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WHAT THE INDUSTRY READS FIRST

Contract Talk: Diamond Wants DirecTV to Pay in Full Amid Lapsed Rights

Diamond Sports is coming after **DirecTV**, claiming in a bankruptcy court filing that the satellite video provider has withheld payments and violated the pair's distribution agreement. It is asking the judge, in a motion to enforce an automatic stay, to force DirecTV to pay up.

The argument between the two parties is centered on an agreement Diamond Sports has with DirecTV tied to its distribution of **San Diego Padres** games on **Bally Sports San Diego** and of **Arizona Diamondbacks** showdowns on **Bally Sports Arizona**. Bally Sports San Diego forfeited its MLB rights in June with Diamond Sports deciding not to provide a rights fee payment to the team as it moved through Chapter 11 bankruptcy. It marked the first time since Diamond's decision to file in bankruptcy in March that it had lost regional distribution rights, and MLB stepped in at that time to take over production and distribution of all local Padres games. It was only one month later when the Diamondbacks found themselves in a similar position as a bankruptcy judge allowed Diamond Sports' request to drop its contract with the team.

Diamond claims that DirecTV has been inappropriately withholding portions of its payments since those rights were lost. DirecTV's argument is fairly simple—it agreed to pay Diamond for content from the San Diego Padres and Arizona Diamondbacks. No programming, no payment. "When DSG ceases to carry a team, they seem to think we should continue to pay them for the right, even as we need to pay the new rights holders to ensure continued transmission to our subscribers," a DirecTV spokesman told ***CFX***. "That makes no sense, and it is not how our agreements with DSG work."

On July 23, it claims DirecTV sent Diamond and other associated parties a Notice of Recoupment notifying them that the satellite TV provider was withholding funds to determine "in light of its mitigation costs" the fees due to Diamond for the distribution of Bally Sports San Diego. On Sept. 29, DirecTV also allegedly withheld payments tied to the Arizona Diamondbacks content, ultimately pushing Diamond to file the motion. Diamond said since the withholding of payments began in connection with the Padres in July, its parties have been trying to negotiate a consensual resolution to the issues to no avail.

Diamond believes there are no terms within its agreement with DirecTV that would allow for payments to be reduced. The terms of that deal are heavily redacted from the filing, but it seems safe to say that at least some of them were tied to the number of games Diamond and its parties delivered based on what was left untouched.

"The Diamond Parties delivered 1,987 total MLB games during calendar year 2023," Diamond said when arguing against DirecTV's reasons for withholding payments. "Moreover, the Diamond Parties delivered 91 Diamondbacks games and 49 Padres games."

The South Texas Bankruptcy Court has set a hearing to discuss the motion for Nov. 15 in Houston at 10am CT.

FCC CHAIR FLOATS PROPOSAL FOR REBATES DURING BLACKOUTS

After staying mum during some of the biggest blackouts in TV history, the **FCC** is breaking its silence with Chairwoman *Jessica Rosenworcel* putting forth a proposal that seeks comment on whether and how to require cable and satellite providers to issue rebates to subscribers in the event of a blackout due to failure to reach a retransmission consent agreement. Another NPRM circulated to FCC Commissioners seeks comment on requiring MVPDs to notify the FCC via an online public portal when there is a retrans blackout of 24 hours or more. Operators have come under fire for not always offering refunds or for requiring customers to request a refund for missing channels. The process varies. For example, **Charter** provided credits to customers for the **Disney** blackout after the dispute ended. However, if customers called in before the spat was resolved, they were given a credit. **DirecTV** customers impacted by blackouts who visit its TVPromise website are offered a one-time $10 credit. The cable and satellite industry has long pushed for the FCC to revisit the retransmission consent process, but this probably isn't what they had in mind. The Commission is likely to get an earful about billing complexities and rising broadcast fees. "Every blackout—every single one—is caused by the same thing: broadcasters want consumers to pay higher prices. We appreciate the Commission's acknowledgement that blackouts are a problem. However, we'd like to see the focus on the broadcasters—who increased retransmission consent fees from $200 million in 2006 to $11.7 billion in 2019, an unbelievable 5,359%—rather than just on the companies that are negotiating to keep prices down for their customers," said a statement from retrans reform group **American TV Alliance**, whose members include **Mediacom**, **DISH** and Charter. **ACA Connects**, also an ATVA member, took a similar stance. "Unfortunately, the proposals announced today do not appear to address the root cause of these blackouts: the insatiable demand of broadcasters for outrageous, ever-increasing fees. We urge the FCC to focus on tackling this underlying problem and to avoid proposals that are more likely to make it worse by giving mega-broadcasters even more leverage in their negotiations with smaller cable operators," ACA Connects President/CEO *Grant Spellmeyer* said in a statement. **NAB** and **NCTA** declined to offer comment Wednesday. They're probably saving those words for the official FCC docket assuming the item is approved by a majority of Commissioners. **Public Knowledge** did chime in, saying the proposal to require refunds would bring more fairness to subscribers. But the group indicated there's more work to be done in the retrans space. "If adopted, the proposal to ensure that blackouts are documented will lay the groundwork for informed decisions that address the root causes of these disruptions," said PK Legal Director *John Bergmayer*.

The WHO and the WHY

CFX's spotlight on recent new hires & promotions

JENNA **Boyd**
SVP, DEVELOPMENT
DISNEY BRANDED TELEVISION

3 THINGS TO KNOW

- Jenna joins the Disney family after overseeing her own production company Field Day Entertainment. Her new gig will have her guide the scripted series development team and manage the production of scripted series pilots for Disney+ and Disney Channel, with a particular focus on building out the company's multicam strategy alongside Disney+ tentpoles. Jenna will report to EVP, Live Action and Unscripted Charlie Andrews.
- Before she created Field Day, Jenna was Director, Kids & Family Series at Netflix from May 2017-August 2019. At Netflix she led the company's roster of original animation and live-action series, as well as the creative team behind kids and family content. Some of the series she's been involved in include "Alexa & Katie," "Julie and the Phantoms" and an adaptation of "The Baby-Sitters Club," which earned a 2022 Children's & Family Emmy Award for Outstanding Children's or Family Viewing Series.
- Jenna first started her career in series development with "Avatar: The Last Airbender" when she was SVP, Animation Development at Nickelodeon. She also held an executive role at GoldieBlox as Chief Content Officer. Jenna received a degree in Communications from Ohio University.

FRONTIER ASSETS FOR SALE?

A *TMT Finance* report claims **Frontier** is contemplating selling assets in Arizona, Nevada, New Mexico and Utah. "Based on the **FCC** fabric data, we estimate that there are 217k homes and businesses[i] in the markets served by Frontier in those states. Based on the same data, there are 18k that are unserved and 7k that are underserved. We would consider these all to be BEAD eligible," **New Street Research** said in a note Wednesday. The firm added it had no idea if Frontier is indeed looking to sell assets, but if so, the transaction would be small. "At the **Apollo**/**Brightspeed** price of ~1,100 per unit, these markets would be worth ~$230MM (5.8x EBITDA). This is likely optimistic—half of the units that Brightspeed acquired can be upgraded to fiber at attractive economics, and we would assume few if any of these can be," New Street said. "At our conservative 3.5x EBITDA, they would be worth $140MM. $140 – 230MM is a reasonable range for copper; we would set our sights towards the low end for these assets."

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AUTHENTICITY, CELEBRITY ON TAP FOR TV ONE IN 2024

TV One has some big plans as it sails into its 20th anniversary next year, including a biopic featuring Rev. *Al Sharpton*. TV One and **CLEO TV** President *Michelle Rice* dropped that bit of news during a presentation Wednesday to announce its new original programming slate across linear and digital. "One thing that our audience really loves is biopics, stories that really dive deep into celebrity. So we will continue to do biopics as probably our number one thing next year," Rice said. "Rev. Al Sharpton has always been a friend of the network. We think he has a really amazing story to tell." Rice said authenticity is at the heart of everything TV One does, a point echoed by *Austyn Biggers*, SVP of Original Programming and Production. "I think it's really important for us to meet people where they are and show the full range of our trials, tribulations and triumphs," Biggers said. "A TV One show also includes seeing our people and our community behind the camera as well. Showing up to a set and seeing executive producers and directors and writers and showrunners that are women and people of color and giving those opportunities to people. When I think of what is a TV One or a CLEO TV show, I think about it holistically behind the camera and in front of the camera." The 2024 slate includes *Doug E. Fresh*-hosted music series "Collab," "Raising Fame," a show looking at raising celebrities that is hosted by *Lucille O'Neal*, mother of *Shaquille O'Neal*, and *Sonya Curry*, mother of *Stephen* and *Seth Curry*, and "In the Kitchen with Tamar & Evelyn Braxton," which will kick off with a special on TV One and CLEO TV in December before moving to a series on CLEO. "Our cooking show is definitely going to be about food, but it's also going to be about family," said *Tamar Braxton*. "This is like Braxton Family Values meets the kitchen."

SCRIPPS' DISTRIBUTION WINS

Scripps revealed Wednesday it has successfully agreed to cable and satellite carriage deals that account for approximately 75% of its subscriber households. After striking these new contracts, Scripps expects to generate $750 million in its Local Media division's distribution revenue for 2023, a 15% jump from 2022. It also expects a 40% increase in net distribution dollars. Scripps has 5% of its cable and satellite households renewing in 2024 and in the low 20% range for 2025.

TEGNA TO AIR SPURS GAMES

KENS, **TEGNA**'s CBS affiliate in San Antonio, will exclusively air 11 Spurs games during the 2023-24 season. The first of the batch to air on KENS is the battle between the L.A. Clippers and the Spurs on Nov. 20. The remainder of the Spurs' games during the season are expected to air across **Bally Sports Southwest** and San Antonio station KMYS.

ESPN'S FOOTBALL RATINGS

"Monday Night Football" had its best Week 5 audience in the **ESPN** era, notching 17.43 million viewers across ESPN, **ESPN2**, **ABC** and **ESPN Deportes**. That's up 10% from last year's Week 5 MNF bout. The Packers vs Raiders broadcast peaked at 18.8 million viewers in the 9-9:15pm window. "Monday Night Football with Peyton and Eli" on ESPN2 accounted for 1.04 million viewers, solidifying the telecast's 22nd consecutive episode with over 1 million viewers.

NEW VIEW FOR C-SPAN

C-SPAN viewers may have noticed something a little different this week with the network's main studio moving to the first floor of its headquarters. The change means saying goodbye to that iconic live view of the Capitol dome, but it also ushers in a new, contemporary studio. C-SPAN is vacating the sixth floor and consolidating everyone to the first floor, a move in line with current staffing and efforts to reduce costs. "Washington Journal" host *John McArdle* gave viewers a tour of the new studio on social media. The daily call-in show spent nearly three decades at the old studio.

NARB TELLS GOOGLE TO DISCONTINUE YOUTUBE TV CLAIM

A **National Advertising Review Board** panel followed the **National Advertising Division**'s decision to recommend **Google** discontinue its claim that **YouTube TV** is $600 less than cable. **Charter** sent in the original Fast-Track SWIFT challenge, which is a process made by the NAD for single-issue advertising cases. Google had the claim appear in two of its YouTube TV commercials, which was accompanied by a disclosure labeling "comparable standalone cable" for the comparison. Charter's challenge stated the price calculation included the cost of two set-top boxes per household. "Further, in agreement with NAD, the NARB panel concluded that at least one reasonable interpretation of the challenged claim is that YouTube TV is $600 less than any comparable service available from companies traditionally associated with cable services," NARB said. NARB added that the comparison doesn't align with the challenged claim because "many households can subscribe to basic Spectrum service without renting cable boxes" and "in certain markets, cable providers offer regional sports networks (RSNs) buy YouTube does not." Google responded saying it may reconsider the claim based on updated information at a later date.

CARRIAGE

Crunchyroll and **GSN** are launching a 24/7 channel dedicated to anime. Under the Crunchyroll moniker, the channel launched today on **Amazon Freevee**, **LG Channel**, **The Roku Channel** and **Vizio Watch Free+**. It'll have series like "Horimiya," "Psycho-Pass" and "Sugar Apple Fairytale" available at launch. New and existing content will remain on Crunchyroll's other AVOD and SVOD platforms.

Think about that for a minute...

The Big Difference

Commentary by Steve Effros

Yes, there are many things where size doesn't count. Skill, quality, care, uniqueness, and lots of other things are far more important. But in some businesses in particular size can make a big difference. Think of the "big box" stores, or Google.

We seem to be in a legal phase where "big" is equated with "bad." The rules for companies considered "monopolies" or "utilities" are being challenged as the antitrust laws get reconsidered. But is it really as simple as saying we have to stop companies from getting too big? I don't think so, although I agree that the power exerted by some of those companies is cause for concern.

Let's take Google as a really good example, since there is currently a major test of the antitrust laws underway as Google is challenged by the the Department of Justice in US v. Google, now going on in Federal Court.

One of the key issues in the case is Google's payment of billions of dollars a year to be the "default" search engine on internet devices not owned by Google, such as the iPhone. To keep it very simple, look at the argument of the DOJ, which is that by being big enough to have the monetary clout to "lock up" being the default search engine on one of the most popular smartphones in the world, Google has blocked the ability of any other company to effectively compete with them.

Google, on the other hand, points out that there is nothing preventing anyone from switching from the "default" to any other search engine they want on the phone. That's clearly true. But the DOJ says, essentially, that people rarely change the default and it becomes impossible to compete.

There's a problem with that argument, and my guess is that many of you reading this have, indeed, switched from a "default." As was pointed out in the trial a week ago, Microsoft placed its search engine, Bing, as the default on its computers and software, which is certainly the most dominant operating system for computers. But Bing has not succeeded in effectively competing with Google search, even though it's the "default!" Why? Well, I know for me, I spend most of my time in the Google environment; the search engine, the maps, the calendar, documents, etc. Is that good or bad?

This isn't meant as a promotion for Google but a recognition that when I got a new computer, even though Bing was an interesting program and was the default, I switched over to Chrome and Google search because I find it to be easy, well integrated, and I'm used to it. I'm not alone. So much for the "default" argument, and that's the point Google is making in court; that it's not because they bought the "default" position, it's because they have a very good product that people prefer. That benefits consumers.

It gets a lot more complicated when you realize that the search engine itself is not what these big companies and DOJ are really focused on. It's the data that's derived from the searches. Confounding things even more, that data is now the raw information that is "feeding" the new AI beast (large language models). Whoever controls the access to that data theoretically has a major leg up on any competitor in the new AI world.

So it's not simply who's biggest, it's who can get control or access to the data hoard. And that may give us a potential new way to moderate the power of the "big." Don't worry about how big they are, put guardrails around, and guaranteed access to the core data. Then competition can take place regardless of who is the biggest, or who has the "default" position. Keep the data accessible. It's a thought.

Steve

T:202-630-2099
steve@effros.com

(Steve Effros was President of CATA for 23 years and is now an advisor and consultant to the cable industry. His views do not necessarily reflect the views of Cablefax.)