

# Cablefax Daily™

WHAT THE INDUSTRY READS FIRST

## Temp Check: Where Things Stand on Digital Discrimination

All eyes are on the Sixth Circuit as it prepares to hear oral arguments in the latest net neutrality case at the end of the month, but don't forget about activity around the FCC's digital discrimination rules over in the Eighth Circuit.

While many gathered at SCTE's TechExpo last week, the Eighth Circuit heard oral arguments in a case regarding the FCC's digital discrimination rules. While legal experts predicted that the Commission would face major questions doctrine issues when facing a court challenge to the digital discrimination rules, counsel for the agency argued that it has no place in the discussion.

"Even after Loper Bright, obviously Chevron has gone by the wayside, but the Court emphasized in Loper Bright that if the best reading of the statute is that Congress delegated to the agency the task of interpreting that the Court should respect that delegation," FCC counsel *Jacob Lewis* argued. "This seems to me that there's a powerful argument here that Congress delegated to the Commission the task of defining discrimination because it instructed the Commission to adopt rules."

Lewis also addressed the major questions doctrine and how it applies to this case, attempting to persuade the court that the doctrine is primarily relevant to long-standing statutory provisions that are suddenly discovered to apply to a new case or situation. Because Congress gave the Commission a new task to prevent digital discrimination, he doesn't believe the doctrine is appli-

cable. It's a simple case of statutory interpretation, in his eyes.

"The major questions doctrine doesn't apply to the Commission's contemporaneous or new interpretation of a statute that it had just got handed," Lewis said. "If the best reading of the statute is that it covers disparate impact claims, then the fact that it's a big deal, that's what Congress's decision was."

The judges had plenty of questions around why the FCC's rules around digital discrimination were so broad, prodding Lewis on questions around the intentionality behind discriminatory acts and what leg the Commission has to stand on when it comes to applying this ruleset to entities outside of the broadband providers it typically regulates. Lewis said that aspect of the Commission's order has been overblown and that all it articulated was that broadband providers are not the only people who can adversely affect access to broadband service.

"All the Commission did was essentially observe we're not going to take people who aren't technically broadband internet access providers off the table," Lewis said. "If they have a close connection to the provision of broadband service, they may be able to cut it off just the same way the provider could."

*Morgan Ratner* served as counsel representing the petitioners, a group that includes **NCTA** and **ACA Connects**, argued there is a distinct lack of disparate impact language in Congress' original directive. It doesn't include results-oriented language, an initial ban on disparate treatment followed by a larger catch-all provision tied to disparate impact and other key language.

"I think no reasonable Congressperson would say, 'I'm going

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to enact a statute, I'm going to say discrimination, which is something the Court has repeatedly said means differential treatment, and then I'm not going to include any of those three signals, but I will include a broad goal of equality and that will be enough to get us to disparate impact," Ratner said. "That's just not a plausible reading."

She faced decidedly less pushback from the judges on her arguments, but was asked by the panel if the digital discrimination rules must be dismantled entirely and what would happen if the Court agreed in part and dismissed other aspects of her argument. She said the simplest way to decide the case is on the disparate impact grounds because there's no way to read the regulation and think the coverage of disparate impact is severable from anything else.

"That's the heart of the rule. So if you decide on that ground, then we think that causes you to set aside the whole rule. You don't have to reach the other grounds, although we think they're good, supplementary, alternative grounds, and you don't have to reach the arguments from the public petitioners," she said.

## STEINLAUF TO DEPART WBD

**Warner Bros. Discovery** announced Chief U.S. Advertising Sales Officer *Jon Steinlauf* is leaving the company later this year. Steinlauf has spent more than three decades at WBD and predecessor companies **Discovery**, **Scripps** and **Turner**, and will remain in his current role while a search for his successor is underway. "I have had the privilege of representing this great portfolio of brands for the last 32 years—at Turner, Scripps, Discovery and now at WBD," he said in an internal note shared by Chief Revenue and Strategy Officer *Bruce Campbell*. "I'm grateful for the opportunities that *David Zaslav*, *Bruce Campbell*, and other leaders have given to me. This is the right time to begin a new chapter both personally and professionally." He rose to VP, Ad Sales for TBS and TNT during his time at Turner. Steinlauf made the switch to Scripps in 2000 when he was in the same position for **HGTV** and **DIY**, eventually becoming Scripps' President, Ad Sales and Marketing in 2015. In 2018, he helped usher in networks like **Food Network** when Discovery acquired Scripps Networks. Steinlauf created the WBD ad sales division following the Warner Bros.-Discovery merger in 2022. Recently, Steinlauf helped establish the ad-supported tier on **Max** while also integrating sports and digital sales into the company's sales structure to create the One WBD portfolio. "We are very grateful for all Jon has done for us, and while supportive of his personal desire to seek other directions in his life and career, we will clearly miss him," Campbell wrote. No timetable for Steinlauf's exit was given, but Campbell's memo noted "nothing changes in the near term."

## REPORT: NFL DISCUSSING DEALS WITH SKYDANCE, REDBIRD

The **NFL** might be headed for a change with some of its media assets, and the league is talking with *David Ellison's Skydance Media* and **RedBird Capital** over potential deals, according to a *Bloomberg News* [report](#) citing people familiar with conversations. Deals could include the sale of **NFL Network** and **NFL Media**, but another possible avenue is **Paramount Global** acquiring the league's interest in Skydance Sports, a JV between Skydance and the NFL/NFL Films that creates both movies and TV content. Also noteworthy in the report is that Paramount's media rights contract with the league contains a change of control provision that would open the door for the NFL to seek another media partner. Though unlikely the provision will be utilized, **CBS'** current deal to air NFL games runs through 2033.

## FIBER FRENZY

**Metronet** is upping the speeds in Westminster, Colorado, thanks to a \$34 million digital infrastructure investment. Westminster will be the second area in Colorado to get residential multi-gig speeds of up to 5 Gbps and businesses speeds of up to 10 Gbps. Construction will begin this fall, and the first customers expected to get upgrades will come in the spring. – **ALLO Fiber** is expanding to Wakefield and Bradshaw, Nebraska. Construction is slated to begin in late 2024 or early 2025. The project is funded by a Nebraska Capital Projects Fund grant, which provides funding for broadband infrastructure projects that help expand networks in unserved and underserved areas of the state.

## HELENE AFTERMATH

The Hurricane Helene cleanup and restoration continued this week. *Elon Musk* [complained](#) on **X** Friday that **SpaceX** engineer trying to deliver **Starlink** terminals and supplies to devastated areas in North Carolina weren't allowed by **FEMA** to land. He's been critical of the response to the deadly storm, also posting, "@FEMA is not merely failing to adequately help people in trouble, but is actively blocking citizens who try to help!". FEMA said that as of Friday, more than 72% of originally reported power outages have been restored. It also said it's boosting response coordination by providing 40 Starlink units to ensure first responders can communicate with each other. **Altice USA** Chairman/CEO *Dennis Mathew* said in a LinkedIn post that the company's **Optimum** network in West Virginia is back online, but there's still work to be done in Western North Carolina. The company deployed two WiFi trailers in Hendersonville, North Carolina, to allow residents

to access a free wireless connection and provide charging for devices. “Unfortunately, this is going to be a lengthy rebuild effort in several communities, but Optimum will be there to help throughout the entire process,” Mathew wrote.

at 965,000 viewers from 8:15-8:30pm. The telecast became the most-viewed among A25-54 and A18-49 for the CW this year with 406,000 and 354,000, respectively.

RATINGS

For the show’s visit to the University of Alabama in Week 5, ESPN’s “College GameDay” drew an average of 2.3 million viewers, up 23% from last year’s Week 5 presentation. This marks the program’s best September episode since 2010 and the second-best in its history. College GameDay is currently on pace for its best season ever. Next up for the show is its first-ever stop in Berkeley, California, for the Week 6 matchup between Miami and Cal. Coverage will begin at 8:30am on Saturday. – Tuesday’s WWE NXT debut on CW Network was the largest audience for the event since October 2023 with an average of 895,000 total viewers, up 44% compared to last week’s episode on USA. The premiere peaked

PROGRAMMING

Hulu renewed 20 more episodes of “The Secret Lives of Mormon Wives.” The first set will be released in the spring. – “College GameDay” will make its first-ever stop in Berkeley, California, for the Week 6 matchup between Miami and Cal. Coverage will begin at 8:30am on Saturday on ESPN and will be available across social platforms and ESPN+.

PEOPLE

Comporium is promoting Tim Smoak to EVP/interim Smoak, who’s been with Comporium since 2001, was most recently VP, Business Development.

CABLEFAX DASHBOARD

Social Media Hits

Twitter post by Governor Roy Cooper (@NC\_Governor) with text: "The resilience, compassion and determination of the people of western North Carolina is inspiring. We will continue working around the clock to get them the help they need." Includes four photos of people at a construction site and a meeting.

Twitter post by Shirley Bloomfield (@sbloomfield15) with text: "@MikeRomanoNTCA shares with @NTCAconnect #broadband providers their marching orders on our fight for the future of Universal Service. Rural Americans have better, affordable service thanks to USF good work. Tell the story! #BroadbandBuiltToLast" Includes a photo of a man speaking at a podium with a screen showing statistics.

Twitter post by Wynn Westmoreland CNN (@WynnWs) with text: "Unveiling of the CNN letters at our new location in Atlanta!" Includes a photo of the CNN logo being unveiled at a building entrance.

Up Ahead section with a calendar icon and a list of upcoming events: OCT 21-22: WICT Network Leadership Conference; NYC; OCT. 22-23: 38th Annual NAMIC Conference; NYC; OCT. 23: The Kaitz Dinner; NYC; NOV. 14: Horowitz Research Cultural Insights Forum; Miami; DEC. 4: Cablefax Most Powerful Women Celebratory Luncheon; NYC