Lead-In

Broadcast Deregulation Clears a Court Hurdle

Legal victory will likely clear the way for more mergers and acquisitions

BY JOHN EGGERTON

BROADCASTERS have cleared a potential hurdle to long-sought ownership deregulation.

It was a victory in what has been a years-long legal battle to get out from under cross-ownership and small-market duopoly restrictions that station owners said have unfairly hampered their ability to compete with national distributors, like pay TV providers, who face no such limits.

As of Feb. 7, the FCC's November broadcast-regulation rollback went into effect, meaning TV stations can buy newspapers and vice versa, and group owners can buy more stations as long as they stay under the 39% national ownership cap (though that is now also under review).

The hurdle had been the attempt by Prometheus Radio Project to get the 3rd U.S. Circuit Court of Appeals to block that order as unresponsive to that court's directive on media diversity.

With the FCC orders in place, broadcasters can also now own two stations in a market even if it means there are fewer than eight independent owners overall — meaning duopolies are permitted in smaller markets — and can potentially own two of the four top-rated stations in a market, with the FCC looking at such arrangements on a case-by-case basis.

The move should spur some station sales. "The 3rd Circuit's decision gives the green light to M&A in the broadcast sector and has been seen as a good sign by Wall Street," Adonis Hoffman, chairman of Business in the Public Interest and a former FCC official, said.

FCC chair Ajit Pai told an industry conference that the agency will move forward with a diversity incubator program.

A single company still can't own more than one broadcast network, still a big difference from cable network owners, who own dozens of networks if they want.

It has been a decade and a half since the FCC's attempt to deregulate broadcasting, under then-chair Michael Powell, was stayed and remanded by the 3rd Circuit after being challenged by none other than Prometheus.

Various FCCs have taken their shots at responding to the court, but the issue has yet to be settled.

There remains an underlying challenge to the November rule rollback — filed by Prometheus, of course — but it separately had asked the court to stay that Feb. 7 effective date. It argued that FCC had deregulated without gauging the impact of that decision on media diversity, and the agency should be ordered to better account for that affect on diversity.

But the FCC's Republican majority did propose a diversity incubator program to companies to provide capital and support service to help minorities and women get into the business.

Pai Pledges Diversity Action

FCC chair Ajit Pai was signaling to the court last week that there would be action on the diversity front.

Pai told an audience at the Multicultural Media, Telecom and Internet Council's (MMTC) ninth annual Broadband and Social Justice Summit in Washington that while there has long been general support for the incubator idea — including from MMTC— the idea had stalled because "past commissions had failed to take action," adding, "That is until now."

In denying to block the rules, the court gave the FCC the benefit of the doubt, but the agency will have to deliver.

The court noted that the FCC will be collecting comment on that until April, and told the FCC to report back by Aug. 9 on the program's status.

Broadcasters aren't quite out of the woods on the legal front. Prometheus still has that underlying challenge to the rule change — as too much deregulation — and its lawyers were huddling last week to consider next steps.

MEDIA COMPANIES SEARCH FOR POSITIVES IN EARNINGS NUMBERS

WITH THE BACKDROP of a plunging stock market in the background, media companies are reporting calendar fourth-quarter earnings propped up by corporate tax cuts and trying to convince investors there is still life in the television business.

The Walt Disney Co., 21st Century Fox and Viacom all are looking at transformative transactions, with Disney waiting for government approval to acquire cable network and studio assets from Fox and Viacom's board looking at a combination with CBS.

Bakish

In the meantime, top executives pointed to the opportunities presented by going direct to consumer while insisting pay TV erosion is slowing.

Disney CEO Bob Iger provided additional details of its ESPN Plus streaming service, now due to launch in the spring through a redesigned app. Subscribers who pay $4.99 a month will get access to thousands of games, plus other content including the *30 for 30* library.

The company said it has also detected slowdown in subscriber losses. Instead of rounding down to get a 3% rate of erosion, it was now rounding up to 3%.

Iger also said the emergence of digital multichannel video programming distributors like YouTube TV and Hulu's live service were bringing cord-nevers into the pay-TV world.

At 21st Century Fox, executive chairman Lachlan Murdoch and CEO James Murdoch spent a fair amount of time defending their costly deal to acquire the NFL's *Thursday Night Football*. They say it will give "New Fox," the company live sports and news oriented company that will be left behind after the Disney deal, leverage in retransmission and advertising negotiations.

"It seems fair based on the evidence from the quarter that neither sports nor primetime nor stations are very profitable anymore (at least in a non-political year)," Sanford C. Bernstein analyst Todd Juenger said. "And now they just added an unprofitable NFL deal, and may be looking to acquire more stations."

Viacom's numbers weren't very good either, with affiliate fees dropping 8% and domestic advertising down 5%. But Viacom CEO Bob Bakish seems to have convinced analysts that things will get better faster than anticipated.

"The improved outlook on affiliate growth as well as the reiteration of ad guidance were both better than we expected, suggesting the turnaround is on track," Jefferies analyst John Janedis said. — *Jon Lafayette*

THE WATCHMAN

Deputy editor Michael Malone's weekly look at the programming scene

'Our Cartoon President' and a Dog Day Evening


Our Cartoon President

"PEOPLE ASK ME all the time, do you get tired of mocking the president?" Stephen Colbert said, "and this is a complicated answer: No and hell no."

The CBS late-night host was introducing a screening of two episodes of Showtime's *Our Cartoon President* at a midtown Manhattan hotel, not far from Trump Tower, two nights before the animated series debuted on Feb. 11. Colbert and his *Late Show* executive producer Chris Licht helped bring the new 10-episode series to life, and it was already off to a viral start. Showtime Networks CEO David Nevins noted that a preview of the opening episode had been viewed more than 1 million times on YouTube over about 10 days.

"I agree with David that the show has great virality, because just thinking about the president makes me ill," Colbert said, following Nevins.

Nevins and Colbert stressed how hard showrunner R. J. Fried, lead animator Tim Luecke and consulting producer Matt Lappin have worked and keep working to keep the comedy topical. Yet, Colbert conceded, with his typically great timing: "We tried to think of the stupidest things that this person in the Oval Office could think of, just the most vain and self-serving things, and at no point did we imagine military parade."

Colbert had lots of praise for the material — and the aesthetic. "It is beautiful and stupid and timely and actually gorgeous to look at too," he said. "What I didn't expect is that it would actually be enjoyable to just look at as a piece of art."

Our Cartoon President airs Sundays at 8 p.m. ET/PT on Showtime.

It hasn't even aired yet, but look for Hallmark Channel's inaugural *American Rescue Dog Show* to become an annual programming event.

That's what Crown Media Networks president Bill Abbott says. For more of his views, see this week's Five Spot (page 42).

In the special, which debuts Monday, Feb. 19, at 8 p.m., "adopt-ready" dogs compete in 10 categories for the title of Best in Rescue. Those categories include — and The Watchman is not making these up — best in "kisser," "wiggle butt" and "couch potato."

"The show has some beautiful dogs and tugging-at-the-heartstring moments that are, we believe, going to be with us, in terms of a franchise, for a very long time," Abbott said, adding that the show combines a great cause with great family programming.

Is Abbott himself an animal fan? He says from a business perspective it is a winning proposition, but that he is also "passionate about pets."

Contributors: Kent Gibbons, John Eggerton

THEY SAID IT

"We see great potential to increase our retransmission revenue quite aggressively. We think that for two reasons, one obviously is the focus and investment in sports with the new NFL Thursday night packages, but also being a more focused company with fewer channels in our bundle [we] will be able to drive our retrans for the stations quite aggressively."

– Lachlan Murdoch, 21st Century Fox executive co-chair Lachlan Murdoch, speaking on a Feb. 7 conference call to discuss fiscal second-quarter results.

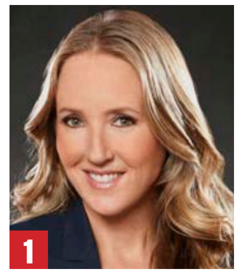
STAT OF THE WEEK

$37.1B

— Amount ad spending on local video is expected to reach by 2022, according to a report from BIA/Kelsey. Thats up from $32.6 billion in 2018.

FATES AND FORTUNES

EXEC MOVES OF THE WEEK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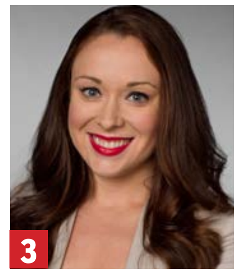
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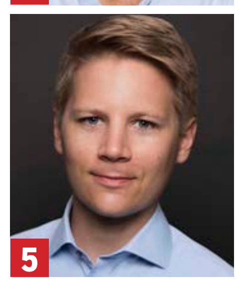
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Courtesy of SHOWTIME

■ **(1) JENNIFER SALKE** has been tapped as head of Amazon Studios. Salke, who was most recently NBC Entertainment president, will oversee all of Amazon's film and television production. She replaces Roy Price, who left last year amid allegations of sexual harassment. ■ Fox has promoted **JEFF HUGHES** to president of the Digital Consumer Group at Fox Networks Group. Hughes most recently oversaw technology and innovation for the unit. He will report to Brian Hughes in his new role and lead digital strategy and execution for all FNG's entertainment and sports brands. Brian Hughes had been president of the group until he was upped to president and chief operating officer of FNG. ■ **(2) DINESH JAIN** has been appointed CEO of Alphabet's Access unit, which operates Google Fiber and Webpass. Jain was most recently COO of Time Warner Cable. He follows Gregory McCray in the role. McCray stepped down almost in July after only five months on the job. ■ **DAVID CAMPANELLI** and **SARAH BAEHR** have been named co-chief investment officers for Horizon Media. Campanella had most recently served as executive VP, managing partner for video investment, while Baehr had been executive VP, managing partner for digital investment. The duo fills the role held by Marianne Gambelli, who left for Fox News Channel last year. ■ Turner has upped **(3) MARIE HUGHES** and **(4) MICHAEL TATUM**. Hughes was named senior VP, strategic media planning, and Tatum was tapped as senior VP, Turner Brand Experience. Both executives are based in Atlanta and report to Molly Battin, executive VP, global chief communications and corporate marketing officer. ■ **(5) JEFF TOBLER** has been tapped as senior VP, television publicity and communications at Warner Bros. Worldwide Television Marketing. Tobler, who has served as VP, publicity since November 2015, will lead strategic communications for Warner Bros.' scripted-TV programming arm. ■ United Talent Agency has tapped **LYNDSAY HARDING** as chief financial officer. Harding, who joins UTA from Steven Spielberg's Amblin Partners, starts at the talent and entertainment company March 19.