

Cablefax Daily™

WHAT THE INDUSTRY READS FIRST

Carry On: Programmers, Distributors Duel in Comments on Video Market

The friction between distributors and programmers of all kinds is on display at the **FCC** as the agency gathers comments on proposals to help independent programmers continue to compete effectively for carriage on MVPDs, streaming platforms and more.

The Commission has proposed a ban on Most Favored Nation and Alternative Distribution Method [ADM] clauses in order to allow independent programmers to compete more effectively through packaging and pricing flexibility. **Fuse** is a major proponent of the proposal, arguing in comments that both restrict independent programmers' ability to compete and deliver content in the same manner as their competitors.

Fuse spoke to the pressure larger conglomerates are placing on distributors through carriage and retransmission consent negotiations, and distributors are forced to absorb those increased costs. That leaves less room for carriage of independent programmers, and Fuse said that forces them to agree to further concessions just to maintain their presence on MVPDs' lineups. It also said independent programmers often have to deal with inappropriate behavior and treatment before even getting to the negotiating table.

"Distributors often lack good faith when interacting with independent programmers, typically avoiding direct interaction or, in the alternative, providing symbolic gestures, such as taking a single meeting, rather than engaging in meaningful, substantive negotiations," Fuse said. "Similarly, even if a distributor carries an independent programmer, it often will engage in

delay tactics or not respond to renewal proposals until shortly before an affiliation agreement expires, then will present a take-it-or-leave-it final offer that the independent programmer must accept or face a potentially fatal loss of distribution."

UP TV, Aspire and **Ovation** submitted joint comments, complaining that large programmers often aren't saddled with MFNs, thus giving them greater contractual flexibility to address the specific needs of each of their distribution partners. The three programmers said they've continued to lose subscribers as customers cut the cord from MVPDs, and these MFNs have locked them in a cage that keeps them from being able to successfully find other sources of revenue from other video providers.

"The services have been unable to recoup these lost subscribers through vMVPD distribution... Aspire, UP and Ovation attribute their minimal distribution by vMVPDs to their inability to flexibly address the needs of vMVPDs, with MFN limitations being a primary cause," they said.

The trio also urged the FCC to define independent programmers to include independents affiliated with broadcast stations that don't have market power. They cite Ovation, which is owned by **Hubbard Broadcasting**, arguing that its ownership of a few small market stations provides no negotiating leverage for the arts network. **Qurate, HSN** and **QVC's** parent company, argued that the FCC's proposed definition of independent programmer is ambiguous and overbroad. "In essence, the Commission's proposed definition... would seemingly exclude any entity with a connection to broadcasting, whether the entity's programming



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is carried on broadcast stations, or the programmer is affiliated with a broadcast network (an undefined term), or with any entity holding a television broadcast license, regardless of type or scope of its station holdings,” Qurate said.

When it comes to negotiations, Fuse said it experiences the same problems when trying to gain carriage for its linear network on vMVPDs, with **Hulu + Live TV** only answering outreach regarding a carriage agreement when Fuse CEO *Miguel Roggero* sent a letter to **Disney** CEO *Bob Iger*. **YouTube TV** offered similar challenges, and it seems like these issues apply generally to all independent programmers. On a separate point, it argued consolidation on both the distribution and programming sides of the market have hurt independent programmers’ ability to compete.

The distributors have a different perspective on things, arguing that the FCC does not need to intervene at this level because independent programmers have dozens of ways other than traditional MVPDs to reach their audiences. **DirectTV** said alternatives include vMVPDs, FAST channels and individual DTC services. It also said there are many reasons it may use Most Favored Nation clauses or Alternative Distribution Method clauses that aren’t anticompetitive. “DirectTV might seek an MFN, for example, for the amount of cloud storage capacity it can offer subscribers so that it can remain competitive on the features and functionalities it offers its subscribers throughout the term of a contract,” it said. “This is nothing more than elementary dealmaking, and there is nothing wrong or anticompetitive about it.” Similarly, ADMs are used by DirectTV to help define and protect the value of the programming it licenses.

DirectTV’s concern is the bans will only disadvantage MVPDs and hurt their ability to compete with online providers, and the fallout will make them less able to carry content from truly independent programmers.

ACA Connects asked the FCC to exclude small cable operators from the restrictions, arguing that they lack the incentive or ability to use those contractual mechanisms in a way that is harmful.

“ADM (or ‘holdback’) clauses in these agreements are similarly limited in scope, generally preventing programmers from distributing their programming for free or a lesser charge by other means for a brief period of time following the original linear airing,” ACA Connects said.

The association admitted small providers do struggle to carry independents, but said that’s largely due to forced bundling of large channels and other strategies like penetration and tier requirements imposed by large programmers.

“The carriage obligations they impose eat up capacity that may have otherwise been available for independent programming—or for higher-speed broadband, which also benefits independent programmers by making online distribution alternatives more robust,” ACA Connects said.

SIXTH CIRCUIT PICKED FOR TITLE II APPEAL, FCC SAYS NO TO STAY

Challenges to the **FCC’s** Title II order will be heard by the U.S. Court of Appeals for the Sixth Circuit. Petitions for review were filed in seven courts of appeal—the First Circuit, Fifth Circuit, Sixth Circuit, Eighth Circuit, Ninth Circuit, Eleventh Circuit and District of Columbia Circuit. The U.S. Judicial Panel on Multi-district Litigation randomly selected the Sixth for consolidating the petitions. Those filing for review include **NCTA**, **USTelecom**, **Texas Cable Association**, **Media Alliance** and the **Benton Institute for Broadband and Society**. Also on Friday, the Chief of the FCC’s Wireline Bureau issued an order denying a [request](#) by NCTA, USTelecom and others that the agency stay its Title II order to give petitioners time to seek a stay in the court of appeals. The order said the petitioners’ arguments for why the Commission’s classification decision should be analyzed under the major-questions doctrine are not persuasive and that they’ve failed to show they will suffer irreparable harm.

WBD NABS U.S. FRENCH OPEN

Warner Bros. Discovery is [reportedly](#) making another move as its **NBA** fate hangs in the balance. WBD scored the U.S. rights to the French Open, according to *Variety* which cites people familiar with the matter. Though the tournament’s rights have been with **NBC Sports** for a while, WBD has been involved with the event through its European network **Eurosport**. WBD’s French Open deal will begin in 2025.

CRICKET’S TIME TO SHINE

Thursday night marked the beginning of this year’s **NBA** Finals, but throughout the day there was another sport that stole the hubbub among sports fans: cricket. The Men’s T20 Cricket World Cup is currently taking place, and in a shock result the U.S.—which is playing in the competition for the first time ever—defeated powerhouse Pakistan yesterday. It was perfect timing for **Willow**, a cricket broadcaster in the U.S. and Canada, especially after it announced a [carriage deal on Fubo](#) last week. Not only that, but three other of its partners, **DirectTV**, **Verizon** and **Altice USA**, have Willow available for free this week on their respective basic plans. Willow might nab a few newly interested cricket fans as the World Cup continues. “We have to make sure that we’re serving our core fans, which largely is the South Asian diaspora that lives here [in the U.S.],” Willow COO *Todd Myers* told **CFX**. “We make sure we serve that audience first, because they are our core business. Then we’re constantly looking for opportunities to expose the sport, expose Willow to new sports fans. That’s why this freeview for a week, I feel, is really important. It just gave

us an opportunity to expand Willow's reach to about 20 million households." Willow is normally on a sports-specific package from its partners, which includes **DISH, Sling TV, Charter, Comcast** and **Karostream**. Myers said once the freeview ends, Willow is available in about 4 million homes across all distributors. It has a DTC offering that runs for \$9.99/month or \$79.99/year. As for what's next, Myers, who spent 16.5 years at ESPN, is looking forward to another year of Major League Cricket that begins next month, but has his sights set on the growth of Willow's DTC sector and other carriage deals with platforms such as **YouTube TV**.

and \$147 million 11.2% Series 2024-1, Class C term notes. Each have an anticipated repayment date of May 2031 and have a collective weighted average yield of approximately 7.4%.

FRONTIER PRICES ABS DEBT

Frontier announced that a limited-purpose, bankruptcy remote, indirect subsidiary of the company has priced \$750 million aggregate principal amount of secured fiber network revenue term notes. It consists of \$530 million 6.2% Series 2024-1, Class A-2 term notes, \$73 million 7.0% Series 2024-1, Class B term notes

FIBER FRENZY

Zipty Fiber is entering a public/private partnership with Island County, WA, to roll out fiber in the north-end area of Camano Island. The agreement will see over 100 homes and businesses get Zipty's portfolio of products, which include speeds ranging from 100 Mbps to 50 Gig. Construction should begin later this year and be completed by mid-2025 following the design and permitting phases.

PEOPLE

Former **AT&T** comms exec **Stephen Stokes** has joined **Altice USA** as VP, Communications. At AT&T, Stokes led technology innovation communications, including IT, product development and AT&T Labs.

CABLEFAX DASHBOARD

Social Media Hits

Midco @Midcontinent

The Fargo Sports Center recently held its grand, and we're proud to be one of the founding partners.

When it officially opens on June 3, you can take a break in the Midco Lounge, take a lap around the Midco track or explore any of the other amazing offerings.



Max @StreamOnMax

Here's to a first year that was filled with big feels and celebrations of characters old and new with some pretty incredible fans.

Jason Kilar @jasonkilar

The virtuous cycle of media properties at scale (large # of ppl meaningfully engaging w/ a property in the past 24hrs) is a thing to behold...the best talent, best sports leagues, best events all come calling. Conversely, media properties losing scale face a vicious cycle.

Jason Kilar @jasonkilar · Jun 3

Disney is 1 example of a co that has innovated for much of its 100yr history to keep the virtuous cycle going. Animated shorts 1924 -> cons products 1929 -> feature length animation 1937 -> TV shows 1950 -> Disneyland 1955 -> TV channels 1983 ...etc. An incredible virtuous cycle

Jason Kilar @jasonkilar · Jun 3

I think it is fair to say that the companies that lead these next 100 years of media + entertainment will be the ones that repeatedly transform themselves, that innovate...in order to entertain + inform, and in the process keep powerful virtuous cycles going.

Up Ahead

- JUNE 13:** [Cablefax American Broadband Congress](#); D.C.
- JUNE 17-19:** [The Canadian Telecom Summit](#); Toronto
- JUNE 17-21:** [Cannes Lions 2024](#)
- JUNE 24-27:** [CableLabs Interop Labs, DOCSIS 4.0 and DAA Technology](#); Louisville, CO
- JULY 14-16:** [NTCA 2024 Summer Symposium](#); Olympic Valley, CA