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TELECOM SECTION MEETING:
Cable Law & Policy: Over the Top (OTT) Programming Impacts on Franchising and Right-of-Way Fees

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Top Cable Companies

Leichtman Research Group

Pay-TV Providers	Subscribers at end of 2Q 2021	Net Adds in 2Q 2021
Cable Companies		
Comcast	18,956,000	(399,000)
Charter	16,012,000	(50,000)
Cox*	3,530,000	(60,000)
Altice**	2,870,500	(48,300)
Mediacom	611,000	(15,000)
Atlantic Broadband	309,242	(4,349)
Cable One**	287,000	(11,000)
Total Top Cable	**42,575,742**	**(587,649)**

Top Other Traditional Services

Leichtman Research Group

Other Traditional Services		
AT&T Premium TV^	15,412,000	(473,000)
DISH TV (DBS)	8,554,000	(132,000)
Verizon FiOS (Telco)	3,782,000	(63,000)
Frontier (Telco)*	423,000	(30,000)
Total Top Other Traditional	**28,171,000**	**(698,000)**

Top Internet-Delivered Services

Leichtman Research Group

Internet-Delivered (vMVPD)		
Hulu + Live TV	3,700,000	(100,000)
Sling TV	2,439,000	65,000
fuboTV	681,721	91,291
Total Top vMVPD^^	**6,820,721**	**56,291**
Total Top Providers	**77,567,463**	**(1,229,358)**

Sources: The Companies and Leichtman Research Group, Inc.

* *LRG estimate*

** *Includes recent acquisitions and LRG pro forma estimates of net adds*

^ *AT&T Premium TV includes DIRECTV, U-verse, and AT&T TV*

^^ *vMVPD does not include YouTube TV or Philo, as neither regularly report results*

Company subscriber counts may not solely represent residential households

Top pay-TV providers represent approximately 95% of all subscribers

Net additions reflect pro forma results from system sales and acquisitions, reporting adjustments, and changes to the list of top providers – therefore, comparing totals in this release to prior releases will not produce accurate findings

Top US Broadband Internet Providers

Leichtman Research Group

Cable Companies	Subscribers at end of 1Q 2021	Net Adds in 1Q 2021
Comcast*	31,034,000	460,000
Charter	29,234,000	355,000
Cox**	5,435,000	55,000
Altice	4,370,800	11,600
Mediacom	1,454,000	16,000
Cable One	880,000	23,000
WOW (WideOpenWest)	823,800	10,000
Atlantic Broadband	511,004	6,383
Total Top Cable	**73,742,604**	**936,983**

Top US Broadband Internet Providers

Leichtman Research Group

Telephone Companies		
AT&T	15,435,000	51,000
Verizon	7,193,000	64,000
CenturyLink/Lumen^	4,728,000	(39,000)
Frontier	3,052,000	(17,000)
Windstream	1,122,300	13,000
Consolidated	794,224	2,024
TDS	501,700	8,400
Cincinnati Bell	437,600	1,500
Total Top Phone	**33,263,824**	**83,924**
Total Top Broadband	**107,006,428**	**1,020,907**

Pay-TV Providers = 77.6 million subscribers

Top 7 cable companies = 42.6 million subscribers

- **net loss of 590,000 subscribers in 2Q 2021**
- compared to a loss of 505,000 subscribers 2Q 2020

Other traditional Pay-TV services = 28.2 million subscribers

- **lost 700,000 subscribers in 2Q 2021**
- compared to a loss of 1,045,000 subscribers 2Q 2020

Top publicly reporting Internet-delivered Pay-TV services = 6.8 million subscribers

- **added 55,000 subscribers in 2Q 2021**
- compared to a gain of about 45,000 subscribers in 2Q 2020

Source: August 17, 2021 - Leichtman Research Group, Inc. (LRG)

Top pay-TV providers

- **net loss of 4,520,000 subscribers over the past year**
- loss of about 5,460,000 over the prior year

Over the past year

- 4,665,000 net broadband adds
- 2,760,000 net broadband adds over the prior year

Source: August 17, 2021 - Leichtman Research Group, Inc. (LRG)

Cable's Customer Base

78 million broadband subscribers

46 million cable subscribers

25 million voice subscribers

Subscriber/Franchise Fee Trend

Sample Data from an LFA with a population base of about 225,000

Year	Avg # of Subs/Mo	Avg Franchise Fee/Mo
2018	49,983	$251,010
2019	47,260	$241,720
2020	44,385	$235,768
2021 (1st 6 months)	42,276	$241,549

How do we watch video?

Leichtman Research Group

78% prefer to watch video on a TV set

11% on a laptop or desktop computer

8% on a smartphone

3% on a tablet

Internet-connected TV devices

- U.S. TV households that have at least one Internet-connected TV device
  - connected Smart TV,
  - stand-alone streaming devices
    - Roku, Amazon Fire TV stick, Chromecast, Apple TV
  - connected video game system
- **2011 30%**
- **2016 65%**
- **2019 74%**
- **2020 80%**
- **2021 - 82%**

What Is OTT?

OTT stands for **Over-the-Top**.

Person obtains video (cable TV) via the internet

They do not need cable, broadcast or satellite service

Netflix, Disney+, Apple TV – are OTT providers

Can LFAs regulate OTT providers?

- Can LFAs require a local/state cable franchise?
- Can LFAs impose franchise fee obligations?
- Can LFAs require local city run channels (PEG) on OTTs?
- Can LFAs impose other ROW compensation on OTTs?

Federal law - Cable Franchise Requirement

A cable operator may not provide cable service without a franchise.

47 U.S.C. Sec. 541(b)

Is an OTT provider a cable operator?

State law may not refer to "cable"

may reference "video."

What Is a Cable Operator?

any person or group of persons:

(A) who provides **cable service** over a **cable system** and directly or through one or more affiliates owns a significant interest in such cable system, or

(B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system

47 U.S.C. Sec. 522 (5)

What Is Cable Service?

(A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and

(B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

"other programming service" means information that a cable operator makes available to all subscribers generally

47 U.S.C. Sec. 522(6) and (14).

What Is A Cable System?

a facility, consisting of a set of ***closed transmission paths*** and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community . . .

47 U.S.C. Sec. 522 (7)

What is a *closed transmission path*?

FCC has equated a "***Closed transmission path***"

"with control [of] the physical method of delivery"

See 2014 MVPD NOPR paragraph 22 and paragraphs 71-79.

What if Cable Operator now says they are OTT?

- **Do you have to be a subscriber on their system to access their video content?**
  - Can we access their video content right here, right now on our devises via the internet?
- **Do you need their convertor box (equipment) to access their video content?**

What if Cable Operator now says they are OTT?

- **Just because an operator claims to now be IP based and OTT does not make it accurate.**
  - They may still need a valid cable franchise and still pay franchise fees etc.
- **If your City elects not to enforce such obligations on certain providers**
  - Will other incumbent operators continue to comply?

What do you do if a "Broadband only" company come knocking?

- **They are not seeking to provide cable or video**
- **They do not have a certificate of need from the state PUC**
- **They want long term authority to be in your ROW**
  - similar to a utility
  - But without the state law utility obligations

What do you do if a “Broadband only” company come knocking?

- **Your elected officials want broadband competition**
- **But how do you verify this company has the qualifications?**
  - Legal, technical, financial
- **Do you franchise them?**
- **Do you grant them a License?**

Questions

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