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WHAT THE INDUSTRY READS FIRST

Antitrust Standing: DirecTV Makes Case to Continue Nexstar, Mission Suit

It's been more than two years since DirecTV carried Mission Broadcasting and White Knight stations. The provider spent Monday morning in a federal appeals court making its case before a three-judge panel on why it believes a lower court erred in dismissing its antitrust suit that claimed Nexstar is engaging in an illegal conspiracy with Mission and White Knight to manipulate, raise and fix prices of retransmission consent fees for broadcast TV stations.

DirecTV's argument centers on it suffering antitrust injury due to the broadcasters' collusion to set supracompetitive prices through sidecar arrangements with Nexstar, leading to lost subscribers and profits. "DirecTV's injury flows from the anti-competitive aspect of the conspiracy, specifically the defendant's ability to set prices above a competitive level, which the Supreme Court has recognized leads not only to the injury of actual payment of inflated prices, but also to reduced demand and reduced output," argued King & Spalding's Paul Mezzina for DirecTV before the U.S. Court of Appeals for the Second Circuit. "In dismissing DirecTV's complaint in this case, the District Court adopted a novel, brightline rule that no other court has adopted. It held that the only way a consumer can allege antitrust standing in a price fixing case is if the consumer agreed to pay the inflated prices the conspirators demanded. That's wrong. As every court to address this issue has held, a priced-out non-purchaser can have antitrust standing if they can point to an established course of dealing with the defendants."

The broadcasters were represented by Wiley Rein's Stephen Obermeier, who argued that no brightline rule was established in the decision and that DirecTV can't establish antitrust standing because the connection between the alleged price fixing and a would-be buyer's supposed injury is too speculative and attenuated to establish causation. A buyer has antitrust injury only when injured at the "first step" in the chain, he argued.

Judge Steven Menashi chimed in here, questioning the broadcasters' argument that the injuries were two steps removed. "What we're talking about is the sidecar companies are sitting down for a negotiation with DirecTV itself, and then DirecTV is bearing the brunt directly of the anti-competitive conduct of the sidecar companies. So it's weird to say that it's not the first step that is the result of the first transaction," he said. "This kind of idea that the consumer choices are a separate step. Doesn't that undermine the idea that anything is really at the first step? They're not going to lose any money until consumers make their choices in any event."

Obermeier's take is that it's all too speculative to know what caused what. "What DirecTV is doing is compiling multiple different channels. And so in addition to just deciding whether or not these customers would have gone away, what you're basically saying is would they have gone away because this one channel wasn't added? Is the package good enough? There's just a lot of speculation," he said.

Menashi didn't seem convinced and recast the situation with DirecTV instead a manufacturer of housing who is dealing



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with someone fixing the prices for lumber instead of broadcast networks. “So, they’re faced with supracompetitive prices. Either they pay more for lumber or they reduce the number of houses they’re building. It’s pretty straightforward, if they have to reduce the number of houses they’re building that they’re going to lose money, right? Because they’re producing fewer products,” he said. “It’s not like a separate question as to whether maybe consumers will pay the same amount of money for fewer products. It seems weird to think about that as a separate step where it might turn out not to harm them.”

Obermeier argued that the housing example is more direct than the DirecTV case. “The record shows that there were a lot of blackouts going on, and DirecTV was losing customers regardless... We don’t know whether they would have paid the competitive price, Your Honor. That’s the speculative point about a non-purchaser,” he said. The judges asked about assuming DirecTV was previously paying a competitive price, with Obermeier arguing that you can’t infer it was because the retrans contract being negotiated was three years old and a lot had changed in the market since then.

“I think the complaint makes clear DirecTV has a long history of successfully negotiating retransmission consent agreements with these defendants. So I think there’s at least a plausible inference that at a competitive price level, DirecTV would continue to reach a successful agreement as it had in the past,” DirecTV’s attorney Mezzina said in the rebuttal.

Judge *Richard Sullivan* quizzed DirecTV, saying it seems that most courts seem to think non-purchasers are generally not efficient enforcers for antitrust case. “Your rule would seem to suggest that non-purchasers are always efficient enforcers, that they can always manage to do just what a purchaser would and that therefore, there should never be a situation where a non-purchaser is not able to both assert antitrust standing and establish that they’re an efficient enforcer,” he said. Mezzina replied that this isn’t a case of just anyone saying they would’ve bought at a competitive price. “We certainly have a long established course of purchasing from these defendants, and I think that’s sufficient under the Ninth and Tenth Circuit case law,” he said.

The U.S. government isn’t taking a stance on the merits of DirecTV’s argument, but it does feel strongly that the U.S. District Court for the Southern District of New York erred in March when it dismissed DirecTV’s antitrust claims for lack of antitrust standing. “We’re here to address the district court’s erroneous holding that the payment of supracompetitive prices is the only anti-competitive effect facing consumers from price fixing conspiracy. This is wrong as a matter of law” DOJ attorney Andrew DeLaney said during the proceeding.

The DOJ was granted three minutes of oral arguments as a friend of the court. It believes the lower court’s decision has

potential ramifications beyond just the impacts of this case and wants plaintiffs to be able to point to the full range of potential anti-competitive effects when proving their case. DeLaney said those could include a reduction in output, diminished product quality and diminished consumer choice.

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BERNSTEIN SAYS WELCOME TO THE AGE OF THE TELCOS

Bernstein Research is initiating coverage of **AT&T, T-Mobile** and **Verizon**, sounding a somewhat cautionary note for cable companies. “With T-Mobile maintaining its momentum and AT&T and Verizon returning to a core-driven growth trajectory, we are in the age of the Telcos. While this does not necessarily signal an age of decline for CableCos, the decade of their dominance has come to an end,” the firm said in a research note Monday. “Competitive intensity, driven by FWA, Fiber and wireless bundling, is unlikely to subside in the foreseeable future, and the steady state—if such a thing exists—will depend on the strategic moves Telcos and CableCos take as both continue to push for broadband share and wireless bundles. While Telcos are in a stronger position today vs the last decade, CableCos’ near-term prospects are improving, as Fiber takes time to build and CableCos are holding on to their share with steady ARPU increases. Long-term for Cable? That’s another note.” Bernstein has AT&T at “outperform” with a price target of \$28; T-Mobile is at “market perform” with a \$265 price target; and Verizon is at “market perform” with a \$48 price target.

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COMCAST PREVIEW BROADBAND LOSSES FOR 4Q

Comcast Cable CEO *Dave Watson* offered a preview of the operator’s 4Q24 results during an appearance at the UBS Global Media and Communications Conference, estimating broadband subscriber losses to be a little more than 100,000. Approximately 10,000 of those losses can be tied to Hurricanes Milton and Helene while factors like intense competition continued to drive down broadband sub numbers. He also said those elements will lead to an impact on ARPU, including rebates the company is offering those impacted by Hurricanes Milton and Helene. Other aspects include the timing of ACP’s shutdown. His announcements led to a 9.5% drop in the company’s stock at market close, and it seemingly dragged **Charter**’s shares down as well with the operator closing down 9.2%. When questioned about fixed wireless providers and their ability to win with income-conscious households, Watson cited Now Internet as a new product that he believes is poised to win back those customers. While it is really early, the game plan now is to make Now Internet more prominent for that

segment of the marketplace. “The key to Now Internet is just making it super easy. I think one thing that fixed wireless has done well is they’ve made it easy. It is a pretty simple product, and Now Internet does the same,” Watson said. “Without a contract, it is just super easy to get, to install and activate. It is digitally driven... I think made for a segment that appreciates those features.” Comcast also made news Monday with **Warner Bros. Discovery**. The pair announced long-term agreements to bring WBD content to Xfinity and Sky UK and Ireland customers across linear television, apps and streaming services. The deals include renewals for linear cable nets including **ID, TLC, TNT, TBS, CNN, Discovery, Food Network** and **HGTV**. Comcast will have expanded rights to package the ad-supported versions of **Max** and **discovery+** in its streaming bundles, and Comcast will continue to offer WBD content as part of its NOW TV service.

FOX STILL BENEFITING FROM LINEAR BUNDLE

Fox Corp. CFO *Steve Tomsic* is taking **Comcast’s** decision to spin off a number of its cable assets as a vote of confidence in his C-suite’s strategic moves over the years. “It seems to be a nod toward focus and simplification, which is what we did five-and-a-half years ago when we split the company and Disney took two-thirds of the assets,” he said during a chat at the **UBS** Global Media and Communications Conference. “The other nod is I think the special position broadcast has with Comcast electing to continue to retain that as part of the bigger company. We continue to believe in the power of broadcast, but we think we’ve already got leadership positions in broadcasting, sports and news. I think the basis of competition, from a Fox perspective, whether it’s just the entity that gets spun or if that then leads to further transactions, doesn’t change much for us.” He also spoke to why Fox hasn’t invested as much in streaming as many of its peers, instead staying largely loyal to the linear bundle. Tomsic did acknowledge that Fox is in somewhat of a different position relative to other programmers given its heavy emphasis on news and sports, which continue to draw in mass amounts of viewers. “The bundle is still the best way for us to deliver our programming because we don’t have a mortgage over all the sports, so people want to watch our sports in combination with others. Being more loyal and having greater fidelity toward the bundle is actually serving our consumer, and being a part of the bundle, from a financial perspective, has saved us a bundle,” he said. “We haven’t spent billions of dollars in terms of creating these SVOD services, the investment in customer acquisition, the investment in programming to develop these services to compete with Netflix.” As for **Venu Sports**, its streaming jv with **Disney** and **Warner Bros. Discovery**, Tomsic remains optimistic about the company’s appeal of a preliminary injunction that blocked Venu’s launch and hopes to have more to say on the product in 1Q25.

MURDOCH BLOCKED FROM CHANGING FAMILY TRUST

Rupert Murdoch’s attempt to change the family trust and give his son **Fox Corp.** CEO *Lachlan Murdoch* complete control of his media assets has been rejected by Nevada Commissioner *Edmund Gorman Jr.* *The New York Times* was the [first](#) to report the news. Gorman Jr. argued Lachlan and Rupert had acted in bad faith in their move to try to change the trust, which currently divides the company evenly between Rupert’s four oldest children. This isn’t the final word on the matter. Instead, this is a recommendation to move to a district judge, who will accept or reject the recommendation.

TIKTOK FIGHTING FOR BAN DELAY

TikTok is still fighting against a law forcing its sale or ban in the U.S. unless it divests from Chinese ownership. On Monday, the team behind the social media app filed an emergency motion for an injunction to stop the ban from going into effect on Jan.19 until its appeal of the **D.C. Circuit’s** decision is reviewed by the **Supreme Court**. The filing argues against the shutdown of the app on the eve of a presidential inauguration, saying it would silence the 170 million Americans who use the platform each month. “Before that happens, the Supreme Court should have an opportunity, as the only court with appellate jurisdiction over this action, to decide whether to review this exceptionally important case. And an injunction is especially appropriate because it will give the incoming Administration time to determine its position—which could moot both the impending harms and the need for Supreme Court review,” TikTok said. It also argued there would be no meaningful harm to the federal government from a delay in the enforcement of the act, noting Congress itself delayed the effective date of the ban for 270 days. TikTok has requested a decision by Dec. 16 to ensure time to seek emergency relief from SCOTUS if necessary.

GOLDEN GLOBE NOMS REVEALED

The Golden Globe nominations are here with the 82nd awards ceremony to air live on Jan 5 on **CBS** and **Paramount+** in the U.S. (**Paramount+** with **Showtime** subscribers can watch it live or on demand, while Paramount+ Essential subscribers can view it the day after the special airs). While **HBO’s** “Succession” was the winner of Best Drama TV series last year, it doesn’t have any shows in the running for the category in 2025. Instead, it’s between **Peacock’s** “The Day of the Jackal,” **Netflix’s** “The Diplomat,” **Prime Video’s** “Mr. & Mrs. Smith,” **FX/Hulu’s** “Shogun,” **Apple TV+’s** “Slow Horses” and Netflix’s “Squid Game.” **HBO/Max** is up for “Hacks” in the Best Comedy/Musical category. It’s competing against **ABC’s** “Abbott Elementary,” **FX/Hulu’s** “The Bear,” Netflix’s “The Gentlemen” and “Nobody Wants This,” and Hulu’s “Only Murders in the Building.” For the Best TV Limited Series, Anthology or Motion Picture Made for TV, **HBO/Max** has two noms: “True Detective: Night Country” and “The Penguin.” Also nominated are Netflix’s “Baby Reindeer,” Apple’s “Disclaimer,” Netflix’s “Ripley” and “Monsters: The Lyle and Erik Menendez Story.”