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WHAT THE INDUSTRY READS FIRST

Call it Fate: SCOTUS Arguments, Net Neutrality Comments Overlap

It seemed rather apropos that on the same day reply comments were due at the **FCC** on net neutrality, the **U.S. Supreme Court** spent the morning hearing oral arguments over whether it should overrule the Chevron doctrine, the principle relied on in its Brand X decision that allowed the FCC to classify broadband as an information service in 2005.

"Brand X is a recipe for instability," Justice *Neil Gorsuch* said during Wednesday's oral arguments. "Each administration can come in and undo the work of the prior one. They are all reasonable—my goodness, the American people elect them, of course they're reasonable people [laughter can be heard—a rare sound during arguments]. If reliance and stability count, I would've thought that Chevron, at least as this court has understood it, is a recipe for anti-reliance."

He recited the various flip flops on Title II classification of broadband since the 2005 ruling, including the 2015 Open Internet rules under FCC Chair *Tom Wheeler*, then the 2018 reversal by Chairman *Ajit Pai* and the present administration's current proceeding that proposes returning to a Title II regime. The court's conservative majority seemed to lean toward overturning or at least limiting Chevron deference, a doctrine that instructs judges to defer to expert agencies when it comes to ambiguous laws.

U.S. Solicitor General *Elizabeth Prelogar* made the administration's case for keeping Chevron in place for administrative law. "Congress, agencies, regulated parties and the American public have all relied on Chevron and the regulations upheld under it to make important decisions that could be upended by overruling that framework. Thousands of judicial decisions sustaining an adjudication would be open to challenge and that disruption is especially unwarranted because Congress could modify or overrule the framework at any time," she argued in a case that actually was brought forth by herring fishermen who claim the National Marine Fisheries Service overstepped by requiring fishermen to carry observers on boats to ensure they aren't overfishing.

Over at the FCC, net neutrality reply comments were tricking in throughout the day. Lawyers being lawyers, expect many to be filed around 5pm and show in the online docket Thursday. Some comments were already in at our deadline, with **ACA Connects** declaring that the FCC proceeding runs afoul of the major questions doctrine. That's the doctrine SCOTUS is expected to lean into over Chevron. Major questions is the principle that courts should not presume Congress turned over major political and economic decisions to agencies. "There is no debate in the NPRM or the record about the significance of a reclassification. As **CTIA** notes, the NPRM and the Chairwoman acknowledge the significance of reclassification in their observations that broadband is more vital than ever for consumers' participation in our society and economy, that it implicates matters of national security and public safety, and that the future of the Internet is the future of everything," ACAC said.

The **U.S. Chamber of Commerce** expressed concern that the

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FCC is opening the door to a patchwork of state regulations. "While the FCC Chair initially touted the benefits of a uniform framework in her initial comments on the NPRM and her public statement on the adopted item, the final text of the NPRM distressingly suggested that FCC 'net neutrality' rules could serve only as a floor, rather than a ceiling, for broadband regulation," the Chamber wrote. "Unfortunately, as the Chamber predicted, pro-Title II advocates in their initial comments have encouraged the Commission to provide states with free rein to supplement federal rules with their own, more sweeping conduct rules."

The Telecommunications Industry Association, which counts **Adtran** and **Nokia** as members, argued that commenters in support of Title II reclassification don't clearly outline how reclassification would further U.S. interests in security. "For instance, **Public Knowledge** argues that the U.S. alone has 'sidelined the agency responsible for overseeing broadband access' from cyber and national security decisions… TIA disagrees and believes that the FCC has and should continue to play an important role in cyber and national security concerns—but it does not need Title II to do so," TIA wrote.

ACA Connects devoted some of its reply comments to addressing its view that broadband providers don't have incentives to block or degrade subscribers' internet traffic or unreasonably discriminate. "Proponents of Title II regulation supply no serious evidence to rebut this conclusion. **The Electronic Frontier Foundation** dredges up stale anecdotes, including one incident that took place in Canada in 2005. Public Knowledge unearthed a single recent example of a wireless internet service provider in Idaho that apparently blocked its subscribers' access to Twitter for political reasons. Even assuming Public Knowledge accurately characterizes the incident, it appears the [provider] quickly reversed its policy in the face of public pressure," ACAC said. "In any event, the provider may have already been subject to an enforcement action under Commission rules if it failed to disclose its blocking policy adequately in its transparency disclosure. In no case can this sole outlier example justify a sea-change in Commission regulation of broadband service."

DIAMOND SPORTS LOOKS TO MOVE FORWARD WITH AMAZON

After 10 months, **Diamond Sports Group** finally has a plan on how to emerge from bankruptcy. The restructuring support agreement includes a commitment from certain of the company's debt holders to provide $450 million of junior secured superpriority debtor-in-possession financing with the proceeds to be used to support Diamond's operations as it finalizes a comprehensive reorganization plans. **Amazon** is also swooping in to help Diamond post-bankruptcy, committing to make a minority investment in the company and enter into a commercial agreement to offer games carried on Diamond's RSNs on **Prime Video**. Customers will be able to purchase DTC access to stream local Diamond channels with access to live **MLB**, **NHL** and **NBA** games for which Diamond owns the digital rights through Prime Video Channels. Additional details regarding pricing and availability will be available soon, assuming the restructuring agreement is approved. **MoffettNathanson** said the deal is obviously good news for the bankrupt Diamond, but what Amazon gets out of this deal is far murkier to make out. "The old RSN model depended on skimming disproportionately high affiliate fees from across the entire universe of cable subscribers, regardless of whether any one subscriber was a sportsfanatic, a casual fan, or the type of person who watched the Super Bowl for the ads," it said in a note to clients. "Is there a business selling directly to just fanatics and (depending on pricing) some subset of casual fans? It remains to be seen but we haven't seen any real evidence to date proving it can be a viable business model." There's also the fact that all of Diamond's deals with the NHL, MLB and NBA are set to expire after this season. In another aspect of the proposal, Diamond and **Sinclair** have agreed to settle all litigation

The *WHO* and the *WHY*

CFX's spotlight on recent new hires & promotions

JON
Wax
EVP, INTERNATIONAL ORIGINAL TELEVISION
DISNEY ENTERTAINMENT

3 THINGS TO KNOW

- While Disney+ is growing worldwide, it wants to keep that local connection. That's why Disney Entertainment created this new role that'll see Jon collaborate with regional leaders across the globe to create local content for Disney+. He'll be based in Los Angeles and report to President, Disney TV Studios and Global Original Television Strategy for Disney Entertainment Eric Schrier.
- Jon will work with Disney Entertainment EVP, International Television Strategy & Operations Kristen Finney to oversee a team that'll set a global original TV strategy in addition to supplying international content to Disney+. Jon will handle the creative aspects of the international content while Kristen will focus on business operations.
- Jon arrives at the House of Mouse after leading Amazon's genre development division, primarily working on sci-fi and fantasy series. Among the shows the division was credited with under his watch are "The Rings of Power" and "The Boys" spinoff "Gen V." Jon also previously led the drama and movies division for YouTube Originals.

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between the two parties. Diamond sued Sinclair in August, alleging the broadcaster began withdrawing funds from the regional sports portfolio and defrauded creditors because it knew that Diamond was headed toward bankruptcy. As part of the settlement, Sinclair will pay Diamond $495 million in cash to support the reorganization plan and fund distributions to certain creditors. Sinclair will also provide Diamond with transition services to allow it to become a self-standing entity moving forward. Diamond and Amazon will need to earn the Southern Texas Bankruptcy Court's approval to move forward with their deal. A virtual status conference was held Wednesday in the court to discuss the proposal. Representatives for **Charter**, Sinclair, Amazon, DirecTV, the NHL, the NBA, MLB and more were on hand.

FCC ASKS FOR COMMENTS ON BLACKOUT REBATE PROPOSAL

The **FCC** is officially moving forward with a proposal requiring cable operators and DBS providers to give subscribers rebates when blackouts strike their programming lineups. The agency released the NPRM on Wednesday with comments to be due 30 days after its publication in the Federal Register. Reports last week said the FCC had voted 3-2 along party lines to move forward with the NPRM and an agency official confirmed them to ***CFX***. The NPRM lays out a number of questions, including if it has the authority to require such a rebate be provided during a retransmission consent or carriage dispute and if such a rule should apply to any channel that is blacked out. It also asks how a rebate should be calculated and what should be done if the parties never reach an agreement and a channel is dropped permanently. In the NPRM, the agency addresses the issue of rate regulation, saying that it has tentatively found that a rebate requirement for interruption of service due to blackouts would not fall into that category. It noted that recent court decisions support its authority to move forward with the rebate proposal, specifically highlighting a recent decision by the First Circuit to uphold a Maine regulation requiring cable operators to issue prorated credits or rebates for the days remaining in a billing period after a subscriber terminates cable service. In a separate move, the Commission adopted a proposal aimed at supporting local journalism. It centers on exploring a new application processing policy that would come into play when applications come in for renewal, transfer or assignment of a broadcast license. The Commission would prioritize the processing and review of applications filed by stations that certify they provide locally originated programming.

CLEARFIELD LOOKING UP FOR 2024

You need both a fork and a knife to enjoy a full meal, and **Clearfield** is eyeing 2024 as an opportunity to provide its customers with the proper tools to finish fiber builds. "We have some customers who have forks, but they need knives," Clearfield CEO *Cheri Beranek* said during a fireside chat at the **Needham Growth Conference** on Wednesday. "They've got some of that inventory, but we need to be able to have to replace parts of it to be able to finish their builds. We're also seeing signs that the build season will be the time in which we will work through the inventory that's there, and we'll start to see some of the real demand." Beranek's read on 2023 was that the vast amount of inventory that's in place overshadowed an underlying demand, citing from the **Fiber Broadband Association** that the industry passed 9 million homes in 2023 compared to 7 million homes in 2022. But as Clearfield turns the page to a new year, there are opportunities to capitalize in specific areas of the market. Beranek said a company like **Corning** does well with national carriers, but falls short on smaller providers who need an extra level of support. That opens the door for Clearfield to work with those providers in addition to larger regional companies that it's seen substantial growth in. "Our biggest growing business has been the large regionals who predominantly didn't do fiber before the pandemic," Beranek said. "These are companies like **Frontier**, who came out of bankruptcy; **Windstream**, who dealt with their bankruptcy and committed to fiber deployment; **Lumen**, who was struggling to figure out their identity, but then after selling off to **Brightspeed**, is now starting to deploy fiber as well." Clearfield is one of the many companies looking forward to imminent funding from the BEAD Program, and while she said those dollars "have had a lot of strings," the opportunities are still there to work in spaces that haven't seen broadband before, which is where Clearfield feels it thrives.

SINCLAIR, FOX INK DEAL EARLY

Sinclair and **Fox** agreed on a multi-year renewal of all Fox affiliates in the broadcaster's markets. Sinclair partners also renewed Fox affiliations in markets where Sinclair offers sales and other services under a joint sales agreement or master service agreement. The 41 renewed markets serve approximately 19 million TV households.

ROSENWORCEL DEFENDS FCC'S HANDLING OF ACP

FCC Chairwoman *Jessica Rosenworcel* told Republicans upset about the number of existing broadband households that are part of the Affordable Connectivity Program that it's not something the agency can police and is consistent with the law. "Moreover, in the law Congress included a provision on consumer protection and outreach that specifically requires providers to notify existing subscribers at the time they renew a broadband subscription of the availability of the ACP," she wrote in a just-released letter to Sens. *John Thune* (R-SD), *Ted Cruz* (R-TX), Rep *Cathy McMorris Rodgers* (R-WA) and *Bob Latta* (R-OH) who have expressed concerns about the FCC's management of the program. The chairwoman added that data shows that a sizeable number of low-income households experience subscription vulnerability after they adopt broadband, something ACP's $30/month subsidy can alleviate. The GOP members fired off a letter to Rosenworcel last month, questioning the administration of the program. “While you have repeatedly claimed that the ACP is necessary for connecting participating households to the internet, it appears the vast majority of tax dollars have gone to households that already had broadband prior to the subsidy,” they wrote, citing Rosenworcel’s testimony that the USAC found that only 20 or 22% of ACP recipients lacked broadband prior to the ACP and previous FCC surveys that found the number of non-subscribers served by the program to be even lower at 16%. Rosenworcel used her reply to once again urge for re-funding of ACP and provided some stats on its success, such as how the FCC aimed to enroll between 36.1% and 43.1% of an estimated 48.6 million eligible households by Nov. 1, 2023 and exceeded the target by enrolling approximately 45% of eligible households.

VERIZON TAKES BUSINESS SERVICES WRITE DOWN

Verizon revealed Wednesday that it will take a $5.8 billion impairment charge in 4Q23 for its enterprise business as sales decline. Verizon said it completed a comprehensive five-year strategic planning review of the reporting unit resulting in lower financial projections compared to the prior year five-year strategic planning cycle. The impairment test determined that the fair value of the reporting unit was less than its carrying value. As a result, the goodwill balance of the business reporting unit is $1.7 billion as of Dec 31.

AWARDS

Geraldine Laybourne was selected as this year’s Bresnan Award honoree by **The Syndeo Institute at The Cable Center**. She’s the second woman to win the award since its introduction in 2011, with former **NCTA** exec *June Travis* having been the first in 2018. Laybourne’s accolades include playing a major role in building the **Nickelodeon** brand during her time as President of the network from 1984-96. She then moved to President of **Disney/ABC Cable Networks** until 1998 before co-founding **Oxygen Media** and subsequently serving as Chairman/CEO until its sale to **NBCUniversal** in 2007. In 2019, she launched a model teaching apprenticeship program called DAY ONE Early Learning Community. Laybourne will be presented with the award at the 27th Cable Hall of Fame ceremony, which will take place April 18 in NYC.

PEOPLE

Stephanie Mitchko is officially moving over to the programmer side, having joined **AMC Networks** as its EVP, Global Media Operations & Technology after serving as a technology consultant for the company for the past several months. It’s a new role at the company that’ll see Mitchko oversee AMCN’s global technology and operations business, which includes IT, media and broadcast operations, content delivery, cybersecurity, supply chain technologies, products and streaming product operations and customer service. Mitchko previously spent time as SVP, Video Infrastructure Software for **Cablevision** and contributed to its development in cloud-based DVR before becoming CTO/COO of **CadentTV** and EVP/CTO of **Charter**. -- **The CW Network** named *Erin McIlvain* as SVP, Affiliate Distribution and Marketing. She’ll oversee the network’s distribution and affiliate relations with station group partners. McIlvain has been in the media game for nearly two decades, having most recently been Chief Officer, Distribution and Content Strategy at **Great American Media**. She also held the EVP, Distribution and Content Strategy position for **Crown Media**. -- **A+E Networks** is retooling its ad sales team as it looks to capitalize on digital, multi-platform and data opportunities. *Toby Byrne*, who was previously president of global tech company **Zefr** for six years, will join A+E as EVP, National Ad Sales. Four new VPs were also appointed: *April Denn*, *Jeff Gocel*, *Lindsey Quinn* and *Rob Duke*.

Think about that for a minute...

Perspective

Commentary by Steve Effros

One of the most challenging aspects of good journalism is providing both context and perspective. Failure to do that results in skewed judgments, illogical choices and, in most instances these days, excessive anxiety. The current state of "reporting" exacerbates the entire situation.

Sure, we all know about the issues surrounding "fake news" these days, and the fact that some politicians, for instance, only agree to participate in interviews, debates and the like with "favored" networks. The "favor," of course, is because the network seems to report and highlight only one point of view. But that's not what I'm talking about here. There's a more fundamental problem; the seeming lack of context and perspective in just about all reporting recently results in insufficient information to make informed decisions, and creates that aforementioned anxiety. It doesn't have to.

A great example of this is the reporting about the "door plug" that blew off an airliner recently. To be sure, it was justifiably cause for a lot of news coverage. And unfortunately it is resulting in a lot of angst about flying, which, it turns out, is one of the statistically safest ways to travel. An Axios report was succinct in adding some perspective to moderate the fear: "…last Friday, January 5, the day a door plug flew off an Alaska Airlines airplane in mid-flight, was a day in which approximately 120 Americans died in motor vehicle crashes. Roughly 136 died from opioids. Perhaps 150 died as hospital inpatients due to preventable medical errors. About 230 died of COVID-19. And zero died in aircraft accidents."

Now, granted, those other statistics don't make anyone feel good. They are all rather eye-opening at best. But they do provide some context and perspective to the mental clamor created by the total focus on a very rare occurrence. Happily, the airline industry and the government have long focused on the need for extreme vigilance (and this was clearly a failure) regarding airliner design safety. But that should be included in all reporting of this event to make clear that the anxiety I imagine a lot of folks are feeling every time they take off in an airplane these days is far more dangerous than the flight.

Of course, political perspective is also often lacking. The Iowa caucuses just completed are a great example of that. The event is primarily a benefit for Iowa broadcast stations which garnered almost 50 percent of all funds Republican candidates have spent on television ads nationwide this election cycle so far. That's about $125 million. The caucuses are essentially for show. The 40 delegates selected only represent 1.6 percent of the party's candidate vote. There are 2,429 delegates at the Republican convention. Again; perspective.

It's somewhat disconcerting to realize that in this election and policy advocacy cycle the expectation is that over $16 Billion will be spent on advertising. Television and video in all its forms will eat up a vast majority of that money. It's no wonder that immense amounts of money are being spent to get "product" that will attract the eyeballs which are sold to advertisers. Peacock's (NBC/Comcast) $110 Million expenditure on an exclusive streaming of an NFL playoff game last weekend should tell you where things are going. 23 Million watched. There are legitimate reports that the NFL is talking with ESPN about acquiring an ownership interest in the network. And so it goes.

All of this money is inevitably going to put journalists, whether they are talking or writing about politics, policies or even sports in an even more difficult position when it comes to the public's need for perspective and context regarding the things being shown or discussed. As has long been lamented, "money talks." We have to make sure we learn how to watch and listen.

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.)