



**Testimony of John Bergmayer
Legal Director
Public Knowledge**

**Before the
United States Senate
Committee on Commerce, Science, and Transportation**

**Hearing on:
“Field of Streams: The New Channel Guide for Sports Fans.”**

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Streaming video has benefited viewers in many ways, and the prevalence of cord-cutting backs that up. Millions of Americans have discovered that they can get the content they want more cheaply and conveniently through streaming services than with traditional multichannel video programming distributors (MVPDS) like cable and satellite TV providers.

With online video, people can pick and choose services, instead of being forced into bloated cable bundles. They can watch video on many different kinds of device, inside the home and outside of it, instead of being limited to rented cable set-top boxes. Online video also gives diverse content creators an opportunity to reach audiences in ways that were not possible when broadcast and MVPDs were the main source of video programming.

When it comes to sports, streaming has brought benefits as well. It's easier for fans to watch out-of-market games, and streaming platforms can integrate sports-specific features (like MLB's Gameday) that are not possible on broadcast or cable. It's also easier for viewers to access sports content outside of the major professional leagues and collegiate conferences. Major services like ESPN+ carry sports like Ultimate Frisbee and Lacrosse. Organizations like the Professional Darts Association provide their own video content online. Apple distributes Major League Soccer, and Formula One racing is finding a larger audience in the United States in part due to the success of "Drive to Survive" on Netflix. HBCU Go offers easy access to collegiate sports from Historically Black Colleges and Universities.

But the transition to streaming hasn't been entirely smooth. The proliferation of streaming services, and the fragmentation of content between them, means that the costs of watching streaming video are rising, and for many people can approach what they were paying on their cable bill. Some viewers feel like they finally broke free of the cable bundle only to watch it re-forming between their eyes. New major video apps are launched, shut down, and rebranded on

a regular basis, and people might sign up to a service to watch particular content only to have it disappear without warning.

Having to set up and remember various accounts, having to download and sign in to a proliferation of apps (often from content providers that have no clear brand identity or specialization), and having to track a number of monthly subscription payments can be a burden on viewers. A number of businesses have even sprung up that promise to help people manage their increasing monthly subscriptions. Streaming apps can be buggy, and apps from different services might work and be organized differently from each other. Many apps do not support “universal search” features even if they are available, meaning that users looking for something to watch might spend more time flipping between apps than people used to spend flipping between channels. There is simply no one place to look to figure out where to watch what you want.

Some user experience problems with online video can be quite pronounced with sports. To watch MLB Baseball, for instance, a fan might need to subscribe to Apple TV+ and MLB.tv as well as a traditional cable or satellite multichannel video programming distributor (MVPD) or a “virtual” MVPD (vMVPD) like YouTube TV or Fubo—and even then, carriage of Regional Sports Networks (RSNs) or sports channels like the MLB or NHL Network by MVPDs and vMVPDs is far from universal, and sports-specific channels have frequently vanished from subscriber’s lineups, even mid-season. With traditional TV, even when games might be on different networks on different days, at least a fan could simply switch channels. Watching games now requires that a fan have a compatible device, a fast broadband connection, an account (free in some cases, not in others) with each service, and the ability to download and configure an app for each service. All of this might be fine for the early adopters of online video. But we’re

well past that point. Watching sports online has a few other sour points as well. Confusing and fan-hostile blackout rules mean that games available online in one market may not be available in another. Due to inadequate broadband or weak WiFi in the home, video quality might be poor. Online sports streaming may also be significantly laggy, meaning that viewers might be watching events that are seconds or minutes behind real time. In the days of live reactions to games on social media, this means that a viewer may find out what happens in a game on X or Bluesky before seeing it on screen.

The rise in streaming and cord-cutting is undoubtedly a cause of consumer frustrations, even outside of streaming itself. Shifts in the economics of sports, such as the dispute between Altice-owned Optimum cable and the MSG Networks channel, are downstream of cord-cutting and the rise of online video, as the media deals that have been the backbone of the industry for many years need to be re-thought and renegotiated. That dispute is now resolved, but the Attorneys General of New York, New Jersey, and Connecticut got involved, with New York Attorney General Letitia James noting that “New York sports fans are being put in the penalty box, forced to shell out their hard-earned money for television channels they cannot even watch.”¹ Fan frustration in this area is particularly acute because many games that were once available on free-over-the-air broadcast are moving to paid streaming services. It should not be lost in this discussion that millions of viewers still primarily watch TV through broadcast, cable, and satellite—older viewers in particular, who may have lifelong attachments to particular teams, whose games are now a puzzle for them to find. And, even with the rise of streaming, sports like

¹ Ariel Zilber, NY, NJ, and Connecticut AGs Hit Optimum With Ultimatum as MSG Blackout Frustrates Customers, NY Post (February 6, 2025), <https://nypost.com/2025/02/06/business/new-york-new-jersey-and-connecticut-ag-demand-optimum-lift-msg-black-out>.

Women's College Basketball are setting viewership records on traditional pay TV. These viewers should not be left behind.

It's also important to understand that the current market structure is not a consequence of a free market, but rather the result of decades of regulatory arbitrage and market power exploitation. Regional Sports Networks (RSNs) emerged not from natural market evolution but as a way for cable operators to evade program access rules. Comcast created the first RSN in Philadelphia specifically to exploit the "terrestrial loophole" by delivering programming terrestrially rather than by satellite, thus avoiding federal regulations.

The following years saw a series of power plays involving major cable companies, RSNs, teams, and leagues, where sports programming was used as a competitive cudgel, and programming that was once available via broadcast channels shifted increasingly to RSNs. When streaming services gained sufficient audience share, leagues found they could leverage new deep-pocketed bidders like Amazon against cable companies, extracting even higher prices while gaining more flexibility for their own streaming offerings. This is still going on, but cord-cutting has significantly reduced the subscribers to, and hence the leverage of, cable companies, and the cable-based RSN model is collapsing.

Today, rather than streaming providing a pathway for local teams to reach local fans, it has become part of a system of dueling industries in which viewers and smaller teams often suffer. Some of this is growing pains. Streaming still offers more opportunities for business models and ways of delivering sports programming than broadcast or cable, and the lack of a natural monopoly on last-mile delivery—provided broadband ISPs remain open—reduces a major barrier to entry. But some of the fan frustration, which is so acute as to result in today's hearing,

is the result of a regulatory system that led to cable bundles and bills to become inflated to the point of unsustainability.

Fan Frustrations

Tracking the issues that consumers face nationally and in specific local markets, particularly outside of major media markets like New York and Los Angeles, can be as complex as a multi-year sports media deal, but an overview might provide a sense of the changing landscape.

Of the major leagues, the NFL long had the most straightforward TV setup. Most games were free on over-the-air channels on Sunday, with a few on cable (Monday Night Football). But there have been recent changes that test viewers' patience. The biggest change came in 2022, when Thursday Night Football (TNF) moved exclusively to Amazon Prime Video on a \$1 billion/year deal. Suddenly, a game that had been on network TV (and simulcast in previous years on NFL Network/Amazon) was now only on a streaming app for most of the country. This caused massive confusion. Many fans, especially older ones, struggled to figure out how to watch. Amazon Prime requires either a smart TV app, a streaming device, or watching on a computer or tablet—like with other shifts to streaming, potentially requiring new hardware purchases, as well as signing up for a new service. This year's Steelers/Ravens playoff game was an Amazon exclusive, and many viewers were simply unable to figure out how to watch it.

The NFL launched its own service, NFL+ (though limited to mobile streaming of local games), and in 2023 it moved the NFL Sunday Ticket out-of-market package from DirecTV satellite to a streaming platform (YouTube and YouTube TV). This was a huge shift after nearly 30 years with DirecTV. This required dedicated out-of-market fans to adapt to a new system in 2024—either subscribing to YouTube TV or buying Sunday Ticket via YouTube's Primetime

Channels, at a hefty price (around \$300–\$400 for the season). Some long-time Sunday Ticket subscribers without robust internet access were concerned about relying on streaming.

MLB fans have faced significant viewing hurdles in recent years. One major issue is exclusive streaming broadcasts. In 2022, MLB began a deal with Apple TV+ to stream Friday night games exclusively, with some Sunday games variously on Peacock, then The Roku Channel. These games were not shown on local TV or regional sports networks (RSNs). While Apple initially made some games free, viewers (especially older, less tech-savvy fans) still struggled with the new setup.

MLB's longstanding local blackout rules continued to frustrate fans. Subscribers to MLB.TV cannot watch their home team's games live due to exclusivity deals with RSNs. This leads to absurd scenarios—for example, parts of North Carolina fall in the Cincinnati Reds' claimed territory (hundreds of miles away), so fans there are blacked out on MLB.TV. Commissioner Rob Manfred acknowledged in 2022, “we hate blackouts as much as fans do,”² but said the league's hands were tied by broadcast contracts. The problem became more glaring as cord-cutting increased. Several major streaming cable alternatives (YouTube TV, Hulu + Live, etc.) dropped RSNs like Bally Sports due to high fees, leaving cord-cutters with no legal way to watch local baseball.

The collapse of the RSN model was dramatically illustrated when Diamond Sports Group (owner of Bally Sports networks) filed for bankruptcy. In May 2023, after Bally failed to pay the San Diego Padres' rights fees, MLB seized control of Padres broadcasts mid-season. Practically overnight, Padres fans had to switch to new channels and streaming offerings run by MLB.

² Tim Kelly, Rob Manfred: “We Hate Blackouts As Much as Fans Do,” Audacity (June 30, 2022), <https://www.audacity.com/1080thefan/sports/mlb/rob-manfred-we-hate-blackouts-as-much-as-fans-do>

Similar brinkmanship occurred elsewhere: the Arizona Diamondbacks had their Bally Sports contract terminated and moved to an MLB-run service mid-2023.

MLB's Rob Manfred even cited the Padres situation as proof that "there were tens of thousands of people who wanted to pay to watch baseball" once blackouts were lifted. He has since made ending local blackouts "business objective No. 1," saying, "We need to be out of the business of blackouts...telling people who want to watch games that we won't sell them to you."³ But this vision has not yet come to pass, and fans in many markets continue to face a patchwork of services and even mid-season broadcast shake-ups that make following their team far more complex than it used to be.

NBA fans encountered many of the same viewing headaches. While the NBA didn't put regular-season games on new streaming-only platforms at the national level (its national games stayed on ESPN/ABC and Turner's TNT), local broadcast issues and RSN fragmentation hit hard. Numerous NBA teams are shown on Bally Sports RSNs, so when services like YouTube TV and Hulu Live dropped Bally channels (in 2020–21), those teams effectively vanished from streaming for many viewers. For example, a fan of the Phoenix Suns or Miami Heat who cut the cord had no streaming bundle carrying Bally Sports Arizona or Sun. By 2022, the only option was often to switch to DirecTV Stream or Fubo (which did carry many Bally RSNs) or pay for Bally's own standalone app at ~\$20/month: an expensive ask on top of other services. Many viewers resorted to VPNs and NBA League Pass (meant for out-of-market games) to bypass local blackouts. To follow a team fully, an NBA fan might need a pay TV bundle (for local RSN and national channels), plus NBA League Pass for out-of-market or if you live away from your team, and even then League Pass is blacked out for local games and certain national broadcasts.

³ Michael S. Schmidt, A Q&A With Rob Manfred, NY Times (April 6, 2025), <https://www.nytimes.com/2025/04/06/briefing/rob-manfred-interview-baseball.html>

During the 2023 playoffs, some first-round games aired on NBA TV (a lesser-distributed channel), with fans without that channel being caught off guard that a playoff game wasn't available.

The NHL's viewing experience also became more convoluted from 2022 onward, owing to a new TV deal and the same RSN tumult affecting other leagues. In the 2021-2022 season, the NHL switched its U.S. broadcast partners to ESPN and Turner Sports, with ESPN+ streaming folded in. That meant a slate of games each week was exclusive to streaming on ESPN+ (and Hulu) instead of any TV channel. Fans quickly noticed that if their team's game was one of those exclusives, a cable subscription alone was no longer enough: they needed an ESPN+ account and a compatible smart TV or device. More broadly, regional blackouts remained a sore point. Even when ESPN+ streams most out-of-market games, local team games are blacked out on the app to protect RSNs, unless the game is carried nationally. An NHL fan blog argued in 2023 that "regional blackouts have crippled the NHL's reach,"⁴ noting that the league's national TV ratings dropped in the second year of the new deal.

Basketball and hockey fans in several cities were also caught in the crossfire of RSN carriage disputes. The most notorious case was in Denver: from late 2019 until late 2023, Comcast (the area's largest cable provider) did not carry Altitude Sports, the RSN for the Colorado Avalanche and Denver Nuggets. This stalemate lasted an astounding 4 plus years, during which most Comcast subscribers simply couldn't watch the Avalanche (NHL) or Nuggets (NBA) at home. As the Avalanche went on to win the 2022 Stanley Cup and the Nuggets the 2023 NBA title, a generation of local fans missed seeing it live on TV. Many resorted to unconventional streaming

⁴ An Honest Review of the NHL's Broadcasts in 2023, Stanley Cup of Chowder (February 3, 2023), <https://www.stanleycupofchowder.com/2023/2/3/23581957/national-hockey-league-broadcasts-boston-bruins-nhl-jack-edwards-nesn-bally-sports-gary-bettman>

services (some likely illegal) to follow their teams. The impasse eventually ended in October 2023, when Altitude and Comcast settled.

Outside the “Big Four” sports similar broadcasting and streaming controversies hit American sports. Major League Soccer (MLS) made a groundbreaking media rights move in 2023, signing a 10-year deal with Apple TV+ to stream every MLS game via the new MLS Season Pass. This meant no more local TV broadcasts at all—a fan must use the Apple TV app (on a smart TV, computer, or device) to watch their team’s games, aside from a few matches simulcast on Fox. On one hand, the MLS/Apple deal eliminated blackouts and offered a consistent platform. On the other, it erected a paywall (\$99/year, or \$79 for Apple+ subscribers) for a product that many casual fans used to watch for free on local channels or regional sports networks. The transition was bumpy. Early on, some long-time fans struggled with the tech, especially if they didn’t own Apple devices. (Notably, the Apple TV app wasn’t available on Android phones until mid-2023, though it did work on non-Apple smart TVs).

College sports also saw streaming-exclusive games (and realignment chaos) impact fans. Notre Dame football, for example, put one home game per year exclusively on Peacock in 2021 and 2022, angering fans unaccustomed to paying to see Notre Dame play Toledo or UNLV. The Big Ten’s new TV deal in 2023 will likewise send some conference football games to Peacock-only starting in fall 2024, meaning fans of certain schools must get Peacock for those contests. Meanwhile, conference media rights shuffles (like the Pac-12’s collapse in 2023) were driven by TV money and left fans unsure where their team’s games would air in the future.

Personally, I recently faced these frustrations. Two weeks ago, a Cubs/Phillies game was mistakenly blacked out for me in DC, and for others as I found out by searching social media. This game was not carried on broadcast or multichannel TV locally or nationally and should not

have been blacked out, but MLB's customer service was unresponsive through their app. Eventually, I resolved it via MLB support on social media, providing them with my IP address and zip code so they could manually override MLB's mistake. This is clearly not a sustainable solution. Just last week, more "correctly" blacked out from a Phillies/Nationals game which was available locally—but not on my multichannel service of choice, YouTube TV, which does not carry Mid-Atlantic Sports Network (MASN)—I was told by the same MLB customer service social media account that they would nonetheless lift the blackout. But after a half hour of trying, and claiming to have lifted the blackout, they in the end just referred me back to a webpage outlining MLB blackout policies. At least I was able to listen to the game on the radio. But even if I had MASN, I'd only have the Nationals' broadcast. No offense to the Nat's fine broadcast team, the Phillies' John Kruk is the funniest color commentator in baseball. To be sure, services like MASN+ and Phillies.TV are a step in the right direction for giving in-market fans the ability to watch local games without an MVPD, but they are still geographically limited, and do not provide access to nationally-carried games, including playoffs, which are still black out of MLB.TV.

A Path Forward

Sports are an entertainment product, to be sure. But they have outsized civic, cultural, and economic importance. The role of the NFL in particular cannot be understated. Every year, 9 of the 10 most highly-rated TV programs are NFL games, and the Super Bowl is the most watched event in the United States. Teams are subsidized by taxpayers through stadiums, special tax districts, and other deals, and major leagues like the NFL, MLB, NBA, and NHL are given special exemptions from antitrust laws by the Sports Broadcasting Act—enhancing their market power, and distorting the market in other ways—for example, by only applying to the “Big Four”

sports. Sorry, soccer. Baseball's antitrust exemption is even broader, and it wasn't even granted by Congress. The Supreme Court devised it in 1922 in *Federal Baseball Club v. National League*, 259 U.S. 200 (1922), and reaffirmed it in *Toolson v. New York Yankees*, 346 U.S. 356 (1953), and in *Flood v. Kuhn*, 407 U.S. 258 (1972). Then-judge Neal Gorsuch described the Court's treatment of baseball as a "precedential island[...]surrounded by a sea of contrary law." *Direct Marketing Ass'n v. Brohl*, 814 F. 3d 1129 (10th Cir. 2016). Maybe that is one vote to overturn it at the Supreme Court.

Streaming is no longer an afterthought, and policymakers, content creators, tech platforms, and sports leagues need to take steps to ensure that shifts in the media, technology, and sports landscapes benefit viewers, and lead to cheaper and more convenient options. Taxpayer-funded sports and teams should be required to clearly and consistently communicate to fans, ahead of time, where games will be available, and commit to making games available free of charge in their local market—either by continuing on broadcast, or streaming them for free. There is no reason for public money to go to private sports organizations unless there is a clear and tangible public benefit. Free, ad-supported broadcast or streaming of games in local markets remains a viable business model.

Leagues and policymakers must recognize that easy, affordable access to sports is crucial for the future of sports viewership. Policies prioritizing immediate profits through exclusive deals threaten to alienate existing fans and fail to attract younger viewers who no longer stumble upon sports while casually flipping through TV channels, and who often cannot afford the high price that tickets now command. Instead, leagues should simplify viewing access, eliminate outdated blackout policies, and offer reasonably priced, easy-to-use direct-to-consumer streaming options.

While these measures may seem financially risky initially, they can be forward-thinking investments in the growth and sustainability of fanbases.

This hearing is evidence that the streaming era has introduced complexity, new costs, and consumer confusion to sports viewing. Yet, thoughtful policy interventions can create a fair, affordable, and sustainable environment, benefiting consumers, fans, and sports leagues alike. Congress should consider legislation like Congressman Ryan and Senator Murphy's recent Stop Sports Blackouts Act, mandating refunds for channels lost due to disputes, require taxpayer-funded sports entities to stream games for free locally, and support initiatives ending local market blackouts entirely. Other model legislation is the longstanding FANS Act proposal, championed by Senator Blumenthal and the late Senator McCain, that would have put public interest conditions, such as a prohibition on blackouts stemming from retransmission consent disputes during marquee events, on continuing sports leagues' antitrust exemption. Senator Baldwin's "Go Pack Go" Act is another promising response that would address Wisconsin's frustrations with arbitrary market boundaries and confusing media deals. Colleges and universities should be permitted to negotiate their own media deals, particularly in their local markets, instead of having to go through the NCAA. Accessibility of games is also an issue that could benefit from increased attention from the state and local policymakers who more directly interact with teams, their owners, and the leagues.

More broadly, it would benefit everyone in the streaming market to focus more on providing a good viewer experience, rather than on customer lock-in. While more competition is good, not every content producer needs to go direct-to-consumer with yet another video streaming app, as opposed to licensing content to the services people already use. Online video services should recognize that viewers often mix and match services, and work to facilitate instead of blocking

this. While content and programming bundles are not *per se* bad, they should offer obvious value to subscribers, instead of being ways to get them to pay for costly programming they are not interested in. Video apps should continue to innovate, but services should bear in mind the advantages of consistency, discoverability, and simplicity across different apps.

Sports in particular show the need for consistency and predictability. Leagues should avoid abrupt and radical changes to how people watch games, and should avoid overly complex licensing that fragments individual sports and even teams across a variety of services. While the leagues and teams may balk at what they view as leaving money on the table, practices that prioritize short-term gain can end up harming the long-term sustainability of professional sports. People have other things to watch.

The streaming revolution has fundamentally transformed how we consume sports content, offering unprecedented flexibility but also creating new frustrations. As leagues prioritize lucrative exclusive deals across fragmented platforms, fans face rising costs, technical hurdles, and confusing blackout restrictions that undermine the very accessibility streaming promised to deliver. This calls for an approach where leagues, policymakers, and platforms recognize their responsibility to fans, particularly given sports' cultural significance and the public subsidies many teams receive. Without meaningful reform that prioritizes viewer experience over short-term profits, including simplified access, reasonable pricing, and elimination of outdated blackout policies, sports organizations risk alienating existing fans and failing to cultivate the next generation of viewers in an increasingly competitive entertainment landscape.

While streaming has unlocked new possibilities for sports fans and content creators alike, it has also replicated many of the frustrations of the old cable model—now spread across a maze of apps, subscriptions, and platforms. As the transition continues, policymakers, leagues, and

platforms must move beyond a mindset of exclusive deals and revenue maximization and instead prioritize a future where sports remain widely accessible, locally available, and simple to find and watch. The public investment in sports demands public benefit in return. The path forward should be built around transparency, consistency, and fair access for all fans.

Thank you for inviting me to testify.