MONDAY, DECEMBER 2, 2024 VOLUME 35 | NO.219

Cablefax Daily™

WHAT THE INDUSTRY READS FIRST

Courtroom Chaos: WBD, Fubo Continue Legal Battles

As the end of 2024 draws near, one thing that'll remain constant into the new year is the contention around sports media rights and the ways games and shows are distributed. Thanksgiving week festivities began with a new class action lawsuit from a **Warner Bros. Discovery** shareholder against the company, and more are joining the support of **Fubo**'s ongoing attempt to block the launch of the **Venu Sports** jv.

Though WBD settled its media rights-related issues with the NBA, some investors are still unhappy with how the situation unfolded. *Richard Collura*, on behalf of all persons and entities that acquired WBD shares between Feb. 23 and Aug. 7, filed with the U.S. District Court for the Southern District of New York and alleged WBD made "materially false and misleading statements" about its business, operations and prospects in the buildup to the league announcing a deal that didn't include WBD in late July. The lawsuit points to claims made by CEO *David Zaslav* and CFO *Gunnar Wiedenfels* that implied positive negotiations between the NBA and WBD in the months before the league's new deal became official.

"Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (i) WBD's sports rights negotiations with the NBA were causing, or were likely to cause, the Company to significantly reevaluate its business and goodwill; (ii) WBD's goodwill in its Networks segment had significantly deteriorated as a result of the difference between its market capitalization and book value, continued softness in certain U.S. advertising markets, and uncertainty related to affiliate and sports rights renewals, including with the NBA," the complaint said, also claiming WBD's foregoing increased the odds of incurring billions in goodwill impairment charges while also overstating overall business and financial prospects.

On Feb. 23 when WBD hosted its 4Q23 earnings call, Zaslav noted, "We have a strong positive 40-year relationship with the NBA. And in terms of our NBA rights, we are now fully engaged in renewal discussions, and they are constructive and productive. Later in the Q&A session of that same call, Wiedenfels responded to a question that mentioned the positive conversations and how a potential NBA deal would work financially for WBD. "We have been able to strike profitable deals and we're always going to be disciplined," he said. "It's very easy to lose control over sports rights investments. That's not what we do. We're going – we know exactly what value we assign and we stay disciplined during our discussions."

Fast forward to Aug. 7—shortly after news broke that WBD would no longer be an NBA rights partner in the U.S.—when WBD released its 2Q24 earnings results. They revealed a $9.1 billion non-cash goodwill impairment charge from its networks segment, and WBD's stock price fell $0.69 per share to close at $7.02 per share Aug. 8, an 8.95% drop.

"As a result of Defendants' wrongful acts and omissions, and the precipitous decline in the market value of the Company's securities, Plaintiff and other Class members have suffered significant losses and damages," the lawsuit stated.

The shareholders requested a trial by jury, but the lawsuit will only move forward if they can show that the defendants misrepresented material facts about WBD's business, operations and management or if they acted knowingly or recklessly in issuing false and misleading financial statements, among other questions of law. No hearing date has been set.

Elsewhere in the sports world, the Venu Sports trio of **Fox**, **Disney** and WBD are getting ready to argue against a preliminary injunction that was granted ahead of the streamer's launch. As Fubo continues to keep the jv's launch at bay, the Department of Justice and several states' Attorneys General voiced their support via separate briefs.

The DOJ filed an amicus curiae brief in support of Fubo, citing Section 7 of the Clayton Act that prohibits mergers, acquisitions and certain jvs that may lessen competition or create a monopoly. "Defendants' insistence that '[n]othing in the antitrust laws empowers federal courts' to require them to unbundle their channels is an attack on a straw man," the DOJ wrote in its brief. "So too here: The evidence that Defendants would have incentives to foreclose distributors like Fubo from access to unbundled sports content, and 'the market power to follow through on these incentives,' … indicated that the formation of Venu may substantially lessen competition in violation of Section 7."

A separate amici curiae filing was made by the states of New York, California, Colorado, Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, Minnesota, New Jersey, Oregon, Pennsylvania, Rhode Island, Vermont and Washington as well as D.C. The states agreed with the district court in finding that the "no duty to deal" doctrine only applies to certain types of unilateral conduct challenged under the Sherman Act.

"Even assuming defendants' bundled licensing agreements constitute permissible unilateral conduct if entered into on an individual basis, that does not immunize their joint conduct from antitrust liability," the brief said.

Of course, Fubo co-founder/CEO *David Gandler* welcomed the DOJ and AGs' support. "We're grateful for the support we've received from the DOJ and state AGs nationwide. Consumers deserve better: more choice, greater innovation, and fair pricing. Now more than ever, we stand confident in the merits of our case," Gandler wrote on X.

The next Venu-Fubo hearing is tentatively set for January.

FCC: ONLY 30 PROVIDERS REPLACED EQUIPMENT AMID SHORTFALL

The **FCC** has said repeatedly that the federal program to help reimburse providers of communications services for expenses incurred in the replacement of communications equipment that poses a potential national security threat faces a shortfall of $3.08 billion. Last week, outgoing FCC Chairwoman *Jessica Rosenworcel* sounded the alarm again. "Most recently, 72% of the status updates filed on Oct. 7, 2024 indicated that the lack of full funding continues to be an obstacle to completing the permanent removal, replacement and disposal of the covered communications equipment and services in recipients' networks. In fact, 50% of the participants reported that they cannot complete the work required under the Reimbursement Program without additional government funding," Rosenworcel wrote in an update to congressional leaders on the Commerce and Appropriations committees, a follow-up to her May 2024 update. Because the demand for program funds exceeds the appropriation, the FCC is required to first allocate funding to applicants with two million or fewer customers. That works out to 126 carriers, who will receive prorated support of only 39.5% of reasonable costs, with most of the efforts centered on equipment from Chinese companies **Huawei Technologies** and **ZTE Corporation**. As of Nov. 20, the agency has received 35,093 Reimbursement Claims across 122 of the applications approved for a funding allocation and it has received final certifications for 30 applications stating that the removal and replacement work has been completed. The FCC has granted 139 extensions of time, with 118 of those based in whole or in part on the funding shortfall. "Some participants in the Reimbursement Program have informed the Commission that they fear that they may need to shut down portions of their networks and withdraw from this process without completing the removal of insecure equipment. Because so many of the Reimbursement Program participants serve rural and remote areas of the country, any shut down of network facilities could remove the only provider available," Rosenworcel wrote, adding that the inability to participate also raises serious security issues. "The Commission stands ready to assist Congress in efforts to fully fund the Reimbursement Program."

LAYOFFS PART OF TELEVISA-UNIVISION RESTRUCTURE

More details on the promised streamlining of **TelevisaUnivision** emerged this week, with CEO *Daniel Alegre* outlining a restructuring Monday in a memo to staffers. It is expected to impact a mid-high single-digit percent of the company's roughly 13,000 employees and follows comments Alegre made during its 3Q24 earnings call that promised a thorough review of investments and operations to identify opportunities for growth and improved efficiencies. Under the reorg, *Jesús Lara*, head of Local in the U.S., is departing the company with U.S. advertising sales to be centralized under the leadership of *Donna Speciale*. *Ignacio Meyer* will now oversee U.S. Audio and Local Programming, in addition to his current role managing U.S. Linear Programming.

Cablefax Daily (ISSN 1069-6644) is published daily by Access Intelligence, LLC | www.cablefax.com | 301.354.2101 | Editorial Director: Amy Maclean, 301.354.1760, amaclean@accessintel.com | VP/Group Publisher, Cablefax and Cynopsis: Robbie Caploe, 917.974.0640, rcaploe@accessintel.com | Managing Editor: Sara Winegardner, 301.354.1701, swinegardner@accessintel.com | Associate Editor: Noah Ziegler, 301.354.1704, nziegler@accessintel.com | Director of Business Development, Cablefax: Ellen Kamhi, 917.626.5574, ekamhi@accessintel.com | Production Manager: Joann Fato, jfato@accessintel.com | Kerry Smith, Divisional President, Marketing & Media Group, ksmith@accessintel.com | Group Subs/Subscription Questions, Client Services: 301.354.2101, clientservices@accessintel.com | Annual subscription price: $1,999.00/year | Access Intelligence, LLC, 9211 Corporate Blvd., 4th Floor, Rockville, MD 20850

José Luis Fabila was tapped to lead all content efforts and create a newly formed Global Content Organization. "While these decisions are never easy, we are committed to supporting everyone through their transition. I understand that this will be a challenging week, but I ask for your focus and resilience as we take these important steps toward a stronger and more connected future," Algere wrote. "Together, we are building a company positioned for sustained growth, innovation, and leadership."

CTA SPEAKS OUT AGAINST PROPOSED TRUMP TARIFFS

President-elect *Trump*'s threats of higher tariffs on products from Canada, Mexico and China have the **Consumer Technology Association** calculating the impact it will have on prices for U.S. consumers. In October, the association released a study that found that a universal tariff of 10% and a 60% flat tariff on all imports from China would likely result in a 46% increase in prices for laptops and tablets, while video game consoles are predicted to increase by 40% and smartphones by 60%. CTA will be updating the study ahead of **CES 2025** to examine how a 20% universal tariff on all imports from all countries and a 100% flat tariff on all imports from China would impact the prices. "We estimate that the new tariffs would burden over $350 billion in U.S. imports of technology products and inputs from these three countries. U.S. policymakers, especially in the Congress, must understand that the tariffs threatened by the President-elect would have the effect of separating the U.S. economy from those of these trading partners. More, they would invite these partners to retaliate against US exporters," said CTA CEO *Gary Shapiro* in a statement. "Higher tariffs on our closest allies and trading partners like Canada and Mexico are counterproductive and will only lead to harm to U.S. businesses and consumers. CTA takes seriously and literally all tariffs proposed by the President-elect given how he followed through on his threats in his first term."

FCC SAYS GET ACP OFF WEBSITES

The **FCC** and **Universal Service Administrative Company** are reminding ISPs that they need to remove all marketing materials and website references to the Affordable Connectivity Program and its monthly discount on broadband services, which ended on June 1. "Failing to accurately update websites and materials to reflect that the ACP has ended may violate the Commission's ACP rules that prohibit providers from engaging in false or misleading advertising of the ACP," the notice said. It also encouraged consumers who encounter a website claiming to provide an ACP benefit to file a complaint by visiting the FCC's Consumer Complaint Center.

SENATOR TELLS DOGE TO BAG BEAD

Republican Senator *Joni Ernst* (IA) has a lengthy list of suggestions for how the unofficial Department of Government Efficiency can trim around $1 trillion, and nixing the Broadband Equity, Access, and Deployment (BEAD) program is among them. "President *Biden's* so-called infrastructure program provided $7.5 billion to build a nationwide network of electric vehicle (EV) charging stations and $42 billion to expand broadband. Three years later, just 17 EV stations are completed and not a single person—not one—has been connected to the internet yet. It's time to pull the plug," Ernst wrote in a letter last week to *Elon Musk* and *Vivek Ramaswamy*. Also making Ernst's list: consolidating government office space and auctioning off unneeded property; reducing costs by changing the metal composition of coins, ending "silly science" studies, auditing the IRS and scrapping government swag (key chains, koozie, etc).

STREAMERS GREET HOLIDAY SHOPPERS WITH DEEP DISCOUNTS

Whether it was Black Friday or Cyber Monday, a plethora of streamers offered huge discounts for their ad-supported offerings. The savings were so big, you have to wonder if there will be a natural churn cycle set up to take advantage of these promos… Deals we spotted included **Max** with ads for $2.99/month for six months—a 70% discount to its normal $9.99/month rate. **Peacock** was offering up a one-year subscription for $19.99 vs its normal $79.99 rate. For those unwilling to commit to an annual plan, there is a $1.99/month offer for six months. **Hulu**'s Black Friday deal has become a Thanksgiving weekend staple, and it didn't disappoint. **Disney** offered new and returning customers Hulu with ads for 99 cents for 12 months. For $2/month more, they could add the ad-supported version of **Disney+**. Other deals included **Paramount+** Essential or Paramount+ with Showtime for $2.99 for the first two months; **ESPN+** for 12 months for the price of 9 (with an annual subscription) and deep two-month discounts on **Starz**, **Hallmark+**, **BET+** and other streamers through **Amazon Channels**.

FIBER FRENZY

Metronet started the construction process of its network in Aurora, Colorado. Residents will begin to receive multi-gig speeds of up to 5 Gbps while businesses can get up to 10 Gbps. First customer service installations are slated for early 2025. – **Ziply Fiber** kicked off its expansion project in Pasco, Washington. The network became available to the first 2,500 addresses and will eventually reach over 4,500 homes and businesses in the city.

PEOPLE

Karl Holmes is leaving **Sky** after a decade to become the new SVP, DTC and GM, **Disney+**, EMEA. He'll begin in January. Holmes will be responsible for the Disney+ business across EMEA. – **FanDuel** named *Michael Shiffman* as SVP/Executive Producer for **FanDuel TV**. The former **ESPN** SVP, Production will oversee the creative and operational direction of FanDuel TV's sports and racing programming, heading up all aspects of production and content strategy. Shiffman will report to President, Sports *Mike Raffensperger*.