

# Counselors Who Seal the Deals in Cable

## IN A TRANSITIONAL YEAR, HERE ARE NINE ATTORNEYS TO KNOW

BY GARY ARLEN

John Quincy Adams once said of the legal system, “Whoever tells the best story wins.” The same holds true for the lawyers who close cable’s biggest deals.

Nine leading cable-industry attorneys offer their visions of what the business — and they — will face in the coming year. Among the storylines they’re following: ripple effects

from the pending Comcast-Time Warner Cable and AT&T-DirecTV mergers, as well as the impact of the FCC’s Open Internet order. They have a unique perspective on what happens after a big merger, such as vendor consolidation. These “outside counsel” examine the impact of today’s all-time high equity valuations and what the tightening credit markets will mean for cable transactions. Their views vary on the significance of issues such as retransmission consent and intellectual property, and help shape the narrative of the TV industry.

### Lee D. Charles

Partner, Baker Botts LLP, New York

**Background:** In his 25 years representing MSOs, program networks and companies that provide services to both categories, Charles has been involved in many firsts. He worked on Discovery Communications’s first acquisition (The Learning Channel, now TLC) and on the creation of the YES Network on behalf of the New York Yankees. He also represented the NBA’s Houston Rockets in creating a regional sports network and has worked with OpenTV, TVG Network and providers of traffic and billing systems. Charles has formulated strategies to deal with intellectual property and other litigation. He earned his law degree from Georgetown University Law Center.

**Notable Cable Deals:** When Mediacom founder and chairman Rocco Commisso (whom Charles calls “one of the great cable industry entrepreneurs”) took the company private in 2011, Charles handled the deal’s legal aspects. Recently, he represented Mediacom in negotiations to carry ESPN’s new SEC Network, and in its long-term deal to carry other Disney-owned channels. Earlier, on behalf of Mediacom, he negotiated several system purchases, sales and swaps, as well as programming agreements. Charles also represented Mediacom in capital markets transactions involving the sale of more than \$3 billion in securities. Charles worked on numerous projects for John Malone’s Tele-Communications Inc. and Liberty Media, including the merger of United Artists and United Cable Television; the acquisition of Viacom’s cable systems; the restructuring of TCI’s investment in Turner Broadcasting System; the spinoff that created Liberty Media Corporation and the AT&T-TCI merger. Later, Charles represented Liberty Media in its acquisitions of Ascent Entertainment Group and a controlling interest in HSN.

**2015 Outlook:** “The pending Comcast-Time Warner Cable transaction has effectively put a lid on cable deals. The market is awaiting a resolution; once that happens, you can expect a flurry of activity regardless of the outcome. Separately, the uncertainty following the FCC’s Internet Title II decision could impact valuations as future revenue streams become harder to predict. Finally, the cost of programming, particularly sports programming, will reach an inflection point.”



### Ariel Deckelbaum

Partner and Deputy Chair, Corporate Department, Paul, Weiss, Rifkind, Wharton & Garrison LLP, New York

**Background:** In addition to his cable projects — largely for Time Warner Cable — Deckelbaum has represented Goldman Sachs in the sale of a 50% interest in TV show *CSI: Crime Scene Investigation* and its related intellectual property; he handled the acquisition of ViaWest by Oak Hill Capital Partners and its subsequent sale to Shaw Communications. Deckelbaum has also worked with private-equity firms and individuals on deals such as the purchase of the National Basketball Association’s Milwaukee Bucks and several cross-border sales in telecommunications and other sectors. He is board chairman of The Lawyers Alliance for New York and is a member of the board of advisers of the Faculty of Law at McGill University. Deckelbaum has two law degrees and an undergraduate degree from McGill University in Montreal.

**Notable Cable Deals:** Deckelbaum was involved in Time Warner Cable’s spinoff from Time Warner Inc. and in TWC’s acquisition of Navisite, the cloud-enabled hosting, managed applications and services provider. He is currently working for TWC on its merger with Comcast; was involved in TWC’s response to the unsolicited Charter Communications acquisition proposals, among other tasks. He previously represented TWC in its Insight Communications acquisition, the long-term affiliation agreement to be the charter distributor for SportsNet LA (the Los Angeles Dodgers’s regional TV network) and the \$3.2 billion sale of spectrum (along with Comcast and Bright House Networks) to Verizon Wireless. Deckelbaum also worked with TWC in its joint bid with Comcast to acquire the Adelphia Communications assets. He represented Oak Hill Capital Partners and ABRY Partners in an agreement to sell cable operator WideOpenWest to Avista Capital Partners and separately with members of WaveDivision Holdings LLC’s management to buy that company’s Internet, cable and phone services.

**2015 Outlook:** “The drivers for M&A activity in 2015 will likely include companies seeking to position themselves in response to consolidation, the shifting regulatory environment and, last but not least, changes in technology. At the same time, equity valuations are at all-time highs, credit markets seem to be tightening and the macroeconomic environment continues to be uncertain, particularly as we head into the campaign trail for the 2016 presidential election, all of which could have a dampening effect.”



### Robert E. Freeman

Partner, Sports, Technology & Media Group, Proskauer Rose LLP, New York

**Background:** Freeman began his career as an intellectual property and antitrust litigator before shifting his focus to transactional matters involving sports, media and technology. He now leads Proskauer’s legal team representing clients such as Time Warner Cable, Cox Communications, Suddenlink Communications, Discovery Communications, Scripps Networks, the Pac-12, CBS Sports Network and the NBA’s Orlando Magic. Freeman joined Proskauer in 2006 after helping to lead the sports and media practices at Brown Raysman LLP. He is a graduate of Princeton University and earned his law degree at the Georgetown University Law Center.

**Notable Cable Deals:** Freeman represented Time Warner Cable on some of the earliest video-on-demand and subscription VOD deals with programmers such as Showtime, HBO



and A&E. Since then, he has worked extensively with cable clients on all types of content-acquisition deals, including a TWC-ESPN pact that was one of the first to include “TV Everywhere” rights. Freeman has also been the primary outside counsel in the launch of TWC SportsNet (Lakers) and SportsNet LA (Dodgers). In 2014, he represented Suddenlink in its global distribution deal with The Walt Disney Co. and handled Cox’s year-end carriage agreements with CBS and NBC. Freeman also has represented Scripps Networks on a variety of matters, including its acquisition of Travel Channel and its global renewal deal with Comcast. He worked on behalf of Discovery when it formed a joint venture with Sony and IMAX to launch 3net, the first dedicated U.S. 3D TV network. Freeman also advises CBS Sports in connection with its college conference media rights deals, including those involving the Mountain West Conference, Conference USA and the Atlantic 10.

**2015 Outlook:** “Certainly everyone in the industry is interested in what impact the FCC’s recently passed net neutrality rules will have on business. At this stage, it is impossible to predict, but certainly the prospect of utility-style regulations on broadband service have some industry participants on edge. And, of course, assuming the Comcast-Time Warner Cable and AT&T-DirecTV transactions are approved, the distribution landscape will shift significantly.”

## Craig Gilley

Member, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, PC, Washington



**Background:** Gilley has balanced the Washington specialty of regulatory and operational representation of cable operators with extensive work on cable M&A transactions. During his 20-year career, he has worked on deals of all sizes, from large MSO transactions such as Time Warner Cable's Adelphia, Insight and DukeNet Communications acquisitions to dozens of local system acquisitions, as well as representing lenders and private equity in a variety of communications transactions. In addition, Gilley counsels cable clients in pole attachment and right-of-way agreements, franchising and intellectual property licensing deals and retransmission consent and programming affiliation pacts. He also represents clients in proceedings at the FCC, state public utilities commissions and federal and state courts. Late last year, Gilley and several colleagues moved their practice to Mintz Levin after a merger at their former law firm. His law degree is from Georgetown University.

**Notable Cable Deals:** Gilley counsels cable operators in what he describes as "their often-contentious relationships with broadcasters." He also has extensive

experience representing programmers, wireless companies and Internet service providers on legal details such as net neutrality compliance and best practices. Gilley has drafted more than a dozen net neutrality and "acceptable use" policies for cable operators and wireless providers and negotiated pole attachment and other rights-of-way agreements. He regularly assists communications organizations in their "complex IT, cloud services, co-marketing, and equipment procurement contracts."

**2015 Outlook:** "Comcast-TWC-Charter has obviously bottled up much of the other MSOs' acquisition energy, with medium and smaller sized MSOs unwilling to justify purchases or sales before a post-transaction consensus on system valuations sets in. The wild card during the current waiting period is that broadcast carriage costs have continued to rise, significantly pressuring medium and small MSO economics. Interesting to see, as many predict, if net neutrality further accelerates cost pressures. The new post-merger valuation consensus will have to incorporate both these factors. There just comes some point where costs are so high that no system valuation model warrants further transactions for a medium or small MSO. Whether that point has been reached cannot be known until the larger transaction shakes everything out."

## Wayne Johnsen

Partner, Wiley Rein LLP, Washington



**Background:** After receiving an undergraduate broadcasting degree and a master's in telecommunications from the Newhouse School at Syracuse University, Johnsen began his career in the A&E network operations center in Stamford, Conn. He then moved on to law school at the Georgetown University Law Center. Since joining Wiley Rein (then Wiley, Rein & Fielding) after graduation, he has focused on media and cable regulatory and transactional issues. Johnsen has represented operators and programmers in connection with the numerous FCC rulemaking proceedings related to the implementation of the 1992 Cable Television Consumer Protection and Competition Act and the 1996 Telecommunications Act. He has advised on mergers and acquisitions, the regulatory implications of digital and Internet-protocol distribution of programming, franchising, copyright and retransmission-consent issues. He has also handled program access and other regulatory issues for networks and has negotiated numerous affiliation agreements.

**Notable Deals:** Johnsen has been involved in transactions of all sizes, including deals for AOL (in the Time Warner transaction), Charter, Comcast (in the Adelphia transaction), Harron/MetroCast, Rapid Communications, and Cogeco Cable (its acquisition of Atlantic Broadband). Johnsen has advised clients in connection with the formation of new networks, including a Major League Baseball team and a children's programmer.

**Outlook for 2015:** "So far in 2015, the focus of attention has been on the major deals announced last year, and, in particular, the Comcast/Time Warner/Charter transactions. In addition, the industry is monitoring the continued development of online video programming distribution, and is watching closely the FCC's ongoing proceeding regarding the definition of a multichannel video programming distributor. Broadly, though, consolidation likely will continue to be the ongoing trend, both for operators and programmers."

## ABOUT THIS LISTING

This second annual roster of leading lawyers complements the *Multichannel News* Money All-Stars list, the latest version of which appeared on Feb. 23. This alphabetical listing is not a ranking and is not intended to be all-inclusive. Rather, it introduces nine attorneys with communications, media, entertainment and technology practices, each of whom understands the needs of cable operators, programmers and vendors — and knows how to make sure cable deals are good for their clients.

## Kevin Mills

Partner, Cooley, Washington

**Background:** Mills has worked on more than 40 cable-related merger-and-acquisition deals valued at more than \$20 billion since 1995, when he joined Dow Lohnes's corporate department. He moved his practice to Cooley's business department when the firms merged in 2014. Mills has also handled franchise, regulatory, programming, technology and day-to-day operations issues faced by cable operators and networks. He is a graduate of The University of Chicago Law School.

**Notable Cable Deals:** Mills is currently advising the future management team of GreatLand Connections as it spins off Comcast systems into a new cable operator coinciding with the Comcast-Time Warner Cable merger. He represented Insight Communications as outside counsel for 15 years, starting with the initial formation of the partnership with Tele-Communications Inc. in 1998. He worked on Insight's Carlyle Group-sponsored going private transaction in 2005; the 2007 split of its partnership with TCI successor Comcast; and its eventual \$3 billion sale to TWC in 2012. Earlier, Mills worked on joint ventures and system roll-ups for cable operators including Falcon Cable and FrontierVision, and eventually the 1999 sales of those companies to Charter and Adelphia, respectively. In 2014, Mills represented Hasbro in amending its relationship with Discovery Communications for the companies' joint venture that operated the Discovery Family Channel (formerly The Hub). Earlier, Mills advised Hasbro in forming The Hub in 2009. He worked on the team that represented Oprah Winfrey in connection with the creation of its OWN joint venture with Discovery. Mills advised a Major League Baseball franchise during the negotiation of its media rights and also counseled groups bidding for MLB franchises regarding their media rights and regional sports network interests.

**2015 Outlook:** "Recognizing the regulatory and competition landscape, I expect cable operators to continue to evolve and adapt their business models to respond to how consumers want to watch content anytime wherever they are. Broadband connections and content will continue to be valuable assets. I expect distributors, networks and other content owners will continue to look for opportunities to build scale and vertically integrate. Operators may also look to rationalize the geography of their systems further. That could all lead to more deal activity."



## Robyn R. Polashuk

Partner, Covington & Burling LLP, Los Angeles

**Background:** Polashuk's entry into the cable business was via the "New Technology Law Group" at The Walt Disney Co., then on to Lifetime Television, where she was vice president of distribution legal affairs before returning to private practice at Greenberg Traurig and now at Covington & Burling. She works "at the intersection of traditional and digital media," representing major media groups and independent networks in their distribution pacts with cable, satellite, telco providers and over-the-top distributors. Polashuk leverages her experience in digital distribution, particularly OTT and TV Everywhere, for projects involving contractual and strategic analysis on new distribution alternatives. Her network clients include Disney, Univision, NFL Network, Pac-12 Networks, PBS, ION Media Networks, TV One, Tennis Channel, One World Sports and Ovation. She also works with online content providers, such as Pluto TV and Hulu, in connection with content-related matters. She has negotiated on behalf of her content clients with distributors such as Dish Network, the National Cable Television Cooperative, Time Warner Cable and Verizon FiOS. In addition to a law degree from UCLA, Polashuk has a master's degree from the Annenberg School of Communications at the University of Southern California. She attended the Cable Television Executive Management program at Harvard Business School.

**Notable Cable Deals:** In just the past year, Polashuk has handled a wide array of distribution deals. She represented Univision in its precedent-setting broadcast and cable carriage deal with Dish Network's OTT Sling TV service. She represented Disney in negotiations with DirecTV on retransmission consent for ABC owned-and-operated stations. Polashuk also provided strategic guidance to Tennis Channel in the launch of its Tennis Channel Everywhere app, and represented Gannett Broadcasting in multicast carriage negotiations for Justice Network.

**2015 Outlook:** "The traditional media deal environment will continue to be challenging in light of the pending mergers, increasing consumption of digital media, and FCC inquiries and changes in regulation. I would also expect additional focus on alternative means of distribution and business models, such as direct-to-consumer offerings, as well as targeted advertising and creative data usage. Data, privacy and the regulatory environment will become increasingly important points of negotiation."



## Robert St. John Roper

President, The Unlaw Firm, Denver

**Background:** Roper gauges his 35-year career in terms of the talented individuals with whom he has worked, as he represented programming networks, program producers and Internet companies. He began his cable career at the National Cable & Telecommunications Association, where he handled copyright and constitutional issues under then-president Tom Wheeler. He then moved on to large Washington law firms before establishing his own practice, which he says "stresses team-building and partnership with clients." Roper has provided business affairs and legal counsel to independent programming networks, ranging from startups to widely distributed, publicly traded companies, including foreign companies entering the U.S. market for the first time. Roper has law degrees from Georgetown and George Washington universities. He is a member of the Cable Pioneers.

**Notable Cable Deals:** As special counsel at Discovery Communications in the early 1990s, Roper helped acquire all new content for The Learning Channel, which Discovery had just bought. He has handled affiliate deals for networks such as Outside TV, Shop HQ, Outdoor Channel, BlueHighways TV, FNTSY Sports Network and Fight Network, representing them in contract negotiations with major MSOs and satellite carriers. He worked for the Daniels Fund on the sale of its limited partnership interest in Mile Hi Cable to Comcast. Roper has represented producers in deals with Discovery, The Weather Channel, A&E, Turner, Food Network, DIY and GAC. A legal publication recognized him as "Best Maritime Lawyer in Colorado" for production deals he did for Rivr Media LLC for Animal Planet's *Whale Wars*. Among his new-media clients is Philo Inc., which delivers IPTV service to college campuses.

**2015 Outlook:** "Three words: Over The Top. OTT is generating seismic changes in our business. Not one television industry deal, be it a merger, financing, distribution, licensing, talent, technology — you name it — will happen without the dealmakers peering into their crystal balls, trying to forecast how OTT will, and it will, change the way people consume television and, in turn, how that changes the economics of our business."



## Phyllis V. Wan

Partner and Chief Diversity Officer, Hogan Lovells US LLP, Denver

**Background:** Wan jumped into cable programming and entertainment law after spending her first five years post-law school practicing bankruptcy and employment law. At the Denver office of Hogan & Hartson (now Hogan Lovells), she teamed up with Niki Frangos Tuttle (who was on last year's *Multichannel News* list of top cable deal lawyers); their primary client was Tele-Communications Inc. They went on to create a robust practice representing distributors and programmers. More recently, Wan's focus has been on retransmission consent negotiations and international programming, as well as traditional pay TV deals. She also has handled VOD and broadband deals on behalf of several startups. In addition to her client work, Wan in 2013 became Hogan Lovells's U.S. chief diversity officer, collaborating with her London co-chair in formulating global diversity and inclusion strategies, missions and goals. Wan also serves on the Colorado Lawyers Committee board and is a co-chair of its Hate Crimes Education Task Force. She earned her law degree from New York University School of Law.

**Notable Cable Deals:** Wan represented the National Cable Television Cooperative in its first-ever retransmission consent deal for ABC's owned-and-operated stations. Since 2003, she has represented AXS TV and HDNet Movies in most of their North American and Caribbean deals. Wan represents Time Warner Cable in its retransmission negotiations with Hearst, Gray, Journal, LIN, Media General and other broadcasters. Her international projects include work for several Arabic-language networks owned by Prince Alwaleed bin Talal bin Abdulaziz Al Saud of Saudi Arabia. Wan negotiated the Al-Arab Channel's deal for business news content from Bloomberg Television.

**2015 Outlook:** "Despite recent legislation and more on the horizon, broadcast retransmission-consent fees will continue to rise by double-digit percentages. Even though 2015 is not an election year, as a percentage, broadcast signals 'going dark' will increase as smaller distributors follow larger ones who took off broadcast signals in 2014. MVPDs are doing better jobs of communicating with their subscribers about the implications of rising fees, thus fewer consumers will 'jump ship' as they use alternative platforms to see the programming they want."

