

Cablefax Daily™

WHAT THE INDUSTRY READS FIRST

Papers, Papers: Judge Sets Limits in Fubo Suit Over Sports Streaming JV

Fubo's antitrust suit against **Disney, Fox Corp.** and **Warner Bros. Discovery** over their sports streaming **juv Venu** rages on, and the groups are steadily preparing for an August hearing on Fubo's motion for a preliminary injunction. Where they've been at odds is on what material Fubo needs from the three programmers to prepare to make its case that the defendants have forced bundling and used other tactics to ensure they maintain a competitive advantage.

During a hearing held Friday afternoon, Southern New York District Judge *Margaret Garnett* denied a request from Fubo for additional discovery for materials tied to Disney, Fox and Warner Bros. Discovery's practice of requiring third-party distributors like Fubo to license content on a bundled basis. Counsel for Fubo argued that communications from executive leadership or documents related to bundling strategy and tactics are key to showing the anticompetitive advantage the sports streaming **juv** will have over its competitors. But counsel for the three programmers argued they have already produced more than enough for Fubo and finding the requested documents would impose an extraordinary and unnecessary burden on the programmers.

"We agreed and have committed to producing the carriage agreements and the bundling-related agreements with the joint venture which will show the joint venture's terms for the content that it licenses. We've committed to producing the bundling-related agreements that bear on Fubo and its terms

and we've also agreed to produce the carriage agreements that were produced in response to the Department of Justice's civil investigative brief," *Steven Bizar*, counsel to Fox, said. Those agreements, in the case of Fox, represent more than 90% of its total distribution network.

Moving on, Judge Garnett also denied a request to add two **Hulu** executives to a list of folks with electronic information that could be relevant to the case, questioning their relevance to the case when Hulu is not directly named in the suit and isn't tied to Venu.

"The JV was originally nicknamed in the press as 'Spulu' as in sports Hulu. We think that Hulu may have played an important role in the development of the JV, and we think that it's worth probing the role that Hulu had in the evolution of how the JV emerged as an entity as a joint venture among the parties," *Rachel Anderson*, counsel to Fubo, said.

Wes Earnhardt, counsel to Disney, suggested to Judge Garnett that it would be much easier to produce the sort of documents Fubo wants if instead lawyers were able to get the information Fubo wants from centralized files, and she was fully onboard.

Unresolved for now is a request from Fubo to extend the end date for when the defendants have to produce relevant information and documents about the **juv**. The three programmers have suggested providing information dated prior to the end of April, but Fubo wants that extended to May 17 due to information about the streaming service that came out during the last month. That includes the name of the service, the number of engineers hired to build out the product and more that



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was revealed during earnings calls and investor presentations.

“That’s evidence about the nature of the final product, its features and what will actually be offered to consumers in the market and what the actual product is going to be. For the first time, we heard about that after April 30,” Anderson said.

Again, counsel for the defendants claimed they were already doing enough for Fubo. They have agreed to produce any final JV agreements and exhibits, and additional documents produced to the DOJ and any final presentations made to the companies’ boards or C-suite leadership.

For now, Judge Garnett has put the issue on ice, but suggested she would be willing to extend that time period to May 9 so that information communicated during the programmers’ earnings calls would be fair game for Fubo. But she directed both sides to work together on a targeted and narrow set of inquiries so the court remains on schedule.

“I think that is a potentially feasible way to resolve this dispute,” she said. “It does seem to me that there’s a reasonable compromise with what Fubo needs in terms of the new information in their quarterly earnings calls and a limited set of targeted requests that might reflect the discussions and preparation for those new announcements.

ACP RIP

Friday marked the official end of the Affordable Connectivity Program, with no congressional funding for the broadband subsidy program to continue into June. ISPs are working to roll those customers receiving the \$30/month subsidy (\$75 on Tribal lands) into other offerings. The White House highlighted voluntary commitments to customers from over a dozen providers who plan to offer plans at \$30 or less to low-income households, calling out **Allo Fiber, altafiber, Altice USA, Astound Broadband, AT&T, Comcast, Cox, Charter, IdeaTek, Mediacom, MLGC, Starry, Verizon** and **Vermont Telephone Company**. “These internet service providers—many of which have a long history of low-cost internet offers—collectively cover up to 10 million ACP households and are voluntarily offering their current ACP subscribers and other eligible households a high-speed internet plan for \$30 per month or less, with no fees and data caps, until the end of 2024,” the administration said. Astound Broadband unveiled its Internet First program Friday for eligible customers that starts at \$9.95/month for 50 Mbps and \$19.95/month for 150 Mbps with three months free for new customers. Astound’s program is also offering one free line of Astound Unlimited Mobile for 12 months. Charter is also offering a free mobile line for one year to customers who lose their ACP benefit. This prompted at least one question we saw on social media from an impacted customer who wanted to know why the \$30 phone line couldn’t be applied to internet costs

instead. “We can understand your frustration and we apologize for any misunderstanding. The ACP program for internet is no longer being funded by the government. The mobile incentive is not meant to be compensation, but an opportunity to offset another cost,” Spectrum responded. In a blog, Comcast EVP, Public Policy *Broderick Johnson* [outlined](#) the operator’s various offers for ACP participants, including its \$9.95/month 50 Mbps Internet Essentials plan. “We’re committed to building on the momentum that is creating unlimited possibilities for millions of customers,” Johnson wrote.

TRUMP VERDICT RATINGS

Many across the nation [tuned in to see the results](#) of former President *Donald Trump*’s criminal trial. All hands were on deck among the news nets, and according to early data from **Nielsen**, it was **Fox News** that led the 5-6pm hour as the verdicts were delivered. Fox News recorded 4.43 million viewers P2+ and 568,728 A25-54. **MSNBC** had 3.42 million P2+ and 399,650 A25-54 during the 5pm hour, while **CNN** checked in with 2.38 million P2+ and 491,357 A25-54. For the 5-11pm frame that includes post-verdict analysis throughout primetime, MSNBC led with 3.31 million P2 and 390,296 A25-54. Fox News was close behind in P2+ with 3.25 million, but did lead the A25-54 demo with 400,689. CNN came in at 1.62 million P2+ and 324,071 A25-54. While Trump briefly addressed the press Thursday evening outside the courthouse, “Fox & Friends Weekend” will have the first interview post-trial with Trump on Sunday. The program runs from 6-10am.

THE WICT NETWORK TOUCHSTONE PARTNERS REVEALED

The **WICT Network** unveiled its 2024 annual Touchstone Partners, a group of organizations that show a year-round commitment to equity and inclusion through their support of the Network’s diversity-based professional development programs, original research and advocacy initiatives. This year’s Strategic Touchstone Partners are **Charter, Comcast NBCUniversal, Disney** and **Warner Bros. Discovery**. Catalyst Touchstone Partners, which recognize those who help create women leaders in the industry, include Accenture, **Cisco, Cox Communications** and **Optimum**. Additionally, **A+E Networks, AMC Networks, Astound Broadband, AWS, Paramount** and **TV One** were named Inspire Touchstone Partners.

RATINGS FROM THE DIAMOND

ESPN had its most-watched college baseball regular season since 2013, with game viewership up 21% compared to last year’s slate. Highlights include the SEC Championship game

between LSU and Tennessee, which averaged 500,000 viewers and was the most-watched regular-season game since 2018 while also being the second most-watched since 2013. The ACC title bout between Duke and Florida State averaged 258,000 viewers, good for the most-watched ACC championship since 2018. On the softball side, this year's Super Regionals round averaged 519,000 viewers across ESPN platforms, good for a 3% improvement YOY.

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TNBC FAST CHANNEL REBRAND

NBCUniversal's **TNBC** FAST channel is changing its name to **NBC Comedy Vault** starting Saturday. The channel will highlight the rebrand with Pride Month programming, debuting Seasons 1-8 of NBC original "Will & Grace." Other shows including "Charles in Charge," "Coach" and "Major Dad" will be added in July in daytime programming. NBC Comedy Vault will launch on **Amazon Freevee**, **The Roku Channel** and **Xumo Play**.

PROGRAMMING


HBO and **NFL Films** are headed to the Windy City to chronicle this year's No. 1 Draft pick *Caleb Williams* and the Chicago Bears for "Hard Knocks: Training Camp with the Chicago Bears." It'll have the usual five episodes *Hard Knocks* rolls out, starting Aug. 6 at 9pm on **HBO** and available to stream on **Max**. New episodes will be released on the following Tuesdays through Sept. 3. The Bears' program will follow "Hard Knocks: Offseason with the New York Giants," which begins July 2 at 9pm. – A new limited docuseries about **Hallmark's** Christmas Cruise is in development. "Hallmark Christmas Cruise" will follow fans as they experience their five-day journeys on the ship. – **Max** renewed "HACKS" for a fourth season. – **Fox Weather** is getting ready for hurricane season with an hour-long "Hurricane HQ: Cone of Confusion" special. It'll take place from the National Hurricane Center in Miami and air 8pm tonight. Encore presentations will be played throughout June.

 **CABLEFAX DASHBOARD**

Social Media Hits

Comcast Policy @ComcastPolicy

Our Chief Technology Officer, Elad Nafshi, advises that communities should consider the scale, expertise, and capability to operate a next-generation network when choosing providers to partner with. Watch the full episode: comca.st/3KvhS2h.



NTIA @NTIAgov

This month, NTIA celebrated #AANHPI leaders in tech and telecom. We end this series with a thread on Dr. Narinder Singh Kapany, the "father of fiber optics."



Peter Adderton @peter_adderton

The wireless industry in America is at a real inflection point if you ask me and regulators who are supposed to protect consumers seem asleep at the wheel, MNOs still hold a huge stick to MVNOs by forcing minimum revenue requirements, and onerous Wholesale term's, making it near impossible to raise the required capital to truly compete with the larger MNO brands @FCC @BrendanCarrFCC @JRosenworcel @JusticeATR need to step in if they truly care about the digital divide history has shown MVNOs have helped keep prices lower but we need regulators to step up and NOW.

 **Up Ahead**

- JUNE 4:** [Regional Fiber Connect](#); Deer Valley, Utah
- JUNE 13:** [Cablefax American Broadband Congress](#); D.C.
- JUNE 17-19:** [The Canadian Telecom Summit](#); Toronto
- JUNE 24-27:** [CableLabs Interop Labs, DOCSIS 4.0 and DAA Technology](#); Louisville, CO
- JULY 14-16:** [NTCA 2024 Summer Symposium](#); Olympic Valley, CA