

Testimony of Mr. John Ourand, Sports Correspondent, Puck News  
before the Subcommittee on Communications and Technology  
at a hearing entitled, "TV Timeout: Understanding Sports Media Rights"  
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The sports media market is defined by chaos right now. Faced with falling subscriber bases, traditional media companies have become much more judicious about where they want to invest their money. Deep-pocketed digital companies have remained disciplined about how much they want to pay for sports rights. The result has seen the most popular sports command the biggest pay increases for their media rights. The NFL nearly doubled its rights fee haul when it signed its most recent rights deals nearly three years ago. The NBA currently is negotiating its next deal, and by all accounts that league is poised to see a big increase.

But other leagues and conferences have found it difficult to negotiate such lucrative deals. Take the Pac-12, for example. Located on the West Coast, it's one of the most storied college conferences in the country, nicknamed the Conference of Champions because its schools have won more NCAA championships than any other college conference. The Pac-12 was unable to work out a television deal last summer, and the conference that boasts Cal, Washington, Arizona, UCLA and USC imploded. The schools decided to bolt to other conferences that had TV deals rather than stick with the Pac-12.

It's not just the Pac-12. Diamond Sports, the country's biggest owner of regional sports networks, filed for bankruptcy protection. The country's biggest soccer league, Major League Soccer, left the TV business for a deal from Apple when network bids were not big enough. NASCAR posted a 40 percent increase in its most recent rights deal, signed back in November. But it had to slice up its rights package and add three media companies (The CW, Amazon and TNT Sports, in addition to incumbents Fox and NBC) to push the rights fee up higher. And back in September, WWE saw its shares punished after it signed a rights deal with NBCUniversal at a 40 percent increase. Wall St. expected a much bigger increase. To be fair, earlier this month WWE signed another rights deal for a much more substantial increase.

The TV networks' newfound frugality marks a huge shift in the sports business and has the potential to disrupt the way leagues and conferences conduct their business. For the past three decades, leagues have grown to depend on the annual revenue increases they receive from media companies to help fund everything from player salaries to front office employees. As these media companies become more judicious about where to spend their rights fees, leagues and teams will have to prepare to see their rights deals move backwards. It's entirely possible that big leagues and teams will make less from media deals than they currently bring in - a situation they have not faced in nearly 30 years.

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Professional and college sports benefitted from the way the media business was structured more than any other groups. The rise of cable and satellite television proved to be such a boon to the sports business that it would be hard to dream up a more lucrative business plan. Cable and satellite operators pay TV networks based on the number of subscribers that they have - regardless of whether those subscribers watch the channel or not. That means that all the non-sports fans essentially subsidize sports channels for sports fans.

As they negotiated their deals, sports channels realized that they carried most of the leverage during negotiations. That's because of the passion sports fans have for their teams. Historically, if a cable operator were unable to reach a deal and had to drop a sports channel, sports fans proved to be more likely than other cable subscribers to find another provider. Cable and satellite operators quickly realized that they needed to keep sports channels up-and-running to keep subscribers from churning out. No other genre of programming - not kids channels, not entertainment channels - produced that kind of passion. That's the main reason that sports channels became the most expensive on cable and satellite systems. This led to a competition among networks that wanted sports programming. Broadcast networks started becoming more

aggressive to get sports rights, as a way to get cable and satellite operators to pay more for their channels. The added competition resulted in bidding up the fees leagues and conferences could get from networks. It is like buying a house. The presence of more than one bidder creates a bidding war that increases the value of the rights.

At the same time, leagues and conferences started to realize how important their media rights were to some of the biggest media companies in the country. That led most of the leagues to launch their own networks to ensure that they always had at least one more bidder in the market - a way to keep the networks honest. NFL Network, NBA TV, MLB Network, Big Ten Network, SEC Network - they all carry live games.

The pay-TV system worked out great for networks, leagues and cable and satellite operators for decades. The market could support these big fees as long as cable continued to gain subscribers. Leagues got more money from networks in rights fees. Networks got more money from distributors in carriage fees. And distributors got more money from subscribers by raising their monthly rates frequently.

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A decade ago, ESPN was in more than 100 million homes and looked like an unstoppable juggernaut that had relationships with every major sports league in the United States. But cracks in the pay-TV bundle began to emerge a decade ago. Streaming services like Netflix, Amazon Prime Video and Hulu were starting to get a meaningful number of subscribers. Non sports fans started cutting the cord, opting to watch entertainment programming via one of the streaming services, like Netflix. The pay-TV business started a slow, decade-long dip where it shed subscribers. That trend has grown faster recently. Today, for example, ESPN is in around 70 million homes. Its distribution lost roughly 30 million homes in less than a decade.

The new streaming services focused on entertainment rather than sports, which they viewed as too expensive at the time. Slowly, the big tech companies have dabbled in sports rights. The most well-known example is Amazon Prime Video, which picked up the exclusive rights to the NFL's "Thursday Night Football." Amazon also has signed small deals with NASCAR and the WNBA, among others. Apple signed a small deal for Friday night MLB games and bought the worldwide rights to Major League Soccer. YouTube holds the rights to the NFL's out-of-market Sunday Ticket package. And earlier this month, Netflix entered the live business by picking up the rights fees to WWE's most popular package, "Raw."

The problem is that the business model changes as sports go to streaming. Networks still benefit from a dual revenue stream of affiliate fees and advertising. Affiliate fees don't exist in the streaming world. While the big tech companies certainly can afford these rights fees - Apple, Amazon and Google are \$3 trillion companies, after all - the drop off in affiliate fees make it harder to profit off these packages in the same way.

The Big Tech companies all are approaching the market with different strategies appear to be happy with specific packages. Thus far, they don't appear to want to get all the rights of a various league. Other than Apple's deal with MLS, which is for the league's worldwide rights, other tech companies are taking smaller deals. Amazon, for example, had the opportunity to buy the rights to "NFL Sunday Ticket," which it could have paired with its exclusive Thursday night games. Amazon passed, and the out-of-market package eventually went to YouTube.

The tech companies aren't paying as much as the leagues had hoped. And the networks, faced with a declining affiliate revenue stream, are making hard choices about where to invest their money. Network executives will pay for popular sports that keep consumers as pay-TV

subscribers. The NFL, college football and NBA certainly fall into that category. They have such avid fan bases that networks have showed they will pay increases to carry that programming.

Increasingly, networks are using their own streaming services to help pay for these deals. CBS and NBC, for example, make their NFL games available on their streaming services, Paramount+ and Peacock. ESPN has said that it plans to make its full channel available direct-to-consumer by the summer of 2025.

The trend toward streaming is unmistakable. But even as networks and leagues continue to migrate more games to streaming services, the sports business still values the reach provided by traditional linear television. Every single NFL game will be available on broadcast television through 2033. Even the games on Amazon Prime and Peacock have to be carried by a local over-the-air channel in the markets of the participating teams. The NBA has made it clear that it wants to keep its NBA Finals on broadcast television. MLB and NHL playoffs will remain on traditional linear television throughout their contracts.

Given the collapse of many regional sports networks - Diamond Sports filed for bankruptcy protection and Warner Bros. Discovery got out of the business entirely - local market rights already have seen a move to traditional broadcast, with local station owners like Scripps and Nexstar picking up team rights.

For the next several years at least, league and network executives both expect to see a hybrid approach where games continue to coexist on both traditional linear television and streaming. The concept of exclusivity will not be as strict, with games available on both platforms as the business waits to see how the market shakes out..