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WHAT THE INDUSTRY READS FIRST

Many Threads: Wrangling Continues Following Charter, Entropic Settlement

The **Electronic Frontier Foundation** is on a mission to unseal documents related to **Charter** and **Entropic's** patent settlement last year, and it's not taking no for an answer.

Last month, the U.S. District Court for the Eastern District of Texas denied EFF's request to intervene in the case and unseal court records. However, EFF notified the U.S. Court of Appeals for the Federal Circuit last week that it intends to appeal the decision.

In 2022, Entropic sought damages from Charter in excess of \$1 billion, claiming infringement on patents related to functions performed by certain cable modems and set-top boxes. In December, the two announced a settlement and the court closed the case. Then EFF moved in March to intervene "for the limited purpose of vindicating the public's right to access court records."

EFF told the court that it has a strong interest in understanding the DOCSIS license defense used in the case and that sealing records keeps it from obtaining precedent-setting information. "Charter's license defense based on DOCSIS may implicate a core legal question in patent law: when is a particular patent 'essential' to a technical standard and thus encumbered by licensing commitments?" EFF argued. However, the Texas court found that EFF's motion to intervene was not timely and also rejected arguments that the parties improperly filed documents under seal and that pulling parties back months after settlement would not be prejudicial.

The EFF request isn't the only loose end from the Entropic settlement. In February, Charter sued **Ubee Interactive**, [claiming](#) it failed to uphold contractual obligations to defend Charter against any patent infringement claims that involved Ubee cable modems or to contribute to the settlement. The operator wants \$12.31 million for Ubee's share of the settlement. Ubee filed its answer to the complaint last month, saying that it didn't consent to the settlement, has rejected any obligation to pay any amount thereof and denies Charter's implication that it's obligated to make such payments.

Ubee rebutted Charter's lawsuit, telling the court its claims seek indemnification for Charter's own "intentional or reckless infringement" of the relevant patents and that its claims for defense costs and settlement do not relate to the installation, use, deployment or exploitation of the products provided by Ubee. What's more, Ubee argues that Charter owes it money and it has the right to recoup that amount and that any purported damages recoverable by the operator must be reduced by this figure.

The modem maker objects to Charter's calculation that it's responsible for 16.7% of the operator's defense costs. "Plaintiffs knew or should have known from Entropic's allegations that the vast majority of liability for the case involved services offered on or through other devices not supplied by Ubee, which were not subject to indemnification under the [Master Purchase Agreement]," Ubee said in its answer. "An example of this is the CMTS, through which Plaintiffs control various services accused of infringement in the Entropic-125 litigation. Unlike



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a cable modem, which is typically deployed one per household, a CMTS services many households—and those households also would have a cable modem. By calculating responsibility based on accused products—i.e., percentages of equipment deployed—Plaintiffs deliberately shifted a disproportionate amount of responsibility onto cable modem manufacturers.”

Ubee said Charter has repeatedly failed to explain the 16.7% calculation and that it was represented that Ubee’s responsibility for defense costs, if any, would be capped at 16.7% of a fixed fee of \$4,645,250. “Ubee did not and could not reasonably have known, the amount was based on assumptions which Plaintiffs knew or should have known to be false, and that trial was reasonably certain,” said Ubee.

The vendor filed its own counterclaims, among them that Charter has failed to pay more than \$11 million in invoices Ubee sent it last year for COVID-related price increases and surcharges related to a microchip vendor. It claims Charter also has failed to pay nearly \$329,000 in other vendor surcharges pertaining to modems Ubee shipped to Charter from July 1, 2023 to Dec. 31, 2023. On Monday, Charter asked the court to provide it additional time, until July 15, to respond to Ubee’s counterclaims—a motion that Ubee consents to.

DISAGREEMENT ABOUNDS ON FCC’S NET NEUTRALITY ORDER

It’s hard to find agreement on net neutrality, even when it comes to which court should hear legal challenges to the FCC’s Title II order. Last week, the U.S. Judicial Panel on Multidistrict Litigation randomly selected the Sixth Circuit for consolidating the multiple petitions challenging the order. The FCC promptly filed a motion Friday requesting that the case be expeditiously moved to the D.C. Circuit. That resulted in petitioners, including **NCTA** and **USTelecom**, telling the court on Sunday that a group of petitioners in the consolidated cases plan to file an opposition to the transfer motion and thus, they want the court to defer any action on the FCC motion until they’ve submitted their response. They added that some petitioners plan to file a motion to stay the FCC order and want the court to decide their stay motion before the transfer motion. That stay motion is supposed to be filed today, but wasn’t in the docket by our deadline.

FRONTIER DATA BREACH

Frontier reported unauthorized access to some of its internal IT systems in an attack traced back to April 14, a breach it says impacted 751,895 customers but doesn’t involve personal financial information. “Upon discovering the incident, Frontier retained leading cybersecurity experts to support the investigation and

contain the incident. We also took steps to further strengthen our network security and prevent further access by the third party. We have notified law enforcement and applicable regulatory authorities,” the company wrote in a notification letter to impacted customers. Frontier is offering one year of complimentary credit monitoring and identity theft resolution services to those affected by the data breach. An extortion group called RansomHub claimed responsibility for the attack, according to a [report](#) from *Bleeping Computer*. The group—which claims it has data for over 2 million customers—is giving Frontier a Sunday deadline to respond to demand or else it’ll sell the information to a bidder.

VENU SPORTS DRAMA CONTINUES IN CONGRESS, COURT

Reps. *Joaquin Castro* (D-TX) and *Jerry Nadler* (D-NY) are not letting **Warner Bros. Discovery, Disney** and **Fox** go easy when it comes to their attempts to launch sports streaming **Venu Sports**. Representatives from the **ju** partners met with the staff of Castro and Nadler in late May and sent along responses to a series of questions sent in a previous letter, but the lawmakers said in a new letter sent Friday that there are still a number of unanswered questions and vague answers that they don’t quite believe. Nadler and Castro said they still have not received answers on consumer privacy precautions or methods to determine pricing of the service, and they want more details on exactly how the **ju** will operate. “For example, we find it difficult to understand how your companies can both promise not to share competitively sensitive information and also evaluate the success of the joint venture on a company-by-company basis,” the letter said. “Your repeated assertion that the details of the joint venture have not yet been finalized is also hard to believe, given that the joint venture is projected to roll out in mere months.” – Meanwhile, **Fubo** and the programmers behind **Venu Sports** continue to battle over what information the **vMVPD** needs to move forward with its antitrust suit against the sports streaming **ju**. **Fubo** filed a motion to compel the production of text messages from a number of senior executives at Disney, Fox and Warner Bros. Discovery. But the defendants argued the request was extremely burdensome, unnecessary given the limited scope of discovery for an upcoming preliminary injunction hearing and would not generate anything material. “The Court should not order such an invasion of privacy unless there was some reason to believe that those communications would reveal some material, unique information demonstrably missing from the tens of thousands of emails and instant messages Defendants have already agreed to review,” *Andrew Levander*, counsel for the programmers, said in a June 4 letter to Judge *Margaret Garnett* of the Southern District of New York. “No such reason exists.” Judge Garnett ultimately denied

Fubo's motion, but noted the vMVPD could seek those text messages in broader discovery after the preliminary injunction hearing if that is how the suit proceeds.

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T-MOBILE READY FOR BACKUP

T-Mobile is introducing a new plan for its customers who use a traditional ISP, offering a backup 5G internet connection in the event one's primary service is disrupted. The Home Internet Backup plan is available to cable and fiber internet customers at \$30/month with autopay and \$20/month with autopay for those who have an eligible T-Mobile voice line. Included in the plan is 130 GB of 5G data each month and a 5G gateway at no added cost.

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FX, NETFLIX LEAD TCA NOMS

It was **FX** and **Netflix**'s time to shine as the **Television Critics Association** unveiled the nominees for the 12 categories of the TCA Awards. The two brought in a leading 16 nominations each, including combining to make up five of the six noms for Program of the Year with FX's "The Bear," "Reservation Dogs" and "Shogun" and Netflix's "Baby Reindeer" and "Ripley." Baby Reindeer, Ripley and Shogun also led all programs with five noms apiece. **Max**, which came in second among networks/streamers with 13 noms, saw "Hacks" take the final spot for Program of the Year. **Disney+** followed with six noms, and **ABC, PBS/PBS KIDS** and **Prime Video** checked in with three each. **Apple TV+**, **NBC** and **Peacock** recorded two noms each.

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COMMISSION CONTEMPLATES LETTERS OF CREDIT RULE CHANGES

The **FCC** is looking for input on a number of changes to its letters of credit requirements across a number of its funding programs. In a proposed NPRM released Friday, the Commission sought comment on modifying the required value of a letter of credit for RDOF program winners. The NPRM also questions whether the agency should modify letter of credit rules for USF high cost support and if it should make its waiver of certain aspects of the letter of credit rules permanent for CAF II recipients. The agency said it is investigating the areas to find new ways to ensure providers comply with program requirements while also facilitating broadband deployment to unserved areas and helping ISPs meet their deployment milestones. "Our goal is to make sure that we have right sized these letters and our rules for the current environment, so we can both protect our universal service programs and support broadband deployment for everyone, everywhere," FCC Chair *Jessica Rosenworcel* said in a statement.

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FIBER FRENZY

Google Fiber's Business portfolio is now available to local companies in the San Antonio metro area. Customers can get the Business 1 Gig plan for \$100/month or the Business 2 Gig

offering for \$250/month. Both come with symmetrical speeds as well as a WiFi 6E router with guest WiFi options, while also having the option to add phone service. The Business 2 Gig plan also comes with up to two mesh extenders and a static IP address. – To help with network reliability and redundancy, **Zipty Fiber** installed a second high-capacity fiber-optic route throughout the cities of Albany and Corvallis, Oregon. The addition lets Zipty automatically reroute internet traffic to the new, redundant route in the event the network sustains damage. Zipty first launched fiber in the two areas six weeks ago.

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CARRIAGE

Millennial-focused **Insight TV** is launching the lifestyle FAST channel **INTRAVEL** on **Fubo**. It's the channel's first distribution agreement in North America, coming with programs such as "Paradise Kitchen: Bali" and "Journey Within." – Four Spanish-language FAST channels from **Hemisphere Media Group** are joining the **Fire TV Channels** lineup. **TODO CINE, TODO NOVELAS, Más Pasiones** and **WAPA+** are now available to view for free under the "En Español" category, bringing an array of Spanish films, dramas and Puerto Rican-centric content.

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SPORTS RATINGS

Game 1 of the Stanley Cup Final on **ESPN** networks averaged 3.1 million total viewers and 1.1 million viewers P18-49. Those numbers are good for 12% and 5% improvements, respectively, over last year's Stanley Cup Final opener between the Panthers and Golden Knights on **Warner Bros. Discovery** nets. Through 42 games, ESPN is seeing a 26% improvement in total viewers (1.45 million) compared to last year's average and 19% in the P18-49 demo (590,000). – As Oklahoma cruised to its fourth consecutive Women's College World Series title, Game 2 of the best-of-three series averaged 2 million viewers on **ESPN**. That's the most-watched NCAA WCWS Finals on record and is up 3% from the previous all-time mark set in 2015 (up 24% YOY). The broadcast peaked at 2.5 million viewers. Female viewership was also up 34% compared to 2023. Games 2 and 1 were the second and third most-watched softball games on **ESPN+**, respectively.

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PROGRAMMING

The **NHL** is next to get a "Formula 1: Drive to Survive"-like series, but it's not coming from **Netflix**. **Prime Video** is working on an untitled project with the league on a docuseries that focuses on the biggest teams and stars. Premiere date is still TBD, but the series comes as Prime Video gets ready to exclusively stream Monday night NHL games in Canada. – The supernatural drama "Domino Day: Lone Witch" will make its U.S. debut June 27 on **Sundance Now** and **AMC+**. – **Fox Sports'** summer interview series "The Joel Klatt Show's Big Noon Conversations" is coming back for a second run. Klatt will speak with high-profile coaches in college football. New eps will be released on Mondays across Fox Sports platforms.