

Cablefax Daily™

Tuesday — June 16, 2020

What the Industry Reads First

Volume 31 / No. 116

Maine Line: Cable has Friends in A La Carte Case

The **Motion Picture Association** and the **Washington Legal Foundation**, a nonprofit, public interest law firm and policy center, are backing cable in its quest to stop Maine from enacting a law that would require cable providers to offer programming a la carte. The law, which was temporarily stayed by a judge in December, is “a radical and surprising mandate that requires each cable channel and even each individual program on a channel to be offered a la carte,” MPA told the court in its amicus curiae filing last week. The association went on to say the law is fundamentally incompatible with both the existing structure of licensed programming relationships between content owners and distributors and the MPA members’ exclusive rights under copyright law. Also filing a friend of the court brief was the Washington Legal Foundation, which argues that “the federal government has expressly preempted state regulation of how cable television is provided—how it is served—to customers.” All of this harkens back to last June, when Maine became the first state in the nation to enact a law requiring cable operators (and only cable operators) to offer subs the option to buy channels or programs individually. It took effect in September, with **Comcast, A+E Networks, C-SPAN, Disney, ViacomCBS** and others filed suit—challenging the law both on First Amendment grounds and arguing its an overstep of the editorial discretion operators have over programming networks and packages. On Dec 20, Maine District Court held that the cable companies are likely to succeed on the merits of their First Amendment claim and granted a preliminary injunction, with the state of Maine appealing to the US First Circuit Court of Appeals. They want the court to reverse the preliminary injunction, arguing that the law is a pro-consumer statute that promotes the dissemination of information. MPA told the First Circuit the law would actually result in less content being made available to consumers. The new law “requires cable operators to offer everything a-la-carte, including content for which they do not have a license to do so,” MPA wrote. “The only way for cable operators to comply simultaneously with the Copyright Act, their licenses from programmers, and [the statute] is to stop offering all content for which they lack an a-la-carte license.” When the district court granted the injunction, it disagreed with the cable companies on two important points—that the law infringes cable operators’ and programmers’ editorial discretion (wholly apart from singling out their speech) and that it is preempted by Sect 544 of the federal Cable Act. WLF’s brief focuses on the preemption issue. It said the district court acknowledged that, when given its plain meaning, the law



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Publication Date: July 22, 2020

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BLACK AMERICA SPEAKS. AMERICA SHOULD LISTEN.

What We Need to do to Never Come Back Here Again.

Last night I was sitting in my living room and a convoy of trucks drove by my home filled with law enforcement and National Guard troops.

I am a 59-year old African-American man and this brought back vivid childhood memories. On April 4, 1968, 18 days before my seventh birthday, I was in the middle of the street in my hometown, Detroit, Michigan playing urban baseball with my friends, using a hubcap as home plate, and neighbors' cars as first, second, and third base.

That evening I heard my mother and grandmother scream: "They killed him! They killed him! They killed Martin Luther King, Jr.! They killed my Martin!"

I had never witnessed my mother and grandmother in such emotional pain before. Moments later, I turned my head and immediately noticed National Guard troops coming towards me with rifles and bayonets, and before I knew it, I was looking down the barrel of a tank. My mother and grandmother screamed to me, "Get in the house, get in the house, before they kill you!"

Every kid on that street, including myself, ran as fast as we could. I asked my mother and grandmother, "Why did they kill him?" She answered, "Because they are racist and they would rather kill us than treat us fairly."

That was the very moment I lost my innocence and I went from being a young boy to being a young man. I immediately became a child of war. A war that has tragically taken millions of George Floyds, Breonna Taylors, Ahmaud Arberys, Trayvon Martins, Laquan McDonalds, Mike Browns, Eric Garners, Samuel Duboses, Tamir Rices, Frank Smarts, Sandra Blands, Phillip Whites, Freddie Grays, Jordan Bakers, Philando Castiles, Walter Scotts, Emmett Tills, and a horrifying list of many more that seems to never end.

That evening, I watched as riots erupted throughout the country and smoke from the burning buildings consumed my neighborhood. Through my tears, I could not understand the reasons why.

I became fascinated with Dr. Martin Luther King, Jr. The more I read about him, the more I wanted to learn. He was a prophet, he was the greatest American who ever lived. Dr. Martin Luther King, Jr. is the only private citizen to have his birthday celebrated as a national holiday, and helped change the world by the age of 39 with his teachings and brilliant mind.

In 1967, one year before he was assassinated, Dr. Martin Luther King, Jr. gave a speech to students at Stanford University. The name of that speech is "The Other America." 53 years ago, Dr. Martin Luther King, Jr. taught us and warned everyone that there are two Americas. ONE America has access to opportunity, a good education, jobs, bank loans, human and civil rights. The other America does not. We cannot survive as two Americas. We must become ONE America.

Toward the end of his life, Dr. Martin Luther King, Jr. had just started the Poor People's Campaign to achieve economic justice. He was speaking on behalf of all poor people, which mainly included poor white people.

Yesterday, I phoned Martin Luther King III and I asked if he was watching TV and did he see what I was seeing. He said, "yes." I told him, "I see people of all races coming together as one -- risking their lives protesting -- and demanding the ONE America your father envisioned for all of us. Your father sacrificed his life to help us achieve this moment." Martin agreed.

Now, how do we TRULY achieve "ONE America"?

1) A True Partnership

I am getting lots of calls from white people wanting to know which charities to send donations. I tell them there are plenty of organizations more than happy to accept their money. But I also tell them please don't donate to help eliminate your white guilt. Don't look at Black America as a charity case that needs to be saved by you. Black America does not want, nor do we need, a handout, but rather an extension of your hand so we can shake on what we agree to be a real and equitable partnership going forward.

2. Police Reform

Enact laws at the federal, state, and local levels to achieve absolute and total police reform nationwide. This must include zero tolerance of chokeholds. We must also have consistent comprehensive independent investigations and severe punishment for police brutality, corruption, and murder.

3. Justice Reform

End mass incarceration. Former Attorney General Eric Holder told the world that black men in America are getting sentenced to prison terms that are twenty percent longer than white men who are committing the same crime. America must stop this racial discrimination. Our prison population is the largest in the world. This is just another form of genocide.

4. Reparations

As a nation, America must acknowledge and apologize for the enslavement of African-Americans for nearly 300 years for zero compensation. The newly-freed slaves were never given the opportunity and the land they were promised, and that lack of proper compensation for helping to build this country has hurt their descendants for many generations.

5. Education Reform

Education is the key. America, if we do not get access to a proper education, you will continue to position us to fail. Education needs to be completely reformed, especially preschool through sixth grade. Higher education needs to be free and available to all Americans. As a matter of national security, America does not have enough intellectual capital to compete against our rapidly-emerging foreign competitors. We need to invest at least ten times above current levels. At the top 100 universities in America, black students represent a disproportionately low percentage of the entire student body. The African-American student body population in colleges should reflect the African-American population of the nation as a whole, which is approximately thirteen percent. If we do not improve these numbers, absolutely nothing will change. As for America's historically black colleges and universities, they are great institutions always in need of financial support and should be properly funded.

6) Economic Inclusion

It should be noted that Dr. Martin Luther King, Jr. was completely frustrated that white liberals supported civil rights, but disappeared when it was time to talk about African-American economic inclusion. As Dr. Martin Luther King, Jr. once said: "It's all right to tell a man to lift himself by his own bootstraps, but it is cruel jest to say to a bootless man that he ought to lift himself by his own bootstraps." Stop using lack of access to capital as a form of economic genocide. Audit the banks and you will see that Black Americans do not have equal access to capital. Banks always tell us they have a great record lending to minorities. They always show a black face on their minority brochures, but for lending purposes, in actuality, they re-define "minority" as white women and by doing so, intentionally using them to mislead the public and government

regulators to act as if they are lending money to black people. The United States government controls over a one trillion-dollar federal pension fund, and very little, if any, is managed by African-Americans and invested in our communities. When Black America gains equal access to capital that is not predatory, we will be able to buy homes and participate in the appreciation and tax benefits enjoyed by white Americans. The much-needed capital will allow us to invest in and acquire businesses to help employ people in our communities.

7. Health Care Reform

We need to make sure that every American has access to the best health care, free of charge. We need to completely eliminate hunger and food insecurity nationwide. We also need to recognize the mental illness epidemic that plagues our country, and invest heavily to combat it. Homelessness must be completely eradicated.

8. Environmental Justice

Eliminate racial disparities in environmental safety. Many African-American communities are exposed to very harmful toxic environments, not just Flint, Michigan. My elementary school in Detroit was demolished due to toxic waste. Marathon Oil built a 250-acre refinery less than two miles from my childhood home. The air is almost impossible to breathe and the health conditions of many African-Americans is disproportionate with those in the rest of America, partly due to environmental injustice in our communities. Stop exposing our families to toxic chemicals and waste.

9. Jobs, Opportunities, Internships, and Mentorships

America needs to lean in. Include us on your boards. Include us in your C-suite. Include us in your work force. Include us as some of your vendors. And include us in your investments. Stop the analysis and paralysis and take action now. No more excuses. Chairmen and CEOs, you also need to take on the added responsibility and personally become your own company's Chief Diversity Investment Officer. My mother got pregnant when she was 16, and gave birth to me seventeen days after her seventeenth birthday. But what changed our lives is when she got accepted into UCLA and earned a bachelor's degree and a master's degree in Cinema/TV Production. As a single mother attending college full-time, she secured an entry-level position at NBC network. Soon after, she asked an NBC executive a question and received a reply that changed our lives forever. She asked if the network had an internship program at the executive level. The answer was no. She then asked, "Will you start one with me?" Thank God the answer was "yes." As a young child waiting for my mother to get off work as she gave tours of the NBC studios, I went from soundstage to soundstage and watched them tape hundreds of hours of television, including Johnny Carson on THE TONIGHT SHOW, Redd Foxx on SANFORD & SON, Freddie Prinze on CHICO AND THE MAN, Flip Wilson on THE FLIP WILSON SHOW, and Bob Hope and George Burns starring in their own specials. This opportunity helped me to see myself differently and changed the trajectory of my life. Exposure to a better life can quite often lead to achieving a better life.

I started my company 27 years ago from my dining room table. Today it is one of the largest privately-held media companies in the world, with approximately 1,300 employees, 9 cable television networks, including The Weather Channel, over 64 original television series currently on the air, thousands of hours of content, and 15 ABC, CBS, NBC, and FOX affiliate television stations nationwide. I own my company one hundred percent, not because I planned it that way, but simply because no one was willing to invest in me. Along the way, America never stopped reminding me that I needed to work ten times harder than my white counterparts. I have had at least four white sales executives who work for me tell me on separate occasions that potential clients have said to them, "I will never do business with you as long as you work for that *N word*." Since I was a child, I have conditioned myself to deal with situations like this one, but my four white male sales executives were not. I could see in their faces and hear in their voices they did not know how to process this pain and shame. Over the years, I've lost top sales talent because racism was too much for them to bear, so I knew I had to help them deal with it. I found myself having to console and guide them to a better place. I told them that someone calling me '*N word*' is no reason for us not to achieve our sales goals, but rather, another reason for us to exceed them. My excellence will always dominate and overshadow their ignorance every time.

10) Peace!!!

America, you are very quick to call us thugs and tell the world we are not peaceful. Tupac Shakur taught us when you see THUGS, what you really see is The Hate U Give. When the first slave ship showed up in Jamestown in 1619, we said, "PEACE!!!" and you chose slavery. When we peacefully tried to end slavery, you chose the Civil War. After slavery, we tried to peacefully build our communities, and you chose to lynch us and bomb us. When we tried to peacefully achieve civil rights, you chose to murder our civil rights leaders. When we peacefully tried to vote, you chose to violently stand in our way. When we put our hands up in peace, you chose to shoot. When we went to church to pray for peace, you chose to execute us. When Colin Kaepernick exercised our First Amendment rights to peacefully take a knee in protest, you chose to punish us, and instead took a knee on George Floyd's neck for 8 minutes and 46 seconds.

When you came to this country, our Native American brothers and sisters said "PEACE!!!" and you chose war, rape, and went on to burn down their villages and steal their land. When our Hispanic brothers and sisters came here seeking a better life just like your ancestors, they said "PEACE!!!" and you chose to tell them they broke the law by crossing a man-made boundary, literally took their children out of their arms, incarcerated babies, and sent the parents back across the line without their loved ones. Unfortunately, this atrocity continues even to this day.

America, we will never have true peace until America stops protecting, nurturing, and fostering hate groups. The white supremacists, the neo-Nazis, and the KKK are nothing more than terrorists with a long history of violence against us. America must deal with these hate groups appropriately, the same way it deals with foreign terrorism, because domestic terrorism is much worse.

America, you constantly hit us with the "four Ds". 1) When we share our thoughts, you DISMISS us. 2) When we express our frustration, you DISCREDIT us. 3) When we protest, you DEMONIZE us. 4) After you demonize us, you feel self-righteous and you move on to that fourth and inevitable D, you DESTROY us.

Even today, we are protesting to achieve basic civil and human rights. We're talking about murder, and you're talking about looted merchandise. Your buildings will be re-built and your shelves will be re-stocked, but you can never bring back the lives you have stolen. America, you kill us in the class room, you kill us in the board room and you kill us in the court room, long before you kill us in the streets. America, we have been saying "PEACE!!!" for over 400 years and you chose to suffocate us. I CAN'T BREATHE!!!

Let me be clear, Native-Americans want PEACE!!!, Hispanic-Americans want PEACE!!!, Asian-Americans want PEACE!!!, Muslim-Americans want PEACE!!!, Jewish-Americans want PEACE!!!, and Black-Americans want PEACE!!! America has been denying us what we all want the most - PEACE!!!

I am sharing some of my thoughts for many reasons, mainly because I want America to live up to its fullest potential. My wife and I do not want our children sitting in their living rooms 52 years from now, looking out their windows, watching the National Guard enforcing a curfew simply because we have not achieved "ONE America."

BLACK LIVES MATTER, and we must ALL work together to achieve REAL SYSTEMATIC CHANGE!!! PEACE!!!

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Cablefax Daily (ISSN 1069-6644) is published daily by Access Intelligence, LLC ● www.cablefax.com ● 301.354.2101 ● Editorial Director: Amy Maclean, 301.354.1760, amaclean@accessintel.com ● Publisher: Michael Grebb, 323.380.6263, mgrebb@accessintel.com ● Senior Editor: Sara Winegardner, 301.354.1701, swinegardner@accessintel.com ● Associate Editor: Mollie Cahillane, 212.621.4951, mcahillane@accessintel.com ● Acct. Exec: Olivia Murray, 301.354.2010, omurray@accessintel.com ● Director of Marketing: Kate Schaeffer, kschaeffer@accessintel.com ● Prod. Mgr: Joann Fato, jfato@accessintel.com ● Kerry Smith, Divisional President, Marketing & Media Group, ksmith@accessintel.com ● Group Subs or Subscription Questions, Client Services: 301.354.2101, clientservices@accessintel.com ● Annual subscription price: \$1,749.00/year ● Access Intelligence, LLC, 9211 Corporate Blvd., 4th Floor, Rockville, MD 20850

preempts Sect 544, but when using the “context” of the Cable Act, it rejected the preemption argument. “The trial court went out of its way to read a key word out of a federal statute. There was simply no need to do that,” WLF senior litigation counsel *Corbin Barthold* said in a statement.

Wireless Outages Strike US: A number of US wireless carriers experienced outages Monday afternoon, according to consumer reports. **Verizon, Sprint, AT&T, T-Mobile** and **US Cellular** received outage reports California, Florida, New York and other areas. T-Mobile seemed to be one of the hardest hit services with tracking site **Down Detector** seeing nearly 100K reports of outages as of 3pm ET. It was unclear at press time what was causing the service disruptions.

Cleaning Up HBO: AT&T is trying to eliminate confusion around its many **HBO** products through changes to both **HBO Now** and **HBO Go**. In the coming months, the HBO Now app will be rebranded as HBO. **WarnerMedia** has made the decision to shut down its HBO Go app. It will be removed from other platforms as of July 31. Customers who have pay-TV providers that have not secured distribution deals for **HBO Max** will be able to authenticate into the HBO Go website through Aug 31.

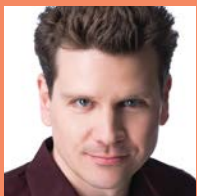
Fastest ISPs: PCMag is out with its [annual ranking](#) of fastest ISPs, and for the eighth time in the past nine years, **Verizon Fios** took the top spot among major ISPs. However, its average PCMag Speed Index (PSI) of 174.5 is far below the magazine’s overall fastest ISP—municipality-owned **Cedar Fall Utilities**, which had a PSI of 1,350.4. Cedar Falls “has the fastest average PCMag Speed Index we’ve ever seen,” the magazine wrote. “Even individual towns with fast speeds were never capable of this in our previous tests.” The PSI is a single number that incorporates 80% of the download speed with 20% of the upload speed, all based on PCMag Speed Test results. **Hotwire**—a perennial favorite on the **Netflix** Speed Index—took 2nd place for US ISPs overall with a score of 426.6, followed by **Sonic** at 415.5. Hotwire was far and away the top scorer in the business-oriented ISP category, coming in at 783.3 vs runner-up **Verizon Fios Business**’ 154.5. “It’s the highest we’ve ever seen for any business-oriented ISP,” the mag said. **Comcast** came in second among the major ISPs, with a PSI of 136.0. It was followed by **RCN** (126.1), **AT&T Fiber** (112.2), **Cox** (107.1) and **Optimum** (106.9).

Turner Ready to Play Ball: *Sports Business Journal* [reports](#) that **WarnerMedia’s Turner** is near a deal with **MLB** that will see it paying an average annual rate increase of 40% for the rights. “The deal will see Turner pay an average of around \$470mln per year through 2028 — a deal that syncs with an extension **Fox Sports** signed in November 2018. Turner now pays an average of \$325mln a year under an eight-year deal that expires after the 2021 season,” *SBJ* reports.

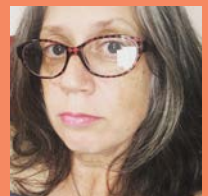
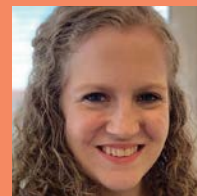
Linear TV Growth Short-Lived: When the COVID-19 pandemic took hold of the country, cable network viewership

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spiked in the P18-49 demo. Trends accelerated through the first half of April, led by news, with **CNN** and **Fox News** reaching up 200% and 110% YOY growth, respectively. Other big gainers were **Food Network**, **TBS**, **Lifetime**, **TLC**, **Comedy Central** and **CNBC**. Some of those nets, especially news, are still seeing growth. But for the most part, overall viewership numbers in cable are once again declining. “With so much uncertainty surrounding the post-COVID-19 world, at least one thing is almost 100% certain: viewership of linear national television is continuing to erode,” a note from **MoffettNathanson** reads. The analysts found that beginning in May, cable network viewership returned to pre-COVID trends and is continuing to decline in the low- to mid-teens range. News networks are still seeing growth, up 70% YOY, in the P18-49 demo. In the quarter thus far CNN has seen the biggest bump, up 153%, followed by Fox News with 75%. Sports have fallen by 50%, as expected. **NBCSN** is down 80%, and **ESPN** by 50%. However, MoffettNathanson expects a reversal in the third quarter, with the PGA Tour returning and the NBA in late July. Lifestyle nets also saw viewership bumps (7%), led by **Discovery’s** Food Network, TLC and **DIY**. Children and family nets didn’t see any growth, with **Disney Channel** dropping by 24% and **Nickelodeon** by 20%. “This would suggest that children are likely spending their time on other streaming services—**YouTube**, **Twitch**, etc.—a shift which was already occurring prior to the coronavirus,” said MoffettNathanson. Overall, kids and family dropped by 9% and general entertainment nets fell by 7%. And it looks like the trend will only continue. A report from **Bernstein** found that total viewing for the week dropped 18% in the P18-49 demo, a further drop from 16% the week before.

Better Networks for Puerto Rico: The **FCC** approved \$237.9mln in funding over three years to expand and improve mobile broadband networks in Puerto Rico and the US Virgin Islands. The funding, which will head to **AT&T**, **T-Mobile** and the **Puerto Rico Telephone Company**, is a part of Stage 2 of the Uniendo a Puerto Rico Fund and Connect USVI Fund. It includes approximately \$59.5mln specifically devoted to deploying 5G networks.

BET Awards: **BET** announced *Amanda Seales* will host the BET Awards, set to take place June 28 at 8pm. It will simulcast live across all **ViacomCBS** networks, making its national broadcast premiere on **CBS** for the first time. Performers include *Alicia Keys*, *John Legend*, *Megan Thee Stallion*, *Usher* and more. **BET** announced in May it would move forward with the awards in light of the COVID-19 pandemic, using innovative techniques and artist-generated content.

Oscars Postponed: The coronavirus pandemic caused the Academy to postpone the 2021 Oscars by two months to April 25, the latest the event has been held since 1932. The eligibility date was also extended, moving from its Dec 31 deadline to Feb 28.

Programming: **ESPN** is commemorating the 48th anniversary of Title IX with “espnW Presents: When We Play.” The multi-platform event takes place June 21-23 and will include more than 125 hours of women’s sports-centric content across **ESPN2**, **ESPNU**, **ACC Network**, **SEC Network** and **Longhorn Network**. -- **Ovation TV** is celebrating black excellence with a 24-hour block of programming on Friday, coinciding with Juneteenth. Programming kicks off at 6am with “DMC: Walk This Way.” -- **USA Network** picked up two unscripted series for its reality lineup, “Instant Family” (wt) and “The Rev” (wt). The network also renewed “The Sinner” for Season 4.

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