BCAP NewsClips July 10, 2014

Satellite TV provider Dish Network Corp. urged the Federal Communications Commission to reject cable giant Comcast Corp.'s proposed acquisition of Time Warner Cable Inc., Dish Chairman Charlie Ergen met with FCC Chairman Tom Wheeler on Monday and made his case against the $45 billion deal, which would unite the nation's two largest cable companies. Among other things, Dish said, the merger "should be denied" because it would give the combined cable companies too much clout in the broadband marketplace. Mr. Ergen and senior Dish executives also met with Roger Sherman, chief of the Wireless Telecommunications Bureau, a division of the FCC, according to the filing. The agency could choose to approve the deal with conditions, but Dish says no potential regulatory conditions could "remedy the harms" of the merger.

A Comcast spokeswoman said in an emailed statement that "Dish not wanting stronger competitors isn't surprising and isn't new." She said "every market we operate in is highly competitive" and Dish "has a national footprint available in tens of millions of more homes than a combined Comcast-Time Warner Cable."

In particular, Dish voiced concerns about Comcast's control over "at least three 'choke points' " in the Internet that could "harm competing video services." Those include the "last mile" of pipe connecting to consumers' homes, the "interconnection point" between Comcast's network and other Internet companies' networks, and so-called managed channels that cable operators use for video-on-demand services, which can "act as high speed lanes and squeeze the capacity of the public Internet portion of the pipe." Dish also raised the prospect that the combined cable giant would "have the incentive and ability to restrict programmers' ability to grant digital rights to competing pay TV" and online video providers. Dish is among several companies planning subscription online-video services.

The Comcast spokeswoman said "any issues regarding NBCUniversal programming and other video services…are already amply covered by pre-existing FCC rules and deal conditions." Comcast acquired NBCUniversal in 2011 and agreed at that time to abide by a number of regulatory conditions aimed at protecting online video services. Those include prohibitions from Comcast engaging in "unfair methods of competition or unfair or deceptive acts" that can "hinder significantly or prevent" any pay TV provider or online video company from offering video programming online to customers.

Dish is one of only a handful of big companies in the media industry to have formally opposed the Comcast merger. Netflix Inc. has also lodged opposition to the deal. Many of the big media companies that supply TV programming have concerns about the merger but have been reluctant to criticize it publicly because Comcast is such a big customer. Mr. Ergen didn't have as much to say about the other pending megamerger in telecom, AT&T Inc.'s proposed takeover of satellite operator DirecTV. In the filing, Dish merely said that the transaction presents "competitive concerns," including the ability of the two companies to "combine their market power to leverage programming content, to the potential detriment of consumers."

Separately, Mr. Ergen told the FCC that Dish plans to participate in coming auctions of spectrum, airwaves that can be used to offer wireless services. Having already amassed spectrum worth billions of dollars over the past several years, Dish has been attempting to break into the wireless industry. But so far, it has failed to strike a partnership with an established industry player. *Wall Street Journal*

Aereo Inc., the online video company that was widely expected to go out of business after losing a high-stakes Supreme Court case in June, signaled Wednesday that it sees a path to survival if it is classified in legal terms as a cable system.

The Supreme Court sided with TV broadcasters, who had sued Aereo for copyright infringement, saying the Web startup was selling their programming without permission. In the ruling, the high court described Aereo as "highly similar" to a cable system. Aereo spotted an opening from that part of the decision. In a letter Wednesday to U.S. District Judge Alison Nathan —in whose court the Aereo case originated—the online startup argued that it should enjoy the privileges of cable systems, including a compulsory license that would give it legal access to content and allow the site to continue operating. "Aereo is entitled to a compulsory license under the Copyright Act," the letter states.

Cable systems are able to get compulsory copyright licenses for the broadcast channels they rebroadcast, meaning they don't have to seek individual permission for every copyrighted piece of content. Compulsory license fees are paid to the Copyright Office and are generally considered inexpensive, according to media lawyers. Cable systems then typically pay broadcasters for the right to broadcast their feeds through negotiated retransmission consent agreements. In its letter, Aereo argued that the Supreme Court effectively overturned an earlier judicial decision that had prevented online video companies from obtaining compulsory licenses. "The Supreme Court has announced a new and different rule governing Aereo's operations…after the Supreme Court's decision, Aereo is a cable system with regard to those transmissions." Aereo said it was proceeding to file the paperwork required to pay copyright fees.

Aereo isn't the only online streaming company making this argument in the wake of the Supreme Court's decision. FilmOn, another company with the capability to stream broadcast channels online that has been sued by broadcasters, said it also was seeking to be classified as a cable system. If either Aereo or FilmOn were to get a compulsory license to stream broadcast content live, it would have a profound impact on the future of television online, removing one of the largest hurdles keeping the most popular television from being available live on people's smartphones and tablets, where viewers are increasingly spending their time. While networks and local TV stations have been working on mobile apps through a strategy called "TV Everywhere," they have been slow to roll out.

In the same letter, which was a joint statement from both Aereo and the broadcasters that have been suing it, the broadcasters said it was "astonishing for Aereo to contend that the Supreme Court's decision automatically transferred Aereo into a cable system" under the Copyright Act. Broadcasters said Aereo was contradicting the position it took in the case, when Aereo argued that it was merely an equipment provider that rented antennas and DVRs in the cloud, not a cable system. *Wall Street Journal*

The next act in Pennsylvania's increasingly tense budget standoff will play out Thursday morning in Gov. Tom Corbett's reception room at the state Capitol. That's when, administration officials said Wednesday night, the governor will make his next public statements about his 10-day ponder over whether to sign the proposed $29.1 billion spending plan, or send it back to the Legislature with a veto message demanding more work. It's well-known that the budget package that's landed in pieces on Corbett's desk over the last week is missing one of his major legislative priorities: a new round of reforms to the state's costly public employee pension systems. Corbett has argued for months that it is essential for Pennsylvania to cut future costs in the retirement systems for state workers and public school employees, which together are currently devouring about 60 cents of every new dollar in state revenue.

He believes that moving towards a 401(k)-style plan is the key to preserving any chance for meaningful future investment in Pennsylvania's in schools and other priorities - not to mention keeping a lid on local property taxes. Already facing an uphill re-election battle, Corbett could well decide Thursday to make the pension issue his last stand, and couple whatever his budget decision is with a call for lawmakers to return to Harrisburg in a special session for further work on the issue. Senior administration officials were maintaining radio silence about their intentions Wednesday night - both to the press corps

and legislative leaders. It was not even clear if the governor himself had even made a final decision yet. "They have told us nothing," Drew Crompton, chief of staff to Senate President Pro Tempore Joseph Scarnati, R-Jefferson County, said. All of which only made the tension surrounding Thursday's announcement - at which the administration made a point of noting that state Budget Secretary Charles Zogby will be available for technical questions - all the more palpable. *pennlive.com* **Watch Gov. Corbett's remarks live on PCN this morning at 10:30 a.m.**

BCAP
Broadband
Cable Association
of Pennsylvania

127 State Street, Harrisburg, PA 17101
717.214.2000 • bcapa.com

First in Broadband.
The Future of Broadband.®