

# Cablefax Daily™

WHAT THE INDUSTRY READS FIRST

## Not So Fast: Fubo Sues WBD, Disney, Fox Over Sports Streamer

Fubo is taking a harder stance against the sports streaming jv announced by Disney, Fox and Warner Bros. Discovery, suing each of the companies in an attempt to block the partnership from moving forward.

The suit, which was filed in the U.S. District Court for the Southern District of New York, alleges that the defendants have engaged in a long pattern of harmful and anticompetitive behavior to obstruct the growth of Fubo's sports-centric vMVPD since its launch in 2015. Fubo alleges that the three have engaged in unfair bundling by forcing Fubo to carry dozens of non-sports channels as a condition of licensing their sports networks, and it also claims that the defendants are charging Fubo content licensing rates that are as much as 30-50% higher than rates charged to other distributors.

Fubo Co-Founder/CEO David Gandler believes that by joining together to create a nearly irresistible sports package, Disney, Fox and Warner Bros. Discovery will effectively prevent any new competitors from being able to enter the marketplace.

"This strategy ensures that consumers desiring a dedicated sports channel lineup are left with no alternative but to subscribe to the defendants' joint venture," Gandler said in a statement. "For many years, they have challenged our business at every opportunity through pernicious practices. While other competitors were prevented from entering the market... Simply put, this sports cartel blocked our playbook for many

years and now they are effectively stealing it for themselves."

Bloomberg reported Friday that DOJ was preparing to kick off an investigation into the sports streaming jv, but some are skeptical that the agency will actually block or require any changes of the collaboration. New Street Research told clients that it is not a surprise to hear that DOJ would be taking a look at the deal, particularly because rumor has it that many with stakes in the sports world reached out to the agency with concerns following the announcement of the streamer. The app will not exclusively distribute any of the programming that it carries, so the firm's opinion is that proving antitrust harm on that front will be a steep challenge.

"Finally, we note that virtually the entire population of the United States has access to a significant amount of sports programming for free over a broadcast signal," New Street Research said. "The fact that the percentage who watch it that way is declining does not take away from [the] fact that it is available and provides something of a competitive check on prices rising too high for alternative platforms."

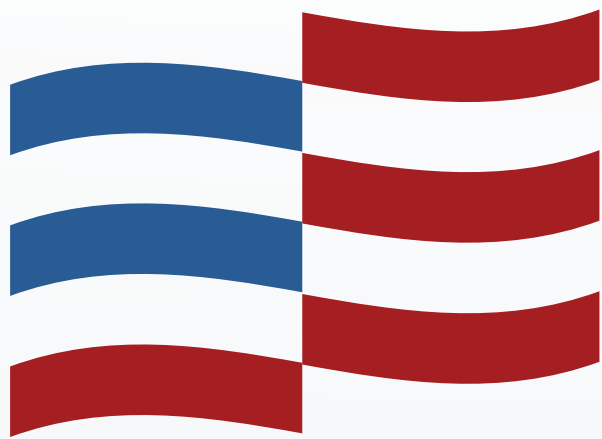
Among those celebrating news of a DOJ investigation is ACA Connects as it believes that a probe is the right course of action in the wake of the streaming shocker. "It's anticompetitive for the biggest media players to join forces while locking out traditional linear video providers, including our members from offering the same packages at the same prices," ACAC CEO Grant Spellmeyer said in a statement. "Fans deserve a level playing field in the sports media landscape without the threat of these giants controlling the marketplace and jacking up prices."

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## APPEALS COURT OVERTURNS \$1B COX COPYRIGHT VERDICT

A federal appeals court threw out a \$1 billion jury verdict against **Cox Communications** for subscribers' illegally downloading music from **Sony** and other music labels. It was the largest monetary verdict ever handed down for statutory damages for copyright infringement. The Fourth Circuit affirmed the jury's finding of willful contributory infringement, but reversed the vicarious liability verdict and remanded it for a new trial on damages because it said Cox did not profit from its subscribers' acts of infringement. Contributory infringement is a form of secondary liability in which one who induces, causes or contributes to the infringing of another and is deemed liable for the infringement. "We are pleased that the court rightly rejected the verdict and set aside the damages award that was wildly out of step with established copyright law and awards in other copyright cases," said a Cox spokesperson. "At the same time, we disagree with the Court's ruling on contributory infringement. Providing homes and businesses with the broadband service that so many depend on in their daily lives should not be a violation of copyright law. We are evaluating our further legal options for establishing that principle." A Fourth Circuit three-judge panel heard [oral arguments](#) in the case in March 2022.

## NCTA, ACA CONNECTS FIGHTING DIGITAL DISCRIMINATION RULES

**NCTA** and **ACA Connects** have teamed up to combat the FCC's digital discrimination rules. The pair submitted a petition for review to the D.C. Circuit arguing that the rules adopted in November exceed the FCC's statutory authority and are arbitrary and capricious. They're asking the Court to hold the digital discrimination order as unlawful. "Among other things, the Order adopts a sweeping prohibition on 'disparate impact' discrimination, subjecting Internet service providers—including petitioners' members—to liability based on '[p]olicies or practices' that 'differentially impact consumers' access to broadband internet access service based on their income level, race, ethnicity, color, religion or national origin," the petition said. "This standard applies to a staggering array of 'covered elements of service,' including not only the deployment of broadband facilities, but also prices, speeds, network reliability, customer service, language options, credit checks, advertising, and much more." The associations' action comes less than three weeks after the **U.S. Chamber of Commerce**, **Texas Association of Business** and the **Longview Chamber of Commerce** filed a similar suit in the Fifth Circuit, also arguing that the Commission's actions will stifle private sector investment and make it even more difficult to deploy broadband service nationwide. "This rule not

only empowers the Commission to micromanage the internet, but it also subverts the badly needed broadband investments included in the Infrastructure Investment and Jobs Act—making the task of connecting all Americans more difficult," U.S. Chamber of Commerce EVP/Chief Policy Officer/Head, Strategic Advocacy *Neil Bradley* said in a statement. "The FCC should focus on expanding connectivity, not expanding its powers beyond what Congress intended." At the same time, there's some action at the state level by those that support the FCC's efforts to preserve the rules in legislation should the Commission's order be struck down. California Assemblymember *Mia Bonta* (D-Oakland) introduced legislation two weeks ago that would codify a digital discrimination of access in state law that conforms to the definition adopted by the FCC. Among those co-sponsoring the bill is the **California Alliance for Digital Equity**.

## MEDIA MISINFORMATION WEIGHS ON COMMISSIONER GOMEZ'S MIND

Moments after **FCC** Chairwoman *Jessica Rosenworcel* announced Tuesday that the agency would relaunch its Consumer Advisory Committee to focus on artificial intelligence and other consumer issues, fellow Commissioner *Anna Gomez* gave remarks at a **Media Institute** lunch in D.C. about how technological advancements are exacerbating the mistrust in news and information today. "While consuming media has always required an understanding of context and tone, discerning misinformation, especially when it is presented in hyperrealistic ways, proves to be far more difficult today than discerning satire comedy on [**Comedy Central's**] "The Daily Show," which delivered news in an entertaining and informative way to Millennials," Gomez said. "A couple of weeks ago, artificial intelligence voice cloning was used to impersonate President *Joe Biden* in an attempt to influence a federal election primary. This is serious. Misinformation in this forum poses a threat to our democracy." While she identified misinformation as a top media issue raised to her as a commissioner, she noted that regulatory options are limited, and for good reason. "The Commission is not in the business of regulating content. The criticality of the First Amendment to democracy cannot be overstated. Let me say this again to make sure I'm crystal clear: I have zero interest in regulating what goes on in the newsroom," Gomez said. Instead, she believes her role at this time should focus on consumer education. She commended media literacy initiatives, giving **Telemundo** a shout-out for its course on radio misinformation and bias in the media, and praised the use of watermarking to signify AI-generated content. Asked about **OpenAI's** new text-to-video AI tool, [Sora](#), and whether the FCC could put up guardrails to limit disinformation from it, Gomez said it's stun-

ning how quickly the tech is developing: “I don’t think the FCC has a role in regulating videos made using AI. I guess I could be corrected... But nonetheless, I think this is why we need to be so vigilant to make sure that these incredible technological advancements that really do a lot of good, aren’t used to harm or for harmful purposes.” She also used the opportunity to remind the D.C. crowd of the possible expiration of the Affordable Connectivity Program, adding that if it isn’t refunded, 23 million households could lose access to streaming video that provides news sources as well as digital media literacy tools.

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## FORMER FCC COMMISSIONER CALLS FOR ACP’S END

Calls for support of the FCC’s Affordable Connectivity Program have been echoing throughout Washington as its funding dwindles, but not everybody is onboard for another round of subsidies. In a [column](#) for *RealClearMarkets*, former FCC Commissioner *Harold Furchtgott-Roth* and **Hudson Institute** Legal Fellow *Kirk Arner* stepped out against the program’s continuance. They pointed to a **GAO** report of fraud in the program and claimed ACP is not managed well and is largely ineffective at connecting households without broadband service. “Perhaps, despite myriad government programs for broadband and other targeted needs—including TANF, SNAP, WIC, Medicaid and SSI, among others—narrow gaps in America’s safety net remain,” they said. “The solution to this problem would be a narrowly-targeted program for those gaps, not ACP. There is no bill in Congress to identify, much less address, those narrow gaps.” They argued that an extension of ACP this year is a precursor of an extension of ACP next year, and it would just become a permanent entitlement program that largely does not help provide broadband access to those that don’t currently subscribe to a plan from an ISP.

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## WALMART SEALS \$2.3B AGREEMENT TO ACQUIRE VIZIO

After [rumblings](#) that **Walmart** was pondering the purchase of **Vizio** broke last week, the deal is now official. The retailer is acquiring Vizio and its SmartCast operating system for approximately \$2.3 billion in a transaction that lets Walmart further reach customers through in-home entertainment and media platforms while also expanding advertising opportunities for brands. Vizio’s SmartCast OS currently has over 18 million active accounts in addition to 500+ direct advertiser relationships. Vizio’s stock jumped by more than 16% on Tuesday morning following the deal’s announcement.

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## DIRECTV SITS WITH THE PIGEONS

**DirectTV** is flying with the birds in its new national ad campaign that began hitting the airwaves to showcase its Gemini product. Titled “For The Birds,” it’s rolling out a 30-second “The

Good Stuff” [spot](#) that features two pigeons voiced by *Steve Buscemi* and *Henry Winkler* as they overlook a family utilizing a high-speed internet connection to access DirecTV, shocking the pigeons that no satellite dish is required to access Gemini. There’s also a [15-second spot](#) “Socks” to show off the array of local **MLB** games DirecTV offers on Gemini as well. DirecTV will utilize the spot in national linear TV buys including **ESPN** and **ABC’s NBA** broadcasts, **NHL** games on **Turner** nets and shows such as “American Idol.”

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## TESTING... TESTING... TESTING 5G

A 5G test lab is coming to the Dayton, Ohio, area thanks to **altafiber**, **Nokia** and the Wright State University Foundation. The three opened “Studio 5G” at Emergence Center One to help inform businesses about indoor and outdoor 4G and 5G technology as the use of private networks in large buildings and open spaces continues to rise. Altafiber will utilize the studio to validate customer-use cases without needing to spend extra time and money for proof of concepts at customer locations. That includes testing mobile connectivity between customer LAN networks and end-user devices like printers, scanners and tablets, as well as assessing cellular backhaul networks to support WiFi access points for large open areas such as golf courses or parks.

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## RATINGS

More numbers are coming in after *Jon Stewart’s* return to “The Daily Show” on **Comedy Central**. The program pulled 3.06 million viewers on live+3. Approximately 374,000 P18-49, 498,000 P25-54 and 1.65 million P2+ tuned in to the original and encore airings, helping it be the biggest Comedy Central premiere audience since August 2017. It was also the No. 1 news program in cable across extended prime from 8pm-midnight in the P18-49 and P25-54 demos.

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## PEOPLE

**Cox Communications** has a new EVP/Chief Strategy Officer. **Cox Automotive’s** *Jessica Tully Shrum* is taking the job, rejoining Cox Communications after a decade at its sister company. She’ll fill a role previously held by *Sujata Gosalia* who left the company in the fall. Tully Shrum has spent time at Cox Communications in the past, joining the company in 2006 after spending time at **BellSouth/AT&T** and **Anderson Business Consulting**. – **Investigation Discovery** named *Kathryn Vaughan* as its new SVP, Head of Production. She joins from **AMPLE Entertainment** where she was Head of Development and Current Programming. While there, she oversaw several series and documentaries including **Peacock’s** “Violent Minds: Killers on Tape,” **Roku’s** “Morimoto’s Sushi Master” and **ID’s** “The Price of Glee,” “Death by Fame” and “Murder in the Heartland.” Vaughan will be based in New York.