



**Written Statement of Rob Thun**

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**Before the House Energy and Commerce Committee**

**Subcommittee on Communications and Technology**

**“TV Timeout: Understanding Sports Media Rights”**

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I want to thank subcommittee Chairman Latta, Ranking Member Matsui, and all the members of the subcommittee for the opportunity to testify today on the evolving marketplace for sports rights. I appreciate the opportunity to talk with you on behalf of DIRECTV and its millions of subscribers, many of whom are your constituents.

I’m Rob Thun and I am the Chief Content Officer at DIRECTV. I am responsible for the acquisition of all programming that is carried across DIRECTV’s various services, including the sports programming that we carry. DIRECTV has built its business in large part on sports. We understand, perhaps better than most, that everybody in the sports “value chain”—from leagues to teams to distributors of all stripes—has a special obligation to fans and viewers. Sports, in other words, is more than just a business to us. So I am especially happy to see this subcommittee take up these issues.

One of the most pressing issues facing the video industry is the migration of key sports programming from pay-TV to the “direct-to-consumer” offerings of the largest programmers, like Peacock, Amazon, and Warner Media.<sup>1</sup> We know from the NFL’s experiment in giving Peacock exclusive rights to the Miami

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<sup>1</sup> Such migration includes the NFL’s Thursday Night Football on Amazon, NFL regular season and playoff games on Peacock, an NFL game exclusively on ESPN+, Major League Baseball Friday night games on Apple, New York Yankees games on



Dolphins-Kansas City Chiefs playoff game that such offerings cause customer anger and confusion. People don't like having to hunt for the big game across multiple services. People *especially* don't like paying twice for programming they used to get for a single fee from pay-TV. And bars, restaurants, and other businesses can't always cobble together the various online services needed to catch the games their patrons want to see, as our business customers discovered when they couldn't show the Peacock-only playoff game. This ultimately disrupts the economics of sports because it makes pay-TV less valuable to subscribers, which in turn endangers the leagues and their partners.

I would like to focus the majority of this testimony, however, on difficulties facing Regional Sports Networks (also known as "RSNs") and the corresponding migration of RSN programming to over-the-air broadcasters. This shift may strike some observers as a good thing, at least initially. I want to suggest, however, that this migration may not be such a good thing for the American people. It will make some local sports programming unavailable to many who receive it today. And it will drive up prices for our entry-level programming package, forcing those uninterested in sports to pay for it.

The migration of programming both from pay-TV to direct-to-consumer offerings and from RSNs to broadcasting threatens the long-term viability of the entire video ecosystem—including broadcasting. People usually switch from pay-TV either because they can't get the programming they want or because they are asked to pay unreasonable rates for programming they don't want. If this happens, broadcasters, teams, and leagues will have to find a replacement for pay-TV revenues, which have supported broadcasting and sports alike for years. Nobody yet knows how they will do so. Absent a solution that involves all of us working together, I don't know how the American public will continue to receive the wealth of sports programming it has come to expect.

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Apple, Major League Soccer exclusively on Apple (with a handful of games simulcast on FOX), and NHL's out-of-market "Center Ice" package unavailable on online providers other than Hulu Live and ESPN+.

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## I. Broadcasters Have Recently Obtained Sports Rights Formerly Belonging to RSNs.

DIRECTV has been a leader in sports programming since its inception. We built our business largely on this foundation. Indeed, we and other pay-TV providers brought sports to Americans like no one before us. This, in turn, drove awareness, passion, and revenues—revenues that supported leagues, teams, and players.

Today, some of the most important sports programming can still be found on network television, like (most of) the NFL playoffs and the World Series. Some can be found on national cable channels like ESPN and TBS. And, more recently, some can be found only on direct-to-consumer products like Peacock, Paramount+, and Amazon Prime. As others will discuss in more detail, direct-to-consumer products have both upsides and downsides.<sup>2</sup>

Perhaps the most sports programming, however, resides on regional sports networks—especially baseball, basketball, and hockey. As the name suggests, RSNs operate regionally, not nationally like ESPN or the ABC, CBS, FOX and NBC networks. Here in Washington, there are two RSNs: Monumental Sports Network, which carries the Mystics, the Wizards, and the Capitals, and MASN, which carries the Nationals and the Orioles. DIRECTV carries 31 RSNs throughout the country,<sup>3</sup> and RSNs remain the way most fans watch most of their local teams. If you are a sports fan, you probably spend a lot of your viewing hours watching RSNs. But not everybody is a sports fan—very few pay-TV subscribers watch an hour or more of

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<sup>2</sup> Among the downsides of direct-to-consumer offerings from a consumer perspective are these three: First, consumers must acquire many such offerings to match the coverage provided by a traditional pay-TV subscription. Second, it can be difficult for a consumer to find individual teams and games among many such subscriptions. Third, consumers with a pay-TV service often end up paying twice for the same programming.

<sup>3</sup> This number may change in light of the shifts and bankruptcies described herein.

RSN programming per month. For this reason, DIRECTV carries RSNs on a higher-tier “Choice” package. This means that those customers who prefer not to watch such local sports do not have to pay for it.

RSNs were a highly successful businesses for many years, in large part due to carriage from distributors like DIRECTV. But they have struggled lately. As their rights to carry teams have grown more and more expensive, RSNs have themselves become so expensive that some distributors (like DISH) have chosen to no longer carry them—while new distributors like Hulu Live and YouTube TV largely decided not to offer them in the first place.<sup>4</sup> This, in turn, threatens the continued success of teams, leagues, and players. Those distributors that do carry them, like DIRECTV, have resorted to recouping these higher fees through specific surcharges—in part so subscribers understand why their bills have gone up. Yet this hasn’t been enough to steady the RSN business.

Today, RSNs are stuck between a rock and a hard place: facing ever-increasing rights fees from teams and leagues and a shrinking potential subscriber base. One RSN, the Diamond Sports Group filed for Chapter 11 bankruptcy as a vehicle to reorganize its RSNs. Others have shut down RSNs and returned rights back to the leagues of the respective teams they carried.

In the wake of these difficulties, some broadcasters have obtained sports rights previously held by RSNs. Scripps, for example, will now carry the Arizona Coyotes and the Las Vegas Golden Knights on its broadcast stations. Gray will carry the Phoenix Suns on its Phoenix and surrounding stations. And Gray will

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<sup>4</sup> One exception to this is the group of RSNs owned by NBC, which are carried on HuluLive and Fubo, which carries most RSNs. Gina Amora, *Virtual Multichannel Packaging Update: Sports Networks*, S&P Global (Mar. 13, 2023), <https://www.spglobal.com/marketintelligence/en/news-insights/research/virtual-multichannel-packaging-update-sports-networks>.



carry some Atlanta Hawks, New Orleans Pelicans and Oklahoma City Thunder games on its various broadcast stations. Likewise, Sinclair will carry the Utah Jazz on its Salt Lake City and other stations.

## **II. The Shift from RSNs to Broadcasting Will Harm Many Viewers.**

Some of you might be inclined to think that the shift from RSNs to over-the-air broadcasters is a good thing. This is certainly the broadcasters' story. After all, what could be better for consumers than "free" over-the-air distribution of sports? Yet there is no free lunch and there never has been. Broadcast distribution of sports programming doesn't mean "everybody gets sports for free." To the contrary, it means that many people who now get local sports won't be able to do so. And it means that many who do not want to pay for local sports will have to do so as part of their pay-TV "entry-level" programming packages.

### **A. Many People Will Lose Sports Programming.**

Today, any DIRECTV subscriber subscribing to an appropriate programming package and located within an RSN's "territory"—that is, the area in which a team authorizes the RSN to carry its games—can receive the RSN. Not all of these subscribers can receive these same games if carried by broadcasters.

First, and contrary to what broadcasters will tell you, not everybody can receive over-the-air broadcast signals. Tens of millions of people live too far from a broadcast tower to receive such signals. This, indeed, is why cable operators built the first cable systems in the 1950s.<sup>5</sup> Many more live in areas in which they can only receive broadcast signals with expensive rooftop antennas. And yet more don't own over-the-air antennas of any kind.

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<sup>5</sup> Some may remember years of fights between satellite carriers and broadcasters about the provision of so-called "distant signals" to "unserved households" that could not receive local signals over the air.



The borders within the map show television markets. They show that many different television stations serve that same territory—some owned by Sinclair, some not. If Sinclair acquired rights to the Capitals from Monumental, non-Sinclair stations would have no ability to distribute Capitals games unless Sinclair were to decide to “sublicense” its Capitals rights to these other stations’ owners (if its deal with the NHL allowed it to). Unless and until that were to happen, people living in those areas couldn’t watch Capitals games over the air.

Likewise, some of the television stations depicted on the map have service areas<sup>7</sup> that are only *partially* within the Capitals territory assigned to Monumental Sports by the NHL. Those stations likely could not carry Capitals games because the NHL won’t let Capitals games be shown in the territories of other NHL teams like the Flyers and the Predators. People living in those areas couldn’t watch Capitals games over the air either.

In our hypothetical, many people won’t be able to receive Capitals games over the air. But what about on DIRECTV? The answer is the same.

Here again, the maps help show why. Capitals games would have to be carried on many different television stations to approximate the geographic coverage of a single RSN. What kind of stations? *Not affiliates of the “Big Four” ABC, NBC, CBS and FOX networks.* Those networks all have “preemption” rights, meaning that stations generally must carry network programming in prime time—and thus couldn’t show prime time Capitals games instead.

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<sup>7</sup> These services area are called designated market areas, or “DMAs.” Nielsen Media delineates DMAs and adjusts them from time to time.



This leaves two kinds of solutions open to any broadcaster wanting to carry the Capitals (in our hypothetical, either Sinclair itself or a sublicensee). It could put Capitals games on its stations affiliated with no network or possibly on smaller networks like CW, which may not have preemption rights. Or it could put Capitals games on a secondary, “multicast” feed of its “Big Four” stations. So, for example, if Sinclair’s Richmond Fox affiliate is on Channel 34, it could put Capitals games on that station’s multicast feed, found on Channel 34.1.

Here’s the problem. *DIRECTV generally does not have the technical infrastructure necessary to carry multicast feeds on its satellites.* And even if DIRECTV could find room on its system for one or two new feeds, it certainly would not have room to add multiple new multicast feeds from multiple stations, each carrying a single team. (For a brief explanation why this is so, please see the Appendix). This means that, in our hypothetical, DIRECTV subscribers could not receive Capitals games carried on broadcast stations as multicast feeds

I want to be clear here. Capacity difficulties do not mean that DIRECTV *can never* carry a single RSN feed anywhere. In the handful of cases so far, for example, we’ve worked out some creative solutions with broadcasters—including with Scripps—to permit us to carry RSN programming to more subscribers than otherwise might have been possible. But these solutions will not work everywhere, or on a very large scale. They are, by definition, “bespoke” to a certain geographic area, which makes it difficult for customers nationwide to understand them and for our customer service representatives to explain them. And, of course, they depend in large part on reasonableness of the broadcaster; but many broadcasters have not been known for their reasonableness lately.

So here’s the bottom line: *many people who happily watch their local teams today will not be able to do so if broadcasters obtain former RSN distribution rights.*



**B. People Who Don't Like Sports Will Pay More For RSN Programming.**

Above, I described how many people who want sports programming will be unable to get it when carried by broadcasters. But what about those who *don't* want sports programming? Unfortunately, many of them will end up paying for sports they don't pay for today.

This may seem counterintuitive. Every broadcaster that obtains sports programming will want to charge for it. And this may seem only natural and fair. After all, distributors like DIRECTV now pay Monumental Sports to carry the Capitals. Why shouldn't they pay Sinclair for the same thing?

To understand why, one must understand how we now distribute RSNs. Again, RSNs are very valuable to those who do watch them—but most people don't. So we have worked very hard over the last several years to *not* have to offer RSNs to our entire subscriber base. Today, DIRECTV puts all of its RSNs on its "Choice" tier, a relatively high, more expensive programming package, so only people who want sports must pay for them. In other words, we now align RSNs better with their actual demand.

DIRECTV puts its broadcast stations, by contrast, on its lower "Select" or "Entertainment" packages, which go to the vast majority of subscribers.<sup>8</sup> So when Capitals Games are on Monumental Sports, people who don't like sports don't have to pay for those games—they can simply subscribe to the less expensive "Entertainment" package. But if DIRECTV were to carry those same Capitals games on Sinclair's broadcast stations, nearly all of its subscribers in those areas would have to subscribe to a package containing the games. And each such subscriber would have to pay more for this package, as DIRECTV would seek to recoup

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<sup>8</sup> DIRECTV is phasing out its "Select" package, so the "Entertainment" package will be DIRECTV's most basic package going forward.



higher broadcast costs from its entire subscriber base, not just those now willing to pay for sports on the “Choice” package.

Here again, solutions are possible if broadcasters are reasonable—and a handful of broadcasters have proven willing to at least discuss creative solutions. Yet we do not know how broadcasters will act if RSN rights move to broadcast on a larger scale. And if they are not reasonable, *everybody*—including your cousin in Richmond or your grandmother in Charlottesville who don’t like sports at all—will have to pay more for their DIRECTV Entertainment package.

### **III. Shifts of Programming Away from Pay-TV Threatens the Viability of the Sports Ecosystem.**

My testimony thus far describes how the migration of RSNs to broadcasting will make certain classes of consumers worse off—those who can no longer receive sports programming but want it and those who do not want it but will have to pay for it. Yet there are *systemic* problems with this migration as well—problems that may well threaten the continued viability of our sports ecosystem.

DIRECTV pays for broadcast programming through “retransmission consent” fees. And I’m sure all of you know that broadcasters have increased such fees exponentially over the last few years. Retransmission consent fees have increased by more than 1,500 percent since 2010 with no signs of slowing. At some point very soon, the fees broadcasters seek for their programming will exceed the value distributors receive from carrying it—no matter how important that programming is. You are already beginning to see distributors choosing not to carry such programming at the prices demanded.

Now, however, broadcasters have begun to obtain RSN content—*very expensive* RSN content. They will find themselves forced to demand yet higher retransmission consent fees to recoup those costs. Thus, to take our hypothetical, if Sinclair were to put Washington Capitals programming on its CW affiliate, it would seek to raise the price for that affiliate on the theory that the CW affiliate is now more valuable to

distributors. Likewise, if Sinclair were to put Capitals games on a multicast feed, it would seek to raise the price of that feed, for much the same reason.<sup>9</sup> Distributors, in other words, will face even higher fee demands for broadcast stations and feeds carrying the Capitals than they did for such stations or feeds without the Capitals.

Yet we know that not everybody cares about the Capitals or would be willing to pay more for Capitals games. If DIRECTV were to accede to higher retransmission consent prices, non-sports fans would be more likely to discontinue DIRECTV service. The addition of former RSN programming exacerbates problems in the video industry more generally: pay-TV costs go up, subscribers churn, programmers try to make up the lost pay-TV revenues by raising prices which causes additional pay-TV subscribers to churn, *etc.*

The same type of vicious circle, of course, occurs when sports rights shift from pay-TV to direct-to-consumer offerings like Peacock. Pay-TV value goes down (because it no longer offers all the games), subscribers churn, programmers try to make up revenue by moving yet more programming to their own (not-yet-profitable) direct-to-consumer platforms, pay-TV value goes down, more subscribers churn, *etc.*

What happens if this spiral continues? Nobody knows. But unless pay-TV finds a way to offer the full range of sports to those who want them and fewer sports to those who do not, I do not see how the sports ecosystem—or for that matter the broadcast industry itself—survives. Pay-TV subscribers have largely funded both sports and broadcasters for years. If we cannot continue to offer our subscribers compelling content for a reasonable price, sports leagues and broadcasters will have to find their funding elsewhere, and I do not know where they will do so.

DIRECTV and others have urged Congress and the FCC to adopt retransmission consent reforms for years. The migration of sports programming from RSNs to broadcasters only increases the need for such

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<sup>9</sup> If DIRECTV were to try to resist such price increases, Sinclair would likely threaten to withhold its Big Four network programming from DIRECTV.



reform. Broadcasters rely today on retransmission consent payments from distributors like us to survive. They will surely seek yet higher payments as they spend more of their resources on new sports rights. This simply won't work without reform. All of us—Congress, the FCC, broadcasters, and distributors—must work together to ensure that the marketplace that has delivered an unprecedented wealth of sports programming to the American people remains viable.

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Thank you again for asking me to testify today. I hope that it is very clear that the migration of sports from RSNs to broadcast stations is not a panacea—and, indeed, will likely make things worse in important respects. I would be happy to answer any questions you might have.

## Appendix: DIRECTV Spot Beam Architecture and Multicast Carriage

Satellite providers offer their *national* programming like ESPN over a single satellite beam covering the entire country. This is an extremely efficient way to carry national programming. It is also a terrible way to carry local programming. A satellite provider could never fit all 1,700 local channels on its nationwide beam. And it would be irrational to devote capacity on a beam covering the entire United States to a local station that the satellite provider may generally only offer within the station’s local market. This is why satellite providers did not initially carry local channels.

Instead, satellite providers offer local television stations on smaller “spot beams” tailored to cover individual local markets. Each of these spot beams uses a limited number of radio frequencies—and such frequencies are reused in different areas throughout the United States. (The idea here is to reuse radio frequencies in different areas. Suppose you drive from Indianapolis through St. Louis and Kansas City to Denver. WTLC-FM is at 106.7 in Indianapolis. No station is at 106.7 in St. Louis or Kansas City. KWBL-FM is at 106.7 in Denver. That is, Denver is far enough away from Indianapolis that 106.7 can be “reused” in both cities.)

Since spot beams use a narrower band of radio frequencies than does the nationwide beam, capacity to carry stations on spot beams is extremely limited, as the FCC has repeatedly recognized. *See, e.g., Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission’s Rules; Implementation of the Satellite Home Viewer Improvement Act of 1999: Local Broadcast Signal Carriage Issues and Retransmission Consent Issues*, 23 FCC Rcd. 5351, ¶¶ 8–11 (2008). DIRECTV designed its system many years ago to carry only existing stations with very little room for additional new stations on its spot beams. That leaves little to no room for carriage of other stations or feeds, depending on the spot beam in question. This is why DIRECTV generally does not carry multicast feeds today.



Even if DIRECTV could find room on a spot beam for *one* multicast feed, this still would not be a solution. To begin with, the migration of sports from RSNs to teams is likely to create *many* new multicast feeds for which DIRECTV would have to find room. Many spot beams cover more than one DMA. Suppose a spot beam covers three DMAs—say, Washington, Baltimore, and Richmond from the map above. Now suppose the Capitals, the Wizards, the Mystics, the Nationals, and the Orioles each cut deals with different broadcast stations for multicast carriage in those markets. DIRECTV would have to find room for *fifteen* new programming feeds on that spot beam, which it could not possibly do.

Second, DIRECTV has explained to broadcasters that it generally cannot carry multicast signals because of its system architecture, an explanation that broadcasters have historically accepted. Broadcasters, in their turn, often insist on most-favored nation protection with respect to multicast carriage. DIRECTV thus may not be able to launch a *single* new multicast feed in most or all DMAs because of contractual obligations to other broadcasters.