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WHAT THE INDUSTRY READS FIRST

FCC Fracas: Digital Discrimination Vote Rankles GOP Members

The **FCC** moved forward with its efforts to combat digital discrimination Wednesday, adopting final rules aimed at ensuring equal access to reliable, fast broadband service regardless of characteristics like income level, race or religion.

The vote fell 3-2 along party lines with Commissioner *Anna Gomez* offering her support virtually from Cape Town, South Africa, during a break from her trip to AfricaCom. Under the rules adopted, digital discrimination can be examined under the lens of both intent and disparate impact. The Commission will consider arguments that legitimate business impediments preclude equal access to broadband service in particular communities, and the agency is requesting further comment on forming an Office of Civil Rights.

Cable industry representatives and Republican lawmakers quickly voiced their dissatisfaction with the rules. Commissioner *Brendan Carr*'s statement of dissent was lengthy, seemingly beating out the approximately 20 minutes he recorded when he opposed the push to launch a new proceeding on the regulation of broadband as a Title II service. One of his arguments was that this is another attempt by the FCC to regulate broadband rates. He posed the idea that language in the Title II NPRM surrounding price controls was softened at the 11th hour before the FCC's October meeting so that the *Biden* Administration could instead put that language into the digital discrimination rules.

"The order before us today expressly states that the FCC can regulate broadband pricing and even an ISP's profitability. Title II is no longer necessary to achieve those ends," he said.

Fellow Republican Commissioner *Nathan Simington* was also notably outspoken in his dissent, saying the Commission was putting forth an impossible standard and offering no way for providers to know if they are in compliance. "The only way for a company to even attempt to comply is to practice racial, ethnic and religious discrimination in every business decision," he said.

In lieu of the Commission's traditional practice of hosting a press conference immediately following the conclusion of the open meeting, Chairwoman *Jessica Rosenworcel* and Commissioner *Geoffrey Starks* joined forces with Congressional leaders and other supporters to bring the gathering to Capitol Hill.

"The providers of internet want to build out because they want more customers, but they also want to reward their shareholders more than anything else. So the buildout programs tend to bypass communities that have lower income and a lot of those communities are communities of color that have been bypassed before," Sen. *Peter Welch* (D-VT) said. "To suggest that there's any other agenda than opportunity for all Americans is essentially to cave in to a lot of the big companies that basically want to build out for their profit."

Also notable from the Commission's meeting was a 5-0 vote to launch a formal inquiry into how artificial intelligence impacts robocalls and robotexts. The NOI looks to seek information on both the positives and negatives of the technology, examining how to define AI in the context of robocalls and the impact of it on consumer privacy rights. It also asks what, if any, next steps the Commission should take to address pending issues.

The question of artificial intelligence in robocalls also arose during a **House Communications** subcommittee hearing Tuesday on how AI could be utilized to create positive impacts on the nation's networks. When questioned about if AI could be leveraged to combat robocalls, *Courtney Lang*, VP of Policy, Trust, Data and Technology for **The Information Technology Industry Council**, gave an emphatic yes.

"For example. AI can be used to analyze things like voice prints, or it can look at crowdsource data from **Consumer Reports** about robocalls and see, for example, whether there are calls coming in at a particular time with a particular kind of repetition and deduce from that that those might be suspicious or spam calls and enable the blocking of those calls before they actually make it to consumers," she said.

GRAND DEBUT FOR ESPN BET

ESPN knew it was time to plant its stake in the sports betting realm in October 2022. A year later, the network's entrance into gambling became real as **ESPN Bet** made its official launch in 17 states Tuesday, with the app quickly ascending to the No. 1 spot in the **Apple** App Store within 24 hours of launch. It was once reported that ESPN's foray into gambling would be alongside the **DraftKings** sportsbook, but the network's strategic partnership eventually came with **PENN Entertainment**. PENN had previously owned *Barstool Sports* and its Barstool Sportsbook, and the current ESPN Bet app holds a similar design and feel as its predecessor. It's been a mixed bag of judgment from fans as some report issues involving the app's biometric verification. Others have pointed out that ESPN Bet's special promos have more favorable odds if inputted through a different sportsbook. However, no major outages have been reported, and there are a few "free bet" promotions for users who sign up and place a wager. ESPN began promoting the newly debuted ESPN Bet in the past couple of weeks by using the sportsbook for gambling-related TV and editorial content. Its previous "Daily Wager" program rebranded to "ESPN BET Live" on Friday in addition to teasers featuring "SportsCenter" anchor *Scott Van Pelt*.

The *WHO* and the *WHY*

CFX's spotlight on recent new hires & promotions

DINA
Roman
SVP, GLOBAL ADVERTISING SALES
FUBO

3 THINGS TO KNOW

- Following a 3Q23 that saw Fubo achieve 34% YOY growth in North American ad sales, the vMVPD appointed Dina to guide its global sales strategy, ad operations and sales team. It's a newly created position that'll have her work from NYC and report to Fubo co-founder/CEO David Gandler. Dina tells ***CFX*** that her short-term goal is to continue aligning Fubo's ad sales and go-to-market strategies with its brand, product and content to drive engagement across agencies, advertisers and users.
- Dina's resume is impressive, including stints with everyone from the *New York Times* to Disney, Discovery, Scripps Networks Interactive and now Fubo. "Former colleagues often tell me I'm one of the first 'digital first' employees," she said. "I came up in this business through the digital arms of many of these traditional media companies, at a formative time when very few people believed video would be delivered over IP in any meaningful way, or that digital video advertising would amount to anything." It was challenging at times for Dina to push colleagues to embrace video as a meaningful platform, but the experiences shaped how she approaches her duties as a media executive.
- While her expertise is felt in the workplace, her impact is global. Dina previously worked with Global Volunteers of America and taught conversational English to grade school-aged children as well as doctors in remote provinces of Indonesia, Vietnam and Romania. "[It was] at once terrifying and exhilarating," she said. "It emphasizes trust and being open to other people, cultures, points of view, the importance of human connection and new ways of learning. Personally, it helped me to understand that happiness is defined in so many different ways."

YOUTUBE TV TO DROP SUNS/MERCURY PARTNER

The Phoenix Suns and Mercury were the first teams to officially leave the **Bally Sports** RSN family, but now the franchises are facing different problems. One of its new broadcast partners **KTVK**, owned by **Gray Television**, will have its channel pulled from the YouTube TV lineup Saturday following a dispute between the vMVPD and broadcaster. "We are disappointed that YouTube TV has come to this decision, as we have done everything in our power to reach a market-based agreement," the station said, pointing its viewers to other alternatives. "The good news is that you have options. Arizona's Family is available on providers like **Cox**, **Fubo**, **DirecTV** and **DISH**, as well as free over-the-air with an antenna." The dispute only impacts Gray's independent stations. YouTube TV will continue to carry **KPHO**, which is owned by Gray but a CBS affiliate.

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FWC, VAB CHECK THEIR LIST

The **FreeWheel** Council for Premium Video (FWC) and the **Video Advertising Bureau** are working together to help give guidance on buying premium video advertising, introducing a document called "Buying Premium Video: A Definitive Checklist." It outlines factors that buyers and sellers should keep in mind when engaging in video transactions. FWC—which is made up of over 30 publishers assembled by FreeWheel—first started the initiative due to the growing premium video advertising market. The checklist involves three key areas for buyers and sellers. The first is quality environment, in which the checklist encourages advertisers to consider the quality of ads, use of programmatic tools rather than legacy display and ad quantity. The second, brand safety, says to uphold brand requirements as well as no placements of objectionable content and having a legitimate verification process in place. Lastly, transparency and legitimacy hones in on running ads where it is planned to in the correct context, the kind of impressions purchased and making ads viewable and not out-streamed, muted, auto-played or hidden.

HBO CLAIMS FULL OWNERSHIP OF MAX IN TRADEMARK BATTLE

HBO and **All Sports Television Network** are embroiled in a trademark dispute over the term "Racemax." All Sports Television Network filed two trademarks using the name in February, one being for a television series appearing on the network and the second being for a line of apparel. In its Notice of Opposition, HBO argued that the Racemax trademarks are likely to cause confusion due to their overall similarity to the appearance and commercial impression to services and networks that Warner Bros. Discovery offers under its family of "Max" offerings. HBO currently owns trademarks including "Cinemax," "HBO Max," "Moviemax" and "Actionmax." HBO also contended that putting the term "Race" ahead of "Max" doesn't do enough to distinguish it as something separate from the entities under the **Warner Bros. Discovery** umbrella, particularly because the term "Race" itself is generic. "HBO's claim to the exclusive use of the word 'Max' with anything related to broadcasting is totally ludicrous," All Sports Founder/President *Roger Neal Smith* said in a statement. "The fact that the attorney assigned to review our trademark applications confirmed that 'Racemax" was not in conflict with any other marks is further evidence that HBO has no special claim on the word."

AMPERSAND OFFERS LOCAL AND NATIONAL ADVERTISING INSIGHTS

Ampersand unveiled new insights into local and national TV for ad buyers after having garnered aggregated data from 65 million households. The company found significant over-exposure of heavy TV viewers in target audiences in both national linear and local broadcast campaigns. By the same token, local broadcast campaigns experience over-exposure despite strong initial reach. Certain households see campaigns up to 10X more frequently than intended, and a large portion of local broadcast impressions reach audiences that fall outside of the planned target audience.

RATINGS

ESPN had its most-watched Week 10 Monday Night Football game ever this week. The Broncos' dramatic win over the Bills had 17.73 million viewers across ESPN, **ESPN2**, **ESPN Deportes**, **NFL+** and **ABC**, peaking with 19.8 million viewers from 9:30-9:45pm. That's up 38% YOY from last year's Week 10 bout between the Commanders and Eagles. The "Monday Night Football with Peyton and Eli" simulcast checked in with 1.12 million viewers on ESPN2. MNF now averages 15.6 million viewers per game this season. – **Paramount+** had its most-streamed **NWSL** match ever in households with the 2023 NWSL Final on Saturday. The match—also broadcast on **CBS**—averaged 817,000 viewers, joining the 2022 championship as the only NWSL matches ever to top 800,000 viewers. Paramount+ enjoyed double-digit growth compared to last year's final.

FIBER FRENZY

The construction process kicked off for **GCI** in Akutan, Alaska, after the company received its final permits. Construction crews are currently building the cable landing station and have started the process of deploying FTTP throughout the community. The company plans to bring 2.5 Gig internet speeds and unlimited data to the community next year. It signals another step in the first phase of GCI's $100 million Aleutians Fiber Project.

PEOPLE

Google Fiber named *Melani Griffith* as the company's first-ever Chief Growth Officer. Griffith will manage the entire customer lifespan across brand and marketing, sales, digital, customer service and public relations. She comes with over 30 years of experience, having held leadership positions at **AMC Networks**, **Insight Communications** and **Rogers Communications**. Griffith also was on the board for **CTAM** and the national board of directors for **The WICT Network**. – *Jeffery Liberman* was selected to the **NAB** TV board effective immediately. He assumes the seat of **Entravision Communications** President, Local Media *Eddie Melendez*. Liberman has been President/COO of Entravision since 2017, first joining the company in 2000 as President of its radio division following the acquisition of **Latin Communications Group**. Liberman has been in various management and operation roles in Spanish-language TV and radio stations since 1974.

Think about that for a minute...

Recalculating

Commentary by Steve Effros

It's almost as though we all have to be amateur economists these days to understand what's going on. This is true both on a macro level and a micro one as well. Let's start with the macro.

The national debate that constantly rages about the economy and the various fears or hopes related to it is shrouded in words that I suspect a whole lot of folks don't really know or understand. The best example is "debt" versus "deficit." The country has lots of debt, but then again, almost every homeowner has that too. So long as your owned and anticipated assets can pay off the debt there isn't much of a problem. Few of us are "debt free," and there's nothing really wrong with that, it is simply a way of managing assets over time.

Deficits, however, are a different thing. They indicate that you are anticipating spending, in a specific period, more than you take in. In other words, that's what increases debt. Again, there's nothing wrong with that so long as you are managing your debt. The "fix" for deficits leading to too much debt is simply to either reduce spending or increase income. Folks mix those two concepts up all the time.

Then there's inflation and prices. They are two different concepts. Inflation refers to the general increase in prices of goods and services over time, while pricing refers to the specific price of a good or service at a given point in time. Again, as with debt and deficit, they're mixed up all the time.

Why go through all this? Because while that's a "macro" look at those subjects, we have to consider the "micro" implications in our business. We started out as "cable" operators and provided "cable service." That service, which includes video content, was constantly criticized for price increases. It's true. Prices constantly went up. But what's more difficult to explain is that the service constantly changed as well. Twenty channels increased to 50, then 100 and so on. Sports networks, among others, demanded more money because they experienced the inflation of prices over time in the entire sports universe of player salaries, network demands and the effects of exclusive product. Subscribers didn't care. They just wanted more programming but lower prices. That couldn't happen under the business model that allowed cable to develop the delivery infrastructure it has as well as also pay for the programming.

The rhetorical solution, at least for those who wanted to force prices down, was to allow folks to "only buy what they want." In other words, end cable bundling. So that's what's happening. Streaming business models allow folks to buy individual program packages. But they're exclusive, and don't include delivery, so consumers are now upset that "a la carte" pricing is becoming as expensive if not more than the old bundles! Thus, even as "inflation" is going down, the price folks pay for video programming continues to go up.

I'll get into the import of "cross subsidy" another time, but just take my word for it, when you separate "cable" and "broadband" service, focusing on the "broadband" as we watch the increasingly rapid decline of cable subscriptions, the cross subsidy effect of cable carrying a lot of the load to allow the broadband infrastructure to continue to constantly improve is going to go away. The result: broadband prices will have to go up. Speed and reliability will too, but, again, just as with "cable," folks want more but want to pay less. It just doesn't work that way.

We're going to have to spend the time to help our customers recalculate what it is they want, and what it will realistically cost. Yes, it's complicated, but just as with "inflation" and "prices" we're better off if everyone understands the difference.

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.)