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WHAT THE INDUSTRY READS FIRST

Digital Discrimination: Deadline Nears for FCC to Adopt Rules

There's been so much focus on this month's scheduled **FCC** vote on reclassifying broadband under Title II, it's easy to forget the Commission has a pressing deadline on digital discrimination on the horizon. In allocating \$65 billion for the expansion of high-speed broadband in the Infrastructure Bill, Congress tasked the FCC with coming up with language and guidance for rules on digital discrimination. It has to send its recommendations to Congress by Nov. 15.

While the initial reply and comment phase on the issue closed at the FCC in April, the agency has continued to work on the matter. This Thursday, the FCC's Task Force to Prevent Digital Discrimination will be in Topeka, KS, to host the latest in a series of listening sessions to gain info about the challenges and experiences in ensuring equal access to broadband. It follows a similar session held Friday in NYC that included Rep. Yvette Clarke (D-NY) and representatives from **Consumer Reports**, **National Urban League** and **NTIA**.

The key question before the FCC is whether it should adopt a standard of "disparate treatment" or "disparate impact" in defining digital discrimination. As the industry waits for the FCC's plan, there are still plenty of stakeholders offering advice. **NCTA** and other telecom stakeholders prefer disparate treatment, which would cover intentional discrimination and thus could recognize legitimate business reasons that might lead to uneven deployment. Public interest groups are in favor

of a disparate impact approach that would allow the FCC to address any discriminatory effects regardless of their intent.

Last week, representatives from **Comcast**, **Charter** and **NCTA** visited the Commission, urging the agency to adopt procedural safeguards such as a pre-filing notice requirement to encourage informal dispute resolution among parties and the opportunity for respondents to raise defenses, including defenses addressing technical and economic feasibility.

ACA Connects also met with staffers, recommending the FCC adopt a modified version of its informal complaint process that is tailored to the unique legal, technical, economic and other limits and factors of digital discrimination. "Specifically, the Commission should adopt a 'Digital Discrimination Complaint Process' that begins with individuals, organizations, and local governments filing complaints, the Commission determining whether those complaints make a prima facie case of digital discrimination, and, if so, the Commission then conducting an investigation to determine whether in fact digital discrimination exists," said ACAC.

In a recent blog [post](#) by **Brookings Institution's Nicol Turner Lee** and **Jack Malamud** suggested two potential paths for the FCC. "A first option might be that the FCC issues a broad prohibition that leads with the values and goals of a more connected nation, explicitly calling out the barriers to deployments based on the federally protected characteristics of prioritized groups and certain communities," they wrote. "More like a code of conduct, the agency could use its existing authority under the

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Communications Act of 1934 and the Telecommunications Act of 1996—most likely, Section 706 of the Telecommunications Act—to police bad actors and use the revamped complaint center to build a substantial record of the potentially egregious behaviors that lead to digital discrimination.” They suggest coordination with **NTIA** as it receives public comments on state digital equity plans under BEAD.

Option two would be a head-on approach with new rules that would be added to existing FCC authority and could be decided on a case-by-case basis under “the totality of circumstances.”

The Brookings scholars noted that any of these approaches will come with their own sets of challenges, which is why they support the FCC establishing an Office of Civil Rights to effectively address digital discrimination. “By establishing an Office of Civil Rights to ensure that digital discrimination rules cover any actors with power over broadband availability and by adopting an enforceable definition that addresses the realities of digital discrimination can the FCC work to ensure that broadband connections are both accessible and equitable.”

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DIAMOND ASKS FOR EXTENSION

Saturday was set to be [judgment day](#) for **Diamond Sports Group** and its pathway through Chapter 11 bankruptcy, but the company is once again asking for more time. Diamond is asking the Houston U.S. Bankruptcy Court for an extension to file its Chapter 11 plan by 60 days, making the filing deadline November 29 and the deadline to receive approval from creditors January 29, 2024. “The Debtors’ Chapter 11 cases are tremendously complex and are occurring while the cable industry is rapidly changing due to subscribers’ persistent “cord cutting” as they move away from traditional cable and satellite multichannel video distributors,” the filing said. “Navigating these choppy waters requires discussions with, and cooperation from, many parties, including multiple creditor groups, sports leagues, teams, and MVPDs. With the **NBA** and **NHL** seasons almost here, and a key MVPD contract up for renewal, the Debtors realize that time is short and each day matters.” Diamond already received an extension in August to make the filing exclusivity period end on September 30 and the solicitation exclusivity period on November 29. The new dates would be well into the regular seasons for both the NBA and NHL, which Bally Sports has the rights to 15 and 12 franchises, respectively.

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RATINGS

It was another big Sunday for **TLC**’s “Sister Wives” on Sept. 24. The show—which aired at 10pm—earned a 2.26 L3 rating on the night among W25-54, helping it also become the No. 1 primetime ad-supported cable program in the P25-54 group as well. Sister

Wives remains the top non-sports ad-supported cable program on Sunday nights across P25-54, W25-54, W18-49 and W18-34 in 2023 to date. – **Warner Bros. Discovery** ended 3Q23 with six of its networks among the top-10 ad-supported cable networks. **TLC** ended the quarter as the top non-sports cable network in primetime among W25-54 and W18-49, also checking in as the No. 1 network without sports for A25-54 and A18-49 thanks to ratings successes from “Sister Wives,” “90 Day: The Last Resort” and “90 Day Fiancé: Before the 90 Days.” **TBS** finished 3Q as the No. 2 entertainment network in prime among M25-54 and M18-49, while **TNT** was the No. 3 entertainment network in M18-49 and No. 4 for M25-54. Other highlights include **Food Network** ranking as a top-10 network among A25-54 and W25-54 every day of the week in prime, **Adult Swim** as a top-five network in total day among A18-49 and A18-34 and **Discovery Channel**—led by Shark Week’s best ratings in three years—being the No. 1 primetime cable network excluding sports for M25-54.

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ON THE HILL

Congress averting a government shutdown (for now) wasn’t the only action on the Hill over the weekend. The Senate confirmed **FCC** Commissioners *Geoffrey Starks* and *Brendan Carr* for new terms at the agency late Saturday. Starks’ term expired July 1, 2022, but he has remained in an acting capacity. His new five-year term is retroactive, expiring June 30, 2027. Carr’s five-year term is retroactive to July 1, 2023. Meanwhile, **House Commerce** is making noise that it might subpoena **FTC** Chair *Lina Khan* if she doesn’t comply with the committee’s request for information. Committee leaders accused Khan of avoiding answering questions about whether progressive groups and the White House are influencing FTC policy. “This response, and previous responses you have provided this Committee and others, indicate that you do not take Congress’ oversight role seriously. Your responses have also been inconsistent with commitments you previously made during your confirmation process to become Chair,” House Commerce Committee Chair *Cathy McMorris Rodgers* (R-WA) and Innovation, Data, and Commerce Subcommittee Chair *Gus Bilirakis* wrote in a letter to Khan Monday. “When you appeared before our Innovation, Data, and Commerce Subcommittee for a Congressional oversight hearing, we expressed our disappointment with your continued inability to answer basic questions. You are not above the law and Congressional oversight does apply to you.”

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ASTROS, ROCKETS TAKE OVER RSN

Another former **Warner Bros. Discovery** RSN found a new home. **AT&T SportsNet Southwest** was acquired by the Houston Astros and Houston Rockets, re-launching Wednesday as **Space City**

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Home Network on the same channels found on its distributors. It'll be a jv between the two organizations and continue as the exclusive local rights holder for the Astros and Rockets, while also broadcasting team-related programs as well as regional high school and collegiate sporting events. The first live game broadcast on the new net will be Oct. 10 when the Rockets open their preseason against the Pacers at 7pm CT/8pm ET.

DISH SETTLES FCC SPACE CASE

The **FCC** embarked on its first space debris enforcement, announcing a settlement of its investigation into **DISH** for failure to properly deorbit its EchoStar-7 satellite. The settlement includes an admission of liability from the company and an agreement to adhere to a compliance plan and pay a penalty of \$150,000. The investigation found that DISH violated FCC rules by relocating its DBS service EchoStar-7 satellite at its end-of-mission in 2022 to a disposal orbit well below the elevation required by the terms of its license, which could pose orbital debris concerns.

COMMSCOPE DIVESTITURES?

Bloomberg [reports](#) that **CommScope** is looking to divest its Ruckus Wireless business and its access network solutions unit to pay down debt, citing people with knowledge of the matter. The people said the businesses could generate \$4 billion. CommScope shares jumped more than 7% Friday after the Bloomberg report.

ARCHTOP CLOSSES HANCOCK DEAL

Archtop Fiber completed its acquisition of **Hancock Telephone Company**, which will allow it to provide service to Hancock's Delaware County, New York, and northeastern Pennsylvania service area and beyond. The Hancock deal comes on the heels of the closure of Archtop Fiber's acquisition of New York-based **GTel**. In May, Archtop announced a stock purchase agreement with **Momentum Telecom**, a leading provider of managed cloud communications services, to acquire its New York-based **Warwick Valley Telephone Co.** The deal is pending regulatory approval.

PLUTO TV'S NEW CAMPAIGN

No extraterrestrial activity on planet **Pluto TV**. The service's new brand campaign "Programmed By Humans" puts a spotlight on the more than 50 programmers who curate the hundreds of FAST channels on the platform, emphasizing its commitment to human-made options rather than utilizing AI to meet customers' preferences. The campaign will air three commercial spots that highlight a Pluto TV category: Sci-Fi, romantic comedy and true crime. Pluto TV is also updating its evergreen "TV the Way It Should Be" campaign with the launch of an out-of-home creative that'll be available at airports, ferries, shopping venues and in Times Square. It'll also have creative spots air during select **NFL** and **NBA** games.

FIBER FRENZY

Zipty Fiber launched its fiber service in Republic, Washington. Over 350 addresses can now get speeds from 100 Mbps to 10 Gbps today, with an additional 100+ addresses to come. – The town of Thurmont, Maryland, approved a cable franchise agreement to bring **Glo Fiber's** fiber network to residents. Glo Fiber parent **Shentel** will build fiber optic cables throughout the area, with construction slated to start no earlier than 18 months after the agreement received approval. Shentel's next step is to get the necessary permits and decide where the cables will be installed.

PUBLIC AFFAIRS

Fuse Media is teaming up with government officials in the "Be Change" social impact initiative. Reps. *Joaquin Castro* (D-TX), *Jamaal Bowman* (D-NY) and Sen. *Cory Booker* (D-NJ) will each appear in at least one PSA in the overall campaign. The vignettes will air across Fuse Media platforms from Oct. 2-6, or National Voter Education Week. Topics highlighted in the PSAs include small business empowerment, social justice, climate, DEI, voting rights and food insecurity.

PROGRAMMING

The 2023 **MLB** Playoffs are set. Starting with the Wild Card series across **ESPN** platforms, postseason play gets underway Tuesday at 3pm with the Rangers vs Rays on **ABC**. Game 1 of the Blue Jays vs Twins will follow at 4:30pm on ESPN, before the Diamondbacks vs Brewers gets going at 7pm on **ESPN2**. Marlins vs Phillies rounds out the Tuesday slate on ESPN at 8pm. Games 2 and 3 for each series will follow the same time and network assignments on Wednesday and Thursday, respectively, though Thursday's schedule is subject to change depending on if any of the best-of-three series are wrapped up. – **The Weather Channel** is looking to give football fans a heads up with game day forecasts. The network is partnering with **Verizon** for "Game Day on The Weather Channel," a live, on-site broadcast that'll fuse tailgating and fan engagement with TWC's meteorologists. The next edition is set for Sunday when the Giants travel to Miami to face the Dolphins at 1pm. Outside of the program, TWC will have game day forecasts Thursday nights on "Storm Center," Friday mornings on "AMHQ" and Sunday mornings on "AMHQ Weekend." On the college side, TWC is partnering with **Amazon** for forecasts on Friday mornings, afternoons and Saturday mornings on AMHQ, "Weather Underground" and "Weekend Recharge."

PEOPLE

Happy trails to PR pro *Don Ciaramella*, who is retiring after 35 years in corporate entertainment and media communication with **The Lippin Group**. He's served as the agency's president of corporate communications since 2013.