a real problem with blackouts.

"It is Congress that needs to cure that," she said. "Consumers are being hammered. It's totally unfair. It's a tool of negotiation by people that think of themselves as being innovators and entrepreneurs. What an idea. Let's just screw the consumer."

Reps. *Rick Allen* (R-GA), *Troy Balderson* (R-OH) and *Diana Harshbarger* (R-TN) all mentioned receiving emails from **Spectrum** encouraging them to try **Fubo** to access football games over the weekend during the operator's blackout with **Disney**. Allen did sign up for the free one-week offer, earning laughs when he said he would have to deal with canceling it later. "It was very frustrating, but I got it," he said. "I was the hero of the group."

So what steps can Congress take to cut down on these "impasses," to use **NAB** CEO *Curtis LeGeyt's* preferred term for the disputes commonly called blackouts? There are not any clear-cut answers at this point, but there may be aspects of some existing proposals that could help. Eshoo said she intends to re-introduce the Modern Television Act in this Congress, an attempt with Rep. *Steve Scalise* (R-LA) to reform the retransmission consent regime.

Consumer Reports Senior Policy Counsel/Manager, Special

Projects *Jonathan Schwantes* said it isn't realistic to believe that bill would prevent blackouts as it is still dealing with private contract negotiations, but it does include some interesting proposals.

"I really do like the baseball-style arbitration in the law where instead of going to a blackout and you miss the U.S. Open and potentially Monday Night Football, you can keep the station on for 60 days and figure it out again," he said. "Is that perfect? I don't know. But I'm open to trying new things."

It seemed based on the witnesses' written testimony that there would be plenty of fireworks over the regulatory future as it relates to vMVPDs like **Fubo** or **YouTube TV**, but generally there seemed to be an agreement that simply expanding the 1992 Cable Act to include those streaming offerings under its umbrella would be a bad call.

Fubo CEO *David Gandler* said applying regulations from decades past to streaming platforms in hopes of modernizing the current video regulatory environment is the epitome of a solution in search of a problem. "Prices will go up. Retrans will require you to negotiate the same sports deal twice, once with the national broadcaster and then again with the local affiliate," he said. "All of those deals are specifically set up to expire right before football season."

At the same time, **House Commerce** Ranking Member *Frank Pallone* (D-NJ) doesn't think the right answer is to completely scrap existing regulations in favor of pulling together new, sweeping proposals that aim to fix many problems at the same time.

"The solution is not to throw it all out, give up any oversight

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and abandon consumers. Instead, we must remember why these statutes and regulations were enacted in the first place and only then can we decide how best to carry these values forward on behalf of American consumers,” he said.

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INSP, COMCAST IN A TUSSELE

Wednesday’s **House Communications** Subcommittee hearing reminded us that **INSP** is a broadcaster now, and as such, it has to deal with retransmission disputes. **Comcast** lost **INSP** affiliate **Imagicomm Communications’** Spokane Fox station **KAYU** and Memphis Fox station **WHBQ** on Sept. 8 at 4:59pm ET. The dispute has been largely under the radar, but it didn’t stay that way given that it is happening in the district of committee chair **Cathy McMorris Rodgers** (R-WA) and there was a Seattle Seahawks game on the schedule Sunday. “We have made several reasonable offers to **Imagicomm**, but we simply cannot agree to the higher fees they’re requiring in exchange for the same programming they offer today. We want to do what is right for our customers, which is why we’ve asked **Imagicomm** to come to a fair agreement that accurately reflects the value of its station.” Comcast said. **Imagicomm** didn’t offer comment by our deadline. Given the dispute, it’s worth noting that Comcast has begun alerting subscribers that **INSP** will move to its less penetrated “More Sports and Entertainment” package. A Comcast spokesperson said the operator had the contractual right to move the cable net. **INSP** entered the broadcast business in 2022 by acquiring 18 stations through its **Imagicomm** affiliate. Just last week **INSP/Imagicomm** COO **Dale Ardizzone** met with FCC Commissioner **Nathan Simington** to express support for reopening a 2014 proceeding that looks at expanding the definition of MVPDs to include vMVPDs. According to an **FCC** filing, they also discussed the use of most favored nations (MFN) provisions in contracts that govern the distribution by MVPDs of cable network programming, and the adverse impact that such provisions have on cable networks—particularly independent networks. “MFNs can serve to effectively extend the worst provisions in a cable network’s distribution agreements to all of its agreements with major MVPDs. This not only burdens independent cable networks with higher costs and lower revenues, but also discourages networks from offering innovative terms to expand their businesses and introduce new service models,” the filing said.

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CHARTER SAYS DISNEY IMPACT ON SUBS BETTER THAN EXPECTED

We’ll probably have to wait until Charter reports 3Q numbers to see how bad subscriber losses were from the Disney blackout, but CFO **Jessica Fischer** described them Wednesday as “much less than what we initially anticipated,” adding that the impact

on broadband subs was very small. “We believe we come out of this really still doing well from a subscriber perspective,” **Fischer** said at a Bank of America conference. Charter sees video as an important part of its product set, particularly with **Xumo** set to launch in 4Q23. Video combined with mobile can help Charter differentiate itself from fiber providers. “I have to say I’ve talked about video more in the last two weeks than I have in quite a while, and that’s because we’re in a really transformational time for video,” she said. “With what we’ve been able to do with Disney, we really have the ability to continue to drive those high value products to consumers and to offer them to consumers at a price that makes sense. That then sort of provides value back into the bundle and ultimately by providing that high value product to consumers, that’s how we continue to grow our business and differentiate versus our competitors.” Not many new details on **Xumo**, the jv streaming platform it is launching with Comcast. “I think that you’ll see that its content forward interface and the easy search and discovery of content that’s enabled through the voice remote, and the capabilities in the platform are really going to work well and set us up for the delivery of those products in a really consumer friendly way and in a way that will make that aggregation and de-aggregation of content quite easy,” **Fischer** said.

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NEXSTAR TALKS DIRECTV, DISNEY-CHARTER & ACQUISITIONS

Nexstar said progress is being made in retransmission consent talks with **DirecTV**. “For the first month or so we were in a blackout with them, there wasn’t a lot of movement going on. We’ve been in pretty constant contact over the last several weeks,” **Tom Carter**, **Nexstar**’s Senior Advisor to the CEO, said at an investor conference Wednesday. “Progress has been made. We don’t have a deal. We’re not going to do a bad deal. But I think our expectation is that we will reach an agreement at some point, hopefully sooner rather than later, because everybody agrees it’s not in anybody’s best interest to alienate the consumer.” **DirecTV** lost 159 **Nexstar** stations on July 2. It’s been without **White Knight Broadcasting** and **Mission Broadcasting** stations, which have shared service agreements with **Nexstar**, since October. At the same conference, **Nexstar** CFO **Lee Ann Gliha** said the recent **Disney-Charter** deal is good for her company. “The premier programming stayed, got paid. The DTC services are now actually being looped back into the bundle, and the lower-rated networks got rationalized,” she said. **Nexstar** is the largest broadcaster in the U.S., and it’s still very interested in acquisitions, particularly with rumblings that **Disney** and **Paramount** may want to sell or reconfigure their asset portfolio. While **Nexstar** is up against the 39% national audience broadcast ownership cap, **Carter** said that wouldn’t preclude it from buying stations. “**ABC**’s portfolio of stations is modest. It’s

only eight, largely in the top 10 markets. We're in eight of the top 10 markets already with a **CW** station, so we could buy a second station in that market and not increase our household footprint," he said. "There may be a few stations that would require divestiture either of a Nexstar station or an ABC station, but we could onboard those with relatively little friction." Nexstar's divestiture of **WPIX** as part of its **Tribune** deal hasn't been without friction, with **Comcast** and **Charter** filing informal **FCC** complaints alleging that the Mission-owned station should really be attributable to Nexstar, which would put it in violation of the 39% cap.

CHARTER'S MOBILE, RDOF TAKE

There has been some concern over whether **Charter** can turn free mobile lines from its Spectrum One offer into paid subs, but CFO *Jessica Fischer* said she's "more confident today than I was when we delivered our earnings a month ago." Speaking at an investor conference, she described how the operator had pilot programs going on in a handful of markets in Q3 of last year with those customers now rolling off. "We've been watching those subscribers very closely as to what happens when they reach the 12-month window and I think right now we're exceeding our expectations in terms of the number of those subscribers who are rolling to paid," she said. Spectrum One was introduced footprint wide in October 2022, bundling internet with one free line of Unlimited Spectrum Mobile for a year. As previously reported, some winning bidders in the FCC's Rural Digital Opportunity Fund are seeking more money or amnesty for defaults, citing the rising cost of construction. Charter's not doing that, but it has seen the inflation. The flip side is when it mapped out RDOF passings, it didn't fully understand all the homes it would have to pass to do the planned build. "While our costs for some of that build have increased versus the original plan, the passings we're getting as part of it have increased as well, which means that the total cost per passing of the build is actually in line with our original expectations," Fisher said.

NETFLIX CFO: 'WE NEED TO GET BACK TO WORK'

The ongoing **SAG-AFTRA** and **WGA** strikes have been throwing a wrench in companies' financial outlooks, and Netflix is among those searching for an imminent resolution before things take even more of a downward turn. "The main thing is that there's a lot of folks out of work and the business isn't moving forward, and so it's terrible for all those folks that aren't working, it's not good for the business," Netflix CFO *Spence Neumann* said at Wednesday's **Bank of America** conference. "To move the business forward and to have great storytelling and fresh stories for our members, it really is about the partnership with those writers, with those producers, with those directors, with those actors. And so we need that partnership to be healthy. We need to get back to work." The commentary didn't sit well with Wall Street as Netflix's stock dipped 5.16% at market close, and some are tinkering with their 4Q23 expectations for the streamer. **Pivotal Research** is reducing 4Q revenue expectations

from \$8.89 billion to \$8.73 billion and its 4Q EBITDA forecast from \$1.67 billion to \$1.55 billion, while raising its 2023 free cash flow estimate to \$6 billion. "We feel comfortable with NFLX's ability to grow by continuing to expand its content line-up, the benefits of traditional PayTV rapidly disappearing and tapping into the sizeable 100M+ households that utilized but did not pay/subscribe to the service (which should act as a wind at the back of NFLX results well into '24)," Pivotal said in a research note.

ISPOT ACQUIRES 605

The ad measurement company **iSpot.tv** completed its fourth acquisition in five years Wednesday, and this deal is its largest to date. iSpot acquired the measurement and attribution firm **605** in a deal that'll see iSpot add set-top box data from 16.6 million homes to its smart TV footprint, bringing the total available TV device footprint to 82.7 million. 605—founded by **AMC Networks** CEO *Kristin Dolan* in 2016—will help iSpot's measurement solutions in the areas of business outcome attribution, advanced audience measurement, media planning and data science managed services. iSpot and 605's combined data sets will help deliver accurate measurements and new currencies to the TV marketplace. All 605 employees will now join iSpot.

FRONTIER HEADED TO TEXAS

Frontier Communications is saying goodbye to Norwalk and relocating its HQ to Dallas. It said the decision will bring the company's leadership to the middle of Frontier's national footprint, hopefully opening the door for easier access to customers and more efficient management. Frontier is investing in a new 95,000 sq ft office space, to be dubbed the GigaHub, in uptown Dallas. Over the next 10 years, the move is projected to boost the local and state economy by \$3.8 billion and bring about more than 3,000 new jobs.

RATINGS

MTV said Tuesday night's VMAs delivered 865,000 viewers, a 37% uptick from the 2022 awards show. It also marked the highest-rated VMAs since 2019 with 18-34s (1.14) and 18-49s (1.03). MTV scored its best Tuesday prime average for 18-34s and 18-49s since 2014. – *Coco Gauff's* first major tournament victory proved to be historic in ratings, too. Gauff's win over *Aryna Sabalenka* became the most-viewed women's tennis final of any major ever on **ESPN**, notching 3.4 million viewers. That's a 92% increase compared to last year's women's championship, and it was the most-streamed telecast of the tournament on **ESPN+**. The men's final—which saw *Novak Djokovic* defeat *Daniil Medvedev*—saw an 8% YOY increase with an average of 2.3 million viewers. That's the most-viewed U.S. Open men's final since 2019 (2.8 million). Overall, U.S. Open coverage across **ABC**, **ESPN** and **ESPN2** averaged 1 million viewers, which is down 17% YOY due to last year's tournament being *Serena Williams'* swansong, but up 25% from 2021.

Think about that for a minute...

The ReBundle

Commentary by Steve Effros

Well, this was predictable. Charter and Disney have kissed and made up, everyone got to see the opening night of Monday Night Football, but nobody guessed that Aaron Rodgers would pop his Achilles tendon after just four plays and be out for the season! I can't claim much foresight about the latter, but the "deal" that allowed both Charter and Disney to claim a "win" just had to be.

You see, there was just too much money at stake for some deal not to be reached. We're talking about over two Billion dollars a year for Disney, and of course had the whole negotiation really collapsed it would have seriously depleted Charter's subscriber numbers. True, those numbers are no longer nearly as significant as the broadband and wireless numbers, but still, that would be a big loss. So neither side wanted this standoff to last. It didn't. But as I suggested last week, it signaled a major change in negotiating leverage and a probable outline for a new business plan between cable operators and programmers.

Enter the "rebundle." Disney is getting higher fees for the programming Charter will carry, but Charter does not have to carry all the channels that Disney was forcing them to under earlier contracts. I'll bet many of you have never even heard of Baby TV, Disney Junior, Disney XD, Freeform, FXM, FXX, Nat Geo Wild, and Nat Geo Mundo. Well, OK, maybe Nat Geo Wild, but Disney has now agreed to drop the mandatory carriage of all those channels. There are still, however, 19 other "Disney" channels tied together in the deal. There had been 25!

Charter also gets to package discounted Disney channels in various tiers offered to its subscribers. That's the key part of this deal. Charter once again becomes the place where customers can purchase a "bundle," and that bundle can potentially include things like Disney+ and ESPN. That's a major move on the part of one of the most significant programmers to allow a form of discounted packaging by a cable operator on flexible tiers. That's not only a "win" for Charter and maybe Disney too, but it's definitely a potentially major "win"

for viewers as well.

Does this mean "cable" is back? No, not necessarily. It means that if this turns out to be a model for future negotiations with the other major programmers, the options for viewing not only include subscription "streaming" and ad-supported streaming, but also bundling offered by an aggregator of the various forms of programming the viewer wants, including a combination of "live" programming, archived programs, linear and "pay" channels and everything else. That's what "cable" will be able to offer, and it's very attractive because that "re-bundle" might be a whole lot easier for subscribers to navigate than the mess we have today.

Of course, there is always the possibility that Disney and the other programmers find success at selling "direct to consumer" (DTC) and that they finally make that business profitable and decide to "go it alone." But the problem there, as I have alluded to many times, is that consumers are already voicing great displeasure at the difficulties inherent in too many choices requiring too many separate subscriptions and very little in the way of an effective unified user interface.

"Navigation" has always been the bedrock basis of cable. You knew what you were getting and where it was. There was one "program guide" and all you had to do was turn on the "cable" and there it was. Streaming, exclusive programming such as Netflix, or Apple TV or Prime, mixed up with sports spreading out over all platforms has already worn out consumers. If a unified, flexible set of channels can be offered combining all those things, a "rebundle," maybe we're on to something.



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.)



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