

# Cablefax Daily™

WHAT THE INDUSTRY READS FIRST

## Technical Foul: NBA Files Motion to Dismiss WBD Lawsuit

The **NBA** asked the New York Supreme Court to dismiss the lawsuit from **Warner Bros. Discovery** which sought to act on a matching rights clause that'd keep it as one of the league's media partners.

On Friday, the NBA filed a 28-page motion to dismiss the complaint with prejudice, primarily citing that **TBS**/WBD fundamentally changed the terms of the offer it matched that came from **Amazon**. The league said its 2014 agreement with TBS included the matching rights exhibit (MRE), but it specified that the matching rights must also agree to distribute the games in the same manner. With Prime Video not being a linear net and TBS having wanted to distribute games on linear via **TNT**, the league said TBS doesn't have the right to match the offer nor change the method of distribution.

"Beyond these infirmities, the Complaint should be dismissed because TBS plainly failed to match 'each term' of Amazon's offer, as the MRE unambiguously required," the motion said. "Excluding ministerial changes to party names and addresses, TBS made substantive revisions to eight of the Amazon offer's 27 sections (including revisions to 22 different subsections), changed 11 defined terms that are collectively used roughly 100 separate times, struck nearly 300 words, and added over 270 new words, substantially altering the parties' rights and obligations in the process."

One of the changes included the financial payments made un-

der the deal. Amazon's agreement is an estimated \$1.8 billion per year, and it agreed to maintain an escrow account from which the rights fees will automatically be paid to the NBA as they become due over the course of the 11-year term. The league said TBS removed that provision and substituted it with syndicated letters of credit that the league can access if TBS' payments are late.

TBS further edited the agreement to give itself the option to distribute games on TNT, **Max** or both, striking the "streaming-only" aspect of the package. But the MRE included in the NBA and TBS' 2014 deal states, "In the event that an Incumbent Matches a Third Party Offer that provides for the exercise of Game Rights via any specific form of combined audio and video distribution, such Incumbent shall have the right and obligation to exercise such Game Rights only via the specified form of combined audio and video distribution," later including a specification that if the specific form is internet distribution, an incumbent "may not exercise such Game Rights via television distribution."

There were changes in the promotional aspects of Amazon's terms as well. Amazon agreed to promote NBA telecasts on **Prime Video**'s "Thursday Night Football" streams. TBS substituted that it'd promote NBA games on other major sporting leagues that are broadcast or streamed on TNT and Max.

Though it may not be able to match a streaming-only option, TBS and WBD could've matched **NBCUniversal**'s offer that came in at a rumored \$2.45 billion per year. The league said TBS "did not even attempt to match" NBCU's offer and matching that deal would've enabled TBS to put games on TNT.



**EXTENDED  
DEADLINE:  
SEPTEMBER 16TH**

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"If TBS wanted linear television distribution rights, it could have matched a separate, more expensive third-party offer from NBCUniversal ... but TBS elected not to do so, attempting instead to save billions of dollars by combining Amazon's lower price with the linear television rights granted to NBCU. The MRE did not give TBS that option," the motion said.

Tucked in at the end of the motion is also the claim that despite WBD being TBS' parent company, WBD can't enter breach-of-contract claims against the league due to WBD not being a party in the agreement. TBS/WBD will have until Sept. 20 to respond to the motion, and the NBA will have until Oct. 2 to provide further support for the motion to dismiss.

"If the NBA can demonstrate legitimate business reasons for each of the items spelled out in the Amazon contract (regardless of how onerous they are for WBD to match), WBD faces a steep uphill battle to enforce its matching rights," **LightShed** said in a note. "WBD will need to show substantial case law to support its attempted match, which nullifies all the NBA's matching issues, otherwise a dismissal (sic) feels likely before year-end 2024."

## SIXTH CIRCUIT SETS DATE FOR TITLE II ORAL ARGUMENTS

It's no trick, but we're not sure if it's a treat. The Sixth Circuit Court of Appeals has scheduled oral arguments in the challenge of the **FCC's** Title II order for Oct. 31 at 8:30am. The industry petitioners—which include **NCTA**, **USTelecom** and **ACA Connects**—will get 20 minutes for arguments as will the government respondents. The hearing is set before a three-judge panel in Cincinnati, but the names of the judges won't be released until they are posted on the court calendar two weeks before the hearing. The FCC rules returning broadband to a Title II regulatory regime were originally set to go into effect on July 22. However, the Sixth Circuit granted broadband providers' request for a stay of the rules pending their legal challenge, declaring that the ISPs have shown their likely to succeed on the merits of their challenge.

## REPORT: AMAZON WALKS AWAY FROM DIAMOND

The curveballs keep coming for **Diamond Sports**, with **Sports Business Journal** [reporting](#) Monday that **Amazon** has pulled its \$115 million investment in the parent company of **Bally Sports** RSNs. Amazon announced a plan in January to make a minority investment in the company and enter into a commercial agreement to offer games carried on Diamond's RSNs on Prime Video. That appears to be out the window, **SBJ** reports, citing multiple unnamed sources. The pub said it appears to only have delayed

Diamond's plan to re-emerge from bankruptcy. On Friday, the company revealed in court filings that it has struck deals with the **NBA** and **NHL** to broadcast 22 teams this season (it's stepping away from contracts with the Dallas Mavericks and New Orleans Pelicans, something described as a mutual decision in the court docs). The leagues and Diamond modified their existing agreements, but financial terms weren't disclosed. A hearing is slated for Sept. 3, with the court needing to bless the league deals. As for how to watch Mavs and Pelicans games, the NBA said more details would be coming soon. The Pelicans have inked a multi-year deal with **Gray TV** for games, but it's unclear where the Mavericks games will air.

## PARAMOUNT EXPLORING STATION SALES, PER REPORT

As the **Paramount Global** ownership fiasco continues, the company is supposedly moving forward with sales to generate more cash, according to a [Bloomberg report](#) citing people familiar with the matter. Paramount hired a bank to help evaluate options, which includes the possible offloading of 12 TV stations that it considers non-core. The stations would span markets such as New York, Philadelphia, Dallas and Tampa, and could garner from \$500 million to \$1 billion in total. Things are still in the early stages, though, and it could still be several months before a sale is finalized.

## FCC SEEKS USF STAY

The **FCC** has asked the Fifth Circuit Court of Appeals to stay its mandate finding that the agency's mechanism for funding USF is unconstitutional. The FCC made the request because of a forthcoming petition from the Solicitor General seeking review of the decision. It wants the court to rule on the motion by Sept. 9 to afford the Solicitor General sufficient time to determine whether to seek a stay from the Supreme Court in the event this motion is denied. The motion is unopposed provided the government files its petition for certiorari by Sept. 30. On July 24, in a petition for rehearing en banc, the Fifth Circuit [found](#) the funding mechanism unconstitutional and remanded the case to the FCC. Without a stay, the court's mandate is set to issue on Sept. 16.

## GROUPS WANT MORE TIME FOR FCC BROADBAND MAP COMMENTS

**CTIA**, **USTelecom** and **Competitive Carriers Association** have filed a joint request for a three-week extension of the deadline to comment on the **FCC's** proceeding to update Broadband Data Collection (BDC) procedures and propose modifications to the

National Broadband Map. The trio want the FCC to push back the comment deadline from Sept. 16 to Oct. 7, with replies to be moved from Oct. 15 to Nov. 5. The associations noted that experts at their member companies are currently prepping the next BDC filing due Sept. 3, which means they are unable to fully dedicate the resources to responding to the FCC docket, particularly with the Labor Day holiday also part of that time. When it comes to updating the broadband map, **Pew Charitable Trusts** is urging the FCC to coordinate with state broadband offices. "The precise programmatic demands of BEAD have created a tension between the data states are collecting to determine grant eligibility and the information needed to improve the national broadband map," it told the FCC in recent comments.

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## DNC RATINGS

The final night of the Democratic National Convention in Chicago reeled in an estimated 26.2 million followers across 15 networks, making the DNC's total estimate across four nights to 87.2 million. Online platforms reached 21.3 million views over the four days. **MSNBC** led primetime viewership during the DNC's run from Aug. 19-22, averaging 5.19 million total viewers and 888,000 A25-54, according to **Nielsen**. **CNN** averaged 3.39 million viewers and 878,000 A25-54, while **Fox News** checked in with 2.42 million total viewers and 356,000 A25-54. Fox News' "The Five" averaged 3.2 million viewers and 352,000 A25-54, which topped **ABC**, **NBC**, **CBS**, **CNN** and **MSNBC**'s 10-11pm coverage during the DNC.

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## AT&T SETTLES WITH FCC ON 911 NOTIFICATIONS

**AT&T** is the latest to settle an **FCC** investigation into whether it failed to deliver 911 calls, and to timely notify of the outage. It relates to events on Aug. 22, 2023. AT&T will implement a three-year compliance plan and will pay a \$950,000 civil penalty. Last month, the Commission announced a \$15 million settlement with **Charter** related to its investigation into compliance with 911 and network outage notification rules.

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## BOOST MOBILE TEAMS WITH UNIVERSITY OF COLORADO

**Boost Mobile** will become the University of Colorado's official wireless provider through 2027. The partnership includes game-day ads, activations, meet-and-greet opportunities with **Coach Deion "Prime" Sanders**, giveaways and on-campus events. Boost Mobile is releasing a new exclusive Coach Prime-branded device tomorrow, dubbed the moto g Coach Prime. It follows the razr Coach Prime released in April.

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## FRONTIER'S SPEED BOOST

**Frontier** rolled out 7 Gig fiber internet across its entire foot-

print. The 7 Gig package begins at \$299.99/month with autopay for 12 months, coming with free installation, a three-year new-technology upgrade and WiFi security. The company said over 60% of new fiber customers signed up for speeds of 1 Gig or faster in 2Q24, with more than half purchasing at least one other service that requires additional bandwidth.

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## FREEWHEEL, PROXIMIC TARGET PRIVACY FOR CTV

**Proximic**, a division of **Comscore** that specializes in audience targeting solutions for programmatic activation, is partnering with **FreeWheel** to strengthen privacy-focused ID-free audiences for connected TV. The two's solution will allow publishers to access monetization tools more quickly while also allowing buyers to reach targeted audiences at scale across premium CTV content. Proximic's data will integrate directly into FreeWheel's ad management platform, which will help enable inventory packaging against high-demand segments like interest and purchase-intent behaviors. **Paramount** is the first company to pick up the new offering, and it'll become available for other publishers later this year.

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## PROGRAMMING

**Comedy Central** set Sept. 25 as the premiere date for highly anticipated animated series "Everybody Still Hates Chris." It's a reimagined version of executive producer **Chris Rock**'s autobiographical series "Everybody Hates Chris," which ran on **UPN** and **The CW** from 2005 to 2009. Rock will return, voicing "Adult Chris." He will be joined by original cast members **Terry Crews** and **Tichina Arnold**. – **Great American Family** will host its third Great American Rescue Bowl on Feb. 9, which is also the 20th anniversary of International Dog Day. The event is designed to raise awareness for pet adoption and is in collaboration with North Shore Animal League America, the world's largest no-kill animal rescue and adoption organization.

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## PEOPLE

**Mike McQuade** is taking over as EVP, Sports Production for **ESPN** as part of a shakeup of the company's content group. He first joined ESPN back in 1987 and most recently was the producer for tennis, NHL, boxing, golf and "Sportscenter with Scott Van Pelt," which he helped create. ESPN's digital, social and streaming will be streamlined under **Kaitee Daley**, SVP, Digital, Social and Streaming Content. Head of Digital Content and Audience Expansion **Freddy Rolón** will oversee the combination of ESPN's international production team and **ESPN Deportes** and International Editorial teams, along with business operations for ESPN International. Additionally, EVP, Executive Editor, Sports News & Entertainment **David Roberts** will now oversee sports news and entertainment. – Former **ESPN** and **F1** exec **Sean Bratches** was tapped as the new Chairman for **Relevant Sports Group**, a soccer event company and owner of the International Champions Cup.