

Although there's no free trial for Sling, a Day Pass is a great way to try out a Sling Orange subscription and decide if it's a good fit. Anyone can watch Sling Freestream for free, and access doesn't end after a few days like a free trial!

▲ **When does my Day Pass access start?**

Day Pass and Week Pass access begins as soon as you complete your purchase. Weekend Passes can be purchased during the previous week, and access will begin on Friday at 4am ET.

▲ **Can I add extras with a pass?**

Yes! If you buy a Day, Week, or Weekend Pass, you can add extras for the duration of your pass.

▲ **How do I cancel my Day Pass?**

Unfortunately, due to the limited duration of the Day Pass offer, there is no cancellation and all sales are final.

▲ **Who can get a Day Pass?**

Anyone with a Sling account can order a Day, Week, or Weekend Pass! However, if you are an active Sling Blue subscriber, you can't use a short-term pass at the same time. Try upgrading to [Sling Orange & Blue](#) instead!

Shop

Services

Sling Orange

Sling Blue

Day Pass

Sling Select

Add-ons

Streaming services

Offers

Gift cards

Watch

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Job opportunities



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|                          |                                                                                                           |
|--------------------------|-----------------------------------------------------------------------------------------------------------|
| Document title:          | Day Pass by Sling TV: Watch Live TV for a Day, No Contract   Sling TV                                     |
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| Display Name:            | jlu                                                                                                       |



# Day Pass by Sling TV—as low as \$4.99

Get 24 hours of access

[See all plans](#)

[Get Day Pass](#)

[Offer details](#)

## What is the Day Pass by Sling?

Day Pass grants you instant, 24-hour access to 34 popular channels, including ESPN, TNT, CNN, AMC, and more. At the end of your 24-hour pass, you can continue watching hundreds of channels included with Sling Freestream, or add another Day, Week, or Weekend Pass.

## We have your favorite channels

[See all channels](#)

### Watch today with your Day Pass

[See all games](#)

Today • 8:40 PM EDT



Today • 9:45 PM EDT



Today • 2:10 PM EDT



Today • 2:10 PM EDT



Watch today with your Day Pass

[See all games](#)

|                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                 |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Today • 8:40 PM EDT</b><br> Cincinnati Reds<br> Los Angeles Dodgers | <b>Today • 9:45 PM EDT</b><br> Chicago Cubs<br> San Francisco Giants | <b>Today • 2:10 PM EDT</b><br> Colorado Rockies<br> Houston Astros | <b>Today • 2:10 PM EDT</b><br> Arizona Diamondbacks<br> Milwaukee Brewers |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

[Get your Day Pass](#)

## Benefits of Sling



### Watch on the Go

With Sling, you can watch on your favorite device so you'll never miss a moment of the action.



### Sports Scores

Sports Scores allows you to track other live football games and easily switch between channels so you never miss a big play!



### Watch & Win

With Sling Rewards, you could win up to \$10,000 in cash and prizes. With giveaways every single month, there's always a chance to win!



### DVR

You get 50 hours of free cloud DVR, and if you upgrade to our Unlimited DVR, you can get added benefits like unlimited storage and Auto Record.

## Trending



Sports



News



Entertainment



Premium



International



Deals

## Watch on 20+ top devices

Apple TV

Apple iOS

Roku

Amazon Fire TV

Android TV

LG

SAMSUNG

VIZIO

See all our [supported devices](#)

Trending



Sports



News



Entertainment



Premium

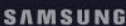


International



Deals

Watch on 20+ top devices



See all our [supported devices](#)

Shop

- Services
- Sling Orange
- Sling Blue
- Day Pass
- Sling Select
- Add-ons
- Streaming services
- Offers
- Gift cards

Watch

- Free live TV
- Channels
- Sling blog
- Programming
- Live news

Sports

- General sports
- Sports schedules
- ESPN
- NBA
- NFL Football
- NCAA College Football
- NHL
- Tennis
- NFL Redzone
- Soccer
- NCAA College Basketball
- MLB
- Cricket

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- Supported devices
- Help center
- Newsroom
- Sling Arcade
- Sling Rewards
- Features & benefits

Work with us

- Advertise with us
- Become an affiliate
- Job opportunities



- Boost Mobile
- Dish Network
- OnTech

# EXHIBIT F

|                          |                                                                                                           |
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| PDF length:              | 6                                                                                                         |
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| Display Name:            | jlu                                                                                                       |

Plan comparison

|                                                                                 | Orange                             | Blue                             | Orange & Blue                                 | Select                             |
|---------------------------------------------------------------------------------|------------------------------------|----------------------------------|-----------------------------------------------|------------------------------------|
| Best for                                                                        | Sports & family                    | News & entertainment             | Everything                                    | Select news & lifestyle            |
| <div><div></div>Monthly</div> <div>Monthly subscription. 24/7 access.</div>     | \$45.99<br>\$1.53/day              | \$45.99<br>\$1.53/day            | \$60.99<br>\$2.03/day                         | \$19.99<br>\$0.67/day              |
| <div><div></div>Day Pass</div> <div>One-time charge. 24 hours of access.</div>  | \$4.99                             | —                                | —                                             | —                                  |
| <div><div></div>Weekend Pass</div> <div>One time charge, access Fri–Sun.</div>  | \$9.99                             | —                                | —                                             | —                                  |
| <div><div></div>Week Pass</div> <div>One-time charge, one week of access.</div> | \$14.99                            | —                                | —                                             | —                                  |
| <div><div></div>5 Month Prepay</div> <div>5 month prepay, then monthly.</div>   | \$199                              | \$199                            | \$274                                         | —                                  |
| Paid channels                                                                   | 34                                 | 43                               | 50                                            | 10+                                |
| Concurrent streams                                                              | 1                                  | 3                                | Up to 4                                       | 3                                  |
|                                                                                 | <a href="#">Learn about Orange</a> | <a href="#">Learn about Blue</a> | <a href="#">Learn about Orange &amp; Blue</a> | <a href="#">Learn about Select</a> |

Try Us Today

Sling TV plans

Standard

Orange >

Great for sports and entertainment for the whole family.

30+ channels

\$45.99/mo

Standard

Blue >

Your favorite news, reality, and drama.

40+ channels

\$45.99/mo

Affordable

Select >

A curated mix of news, sports amp; entertainment.

10+ channels

As low as \$19.99/mo

Standard

Orange & Blue >

Our best base plan.

50+ channels

\$60.99/mo



## We have your favorite channels

[See All Channels](#)

## More live TV options for less money

Get more flexibility for less compared to other service providers.

STARTING AT \$**4.99**

[Us vs. them](#)

## Trending



Sports



News



Entertainment



Premium



International



Deals

## Frequently Asked Questions

We're here to help! Visit our [Help Center](#) if you have more questions.

About

What's on Sling?

Flexible passes

Save on Sling

### ▲ What is Sling TV?

Sling is a flexible TV streaming service that streams live TV and on demand programming straight to you over the internet.

Sling connects you to the best live TV without rigid contracts. Watch limited channels with [Freestream](#), join us for a special event with a 24 hour [Day Pass](#) or subscribe for as long as you'd like, or pay for only the channels you need with [Sling Select](#).

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Save with Sling by choosing a plan with your favorite channels, adding just the extras you'll watch, and not paying for all the fluff.

#### ▲ Can I record programs on Sling?

Subscribers can record live TV and save it to their DVR with 50 hours of free DVR storage, and can extend to unlimited storage by adding Unlimited DVR for just \$5/mo.

Sling's DVR is in the cloud, which means you can watch your recorded content from any logged-in device, wherever you have Wi-Fi.

Local Now, ESPN3, AAC Network Extra, SEC Network+, Pluto, and any local channels added with an over-the-air antenna can't be recorded.

#### ▲ Can I watch Sling on multiple devices at the same time?

Sling Orange subscribers can watch on 1 device at a time.

Sling Blue, Sling Latino, and Sling International subscribers can watch on up to 3 devices at once.

Sling Orange & Blue subscribers can watch on up to 4 devices at a time. However, there's a few channels exclusive to Sling Orange that cannot be streamed simultaneously. You can watch 1 of your Sling Orange exclusive channels and up to 3 other channels at once.

[Learn more about multi-device streaming.](#)

#### ▲ Are shows available on demand?

We have an ever-changing list of thousands of TV shows and movies available on demand!

Use the search bar in your guide to see if your favorites are available.

#### ▲ What if I want to cancel?

Monthly subscribers can cancel anytime by [visiting their account](#). You'll continue to have access to Sling until the period you've paid for ends and won't be charged again until you resubscribe.

Cancellation isn't available for short term viewing options like the day, week, and weekend pass.

Sling is proud to have flexible options. Come and go as you please!

#### ▲ How do I get started?

Start watching live sports, news, and entertainment in just a few steps.

1. [Create an account](#)

2. Choose your channel lineup



Start watching live sports, news, and entertainment in just a few steps.

- 1. [Create an account](#)
- 2. Choose your channel lineup
- 3. Start watching

You can also watch [Freestream](#) until you're ready to decide on the best plan for you! No account needed.

▲ **What do I need to get started with Sling?**

You'll need a reliable internet connection of at least 3 Mbps and a [supported device](#).

Sling works on streaming devices, smart TVs, mobile phones, computers, tablets, and more!

For a great experience watching on multiple devices, an internet speed of 25 Mbps is recommended. [Check your internet speed](#).

▲ **Does Sling offer a free trial?**

Although there's no free trial for Sling, a [Day Pass](#) is a great way to try out a Sling Orange subscription and decide if it's a good fit.

Anyone can watch limited channels on [Freestream](#) at no charge, and access doesn't end after a few days like a free trial!

# Watch on 20+ top devices



See all our [supported devices](#)

| Shop                         | Watch                        | Sports                           | About                             | Work with us                        |     |
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| <a href="#">Sling Orange</a> | <a href="#">Channels</a>     | <a href="#">Sports schedules</a> | <a href="#">Value</a>             | <a href="#">Become an affiliate</a> | <a href="#">Dish Network</a>                                                                                                                                                                                                                                                                                                                            |
| <a href="#">Sling Blue</a>   | <a href="#">Sling blog</a>   | <a href="#">ESPN</a>             | <a href="#">Supported devices</a> | <a href="#">Job opportunities</a>   | <a href="#">OnTech</a>                                                                                                                                                                                                                                                                                                                                  |
| <a href="#">Day Pass</a>     | <a href="#">Programming</a>  | <a href="#">NBA</a>              | <a href="#">Help center</a>       |                                     |                                                                                                                                                                                                                                                                                                                                                         |

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| Sling Orange       | Channels     | Sports schedules        | Value               | Become an affiliate | Dish Network                                                                                                                                                                                                                                                                                                                                            |
| Sling Blue         | Sling blog   | ESPN                    | Supported devices   | Job opportunities   | OnTech                                                                                                                                                                                                                                                                                                                                                  |
| Day Pass           | Programming  | NBA                     | Help center         |                     |                                                                                                                                                                                                                                                                                                                                                         |
| Sling Select       | Live news    | NFL Football            | Newsroom            |                     |                                                                                                                                                                                                                                                                                                                                                         |
| Add-ons            |              | NCAA College Football   | Sling Arcade        |                     |                                                                                                                                                                                                                                                                                                                                                         |
| Streaming services |              | NHL                     | Sling Rewards       |                     |                                                                                                                                                                                                                                                                                                                                                         |
| Offers             |              | Tennis                  | Features & benefits |                     |                                                                                                                                                                                                                                                                                                                                                         |
| Gift cards         |              | NFL Redzone             |                     |                     |                                                                                                                                                                                                                                                                                                                                                         |
|                    |              | Soccer                  |                     |                     |                                                                                                                                                                                                                                                                                                                                                         |
|                    |              | NCAA College Basketball |                     |                     |                                                                                                                                                                                                                                                                                                                                                         |
|                    |              | MLB                     |                     |                     |                                                                                                                                                                                                                                                                                                                                                         |
|                    |              | Cricket                 |                     |                     |                                                                                                                                                                                                                                                                                                                                                         |

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| Display Name:            | jlu                                                                                                       |

Flexible subscription options for the way you watch

|                                                   | Orange                             | Blue                             | Orange & Blue                                 | Select                             |
|---------------------------------------------------|------------------------------------|----------------------------------|-----------------------------------------------|------------------------------------|
| Best for                                          | Sports & family                    | News & entertainment             | Everything                                    | Select news & lifestyle            |
| Monthly<br>24/7 access                            | \$45.99/mo                         | \$45.99/mo                       | \$60.99/mo                                    | \$19.99/mo                         |
| Day Pass<br>24-hour access                        | \$4.99                             | —                                | —                                             | —                                  |
| Weekend Pass<br>Access Fri–Sun                    | \$9.99                             | —                                | —                                             | —                                  |
| Week Pass<br>7-day access                         | \$14.99                            | —                                | —                                             | —                                  |
| 5 Month Prepay<br>5 month prepay, then \$45.99/mo | \$199<br>then \$45.99/mo           | \$199<br>then \$45.99/mo         | \$274<br>then \$60.99/mo                      | —                                  |
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Blue >

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40+ channels

\$50.99/mo

Standard

Orange & Blue >

Our best base plan.

50+ channels

\$65.99/mo

Affordable

Select >

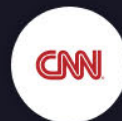
A curated mix of news, sports & entertainment.

10+ channels

\$29.99/mo

We have your favorite channels

## We have your favorite channels

[See All Channels](#)

## Trending

**Sports****News****Entertainment****Premium****International****Deals**

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[About](#)[What's on Sling?](#)[Flexible passes](#)[Save on Sling](#)

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Watch on 20+ top devices



See all our supported devices

| Shop               | Watch        | Sports                | About               | Work with us        |              |
|--------------------|--------------|-----------------------|---------------------|---------------------|--------------|
| Services           | Free live TV | General sports        | What is Sling?      | Advertise with us   | Boost Mobile |
| Sling Orange       | Channels     | Sports schedules      | Value               | Become an affiliate | Dish Network |
| Sling Blue         | Sling blog   | ESPN                  | Supported devices   | Job opportunities   | OnTech       |
| Day Pass           | Programming  | NBA                   | Help center         |                     |              |
| Sling Select       | Live news    | NFL Football          | Newsroom            |                     |              |
| Add-ons            |              | NCAA College Football | Sling Arcade        |                     |              |
| Streaming services |              | NHL                   | Sling Rewards       |                     |              |
| Offers             |              | Tennis                | Features & benefits |                     |              |
| Gift cards         |              | NFL Redzone           |                     |                     |              |
|                    |              | Soccer                |                     |                     |              |

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|                    |              | Soccer                  |                     |                     |              |
|                    |              | NCAA College Basketball |                     |                     |              |
|                    |              | MLB                     |                     |                     |              |
|                    |              | Cricket                 |                     |                     |              |

# EXHIBIT G

|                          |                                                                                                                                                                   |
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BLOG > ANNOUNCEMENTS > DAY, WEEK & WEEKEND PASS BY SLING - INFORMATION & DETAILS

## Day Pass by Sling Gives Sports & TV Fans Unparalleled Flexibility Starting at \$4.99

**With our new Day, Week, and Weekend Passes, Sling is finally bringing flexibility to streaming. Here are the full details.**



Sling Staff

Aug 12, 2025

ANNOUNCEMENTS

Share this:



The big game starts in 3 hours, and you need a way to stream live TV. You could sign up for yet another streaming service, but deep down, you know you're going to overpay or forget to cancel. You feel stuck.

Enter **Day Pass by Sling**. Our industry-changing product gives you 24-hour instant access to 34 of the most popular live channels on cable for \$4.99 – less money than you typically spend on lunch. Best of all, you don't need to remember to cancel: When your access is up, you won't be charged again until you purchase another Day Pass, and you'll still have access to over 600 free channels on Sling Freestream.

Here's everything you need to know about the launch of the industry-changing new Day, Week, and Weekend Passes by Sling.

### What is Sling's New Day Pass?

With the new **Day Pass by Sling (available for \$4.99)**, you can stream 34 channels of Sling programming for 24-hours, beginning when your order is complete. These include popular sports channels like **ESPN, ESPN2, and ESPN3** (which simulcasts select sports programming on ABC), top entertainment channels like **TNT, TBS, and AMC**, breaking news on **CNN** and **Bloomberg TV**, home and food programming on **HGTV** and **Food Network**, children's programming on **Disney Channel** and **Nick Jr.**, true crime on **Investigation Discovery** and **A&E**, hit movies on **MGM+ Drive-In**, adult animation on **Comedy Central**, and much more!

If you're going to miss part of the game or the end of your movie, you can use your 50 hours of free Cloud DVR to watch when you get home, as long as it's still in your Day Pass window (recordings will still be available whenever you resubscribe to Sling). When your 24-hour access is up, you'll still be able to stream over 600 channels at no cost with **Sling Freestream**. Best of all, you don't have to worry about remembering to cancel; Day Pass is not a recurring charge.

### Sling's New Week Pass and Weekend Pass Details

If you're going to miss part of the game or the end of your movie, you can use your 30 hours of free cloud DVR to watch when you get home, as long as it's still in your Day Pass Time Window (read below). You will still be able to watch whenever you resubscribe to Sling). When your 24-hour access is up, you'll still be able to stream over 600 channels at no cost with [Sling Freestream](#). Best of all, you don't have to worry about remembering to cancel; Day Pass is not a recurring charge.

## Sling's New Week Pass and Weekend Pass Details

Sling is also proud to offer additional limited-time access with our **Week Pass and Weekend Pass**! If you subscribe to our **Week Pass (available for \$14.99)**, you'll get 7-day access to the same 34 channels as the Day Pass offer, beginning when you complete your order. This option is perfect for those who are interested in watching the Monday Night Football game, along with the following Saturday's college football action – and everything in between!

The **Weekend Pass (\$9.99)** gives users the opportunity to watch all of this programming from Friday through Sunday. You can place your Weekend Pass order for the upcoming weekend beginning on Monday. Like the Day Pass, there's no need to cancel before these limited-time passes expire, you'll never be charged beyond what you paid for.

## Can I Add Extras to Day, Week, and Weekend Passes?

Yes! In addition to the 34 channels available with Sling's new Day, Week, and Weekend Passes, you can add a variety of Extras to watch even more programming! **The following Extra Packs are available for \$1 each with the Sling Day Pass, \$2 with the Weekend Pass, and \$3 with the Week Pass:**

- **Sports Extra** - Includes SEC Network, ACC Network, ESPNU, NBA TV, and more.
- **News Extra** - NewsMax, NewsNation, OAN Network, Law & Crime, Science Channel, and more.
- **Entertainment Extra** - Paramount Network, MTV, Game Show Network, TV Land and more.
- **Hollywood Extra** - Turner Classic Movies, SundanceTV, REELZ, and more.
- **Lifestyle Extra** - Hallmark Channel, VH1, Lifetime Movie Network, and more.
- **Heartland Extra** - Great American Family, Outdoor Channel, INSP, and more.
- **Kids Extra** - Disney Junior, Disney XD, NickToons, TeenNick, and more.

## You Can Even Order Pay-Per-View with Day, Week, and Weekend Passes

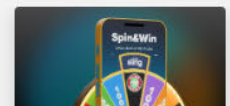
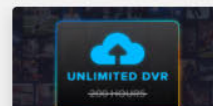
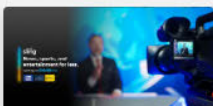
If there's a new release you're dying to watch or a wrestling Pay-Per-View you want to order without a subscription, you can access PPV and VOD content with Day, Week, or Weekend Passes. After you complete your order, simply navigate to the "Rentals" section of the Sling app to find whatever you'd like to order on Pay-Per-View.

Whether you're interested in watching a single game, are craving a couch potato weekend, or need access to live sports while on your week-long vacation, Sling's new Day, Week, and Weekend Passes gives you unprecedented flexibility in streaming. To try out the all-new Sling Day Pass, click the link below!

[Try Day Pass Today](#)

[Offer details](#)

### Most Popular





## You Can Even Order Pay-Per-View with Day, Week, and Weekend Passes

If there's a new release you're dying to watch or a wrestling Pay-Per-View you want to order without a subscription, you can access PPV and VOD content with Day, Week, or Weekend Passes. After you complete your order, simply navigate to the "Rentals" section of the Sling app to find whatever you'd like to order on Pay-Per-View.

Whether you're interested in watching a single game, are craving a couch potato weekend, or need access to live sports while on your week-long vacation, Sling's new Day, Week, and Weekend Passes gives you unprecedented flexibility in streaming. To try out the all-new Sling Day Pass, click the link below!

[Try Day Pass Today](#)

[Offer details](#)

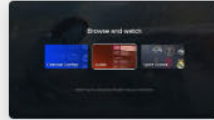
### Most Popular



**Sling Select - Information & Details on the New Sling Package**



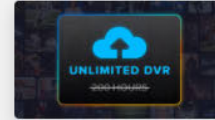
**MeTV is Now Available with Sling Orange and Blue**



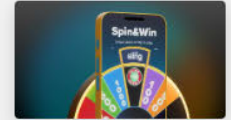
**Sling's New Features Make it Easier Than Ever To Stream What You Love**



**Sling 10 Year Anniversary Offers and Free Previews**



**Unlimited DVR is Now Available on Sling**



**Earn Rewards and Prizes Every Day With Spin & Win From Sling**

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#### Work With Us

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Boost Mobile

Dish Network

OnTech

# EXHIBIT H

|                          |                                                                                                                                                                     |
|--------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|
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BLOG > ANNOUNCEMENTS > GET A SLING DAY PASS FOR JUST \$1 FOR A LIMITED TIME

## For a Limited Time, Sling TV Offers Fans a \$1 Day Pass to Catch Their Favorite Sports and Entertainment

### Sling TV wins latest fight with “Big Media” to keep offering the most flexible customer-first streaming options.



Sling Staff

Nov 19, 2025

ANNOUNCEMENTS

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In a victory for consumer choice, a federal judge has ruled that Sling can continue to sell our new **Day, Weekend and Week Pass** subscriptions, which are short-term subscriptions that get you access to popular networks like **ESPN, TNT**, and more than 30 other channels. **Sling is offering \$1 Day Pass subscriptions to Sling Orange, regularly \$4.99, to new and returning customers through November 30, 2025**, giving viewers affordable, instant access to their favorite live TV channels with no long-term contracts or commitments.

The **Day Pass** by Sling gives subscribers instant 24-hour access to the 34 channels included with the **Sling Orange Service**. These channels include **ESPN, ESPN2, and ESPN3** (which simulcasts sports on ABC), live news on **CNN**, sports and entertainment on **TNT and TBS**, and **Disney Channel** for your kids. Although all sales are final, you won't have to remember to cancel, and if the sports you want to watch are on SEC Network or ESPNU, just add the Sports Extra pack to your Pass starting at \$1.

You can resubscribe to your \$1 Day Pass as often as you like during this limited-time offer. With the offer running through the sports-heavy Thanksgiving holiday, some of the upcoming live events you can watch with a Day Pass subscription include:

- Top college football rivalry games like **Texas A&M at Texas** (Nov. 28); **Georgia at Georgia Tech** (Nov. 28); and the Iron Bowl between **Alabama and Auburn** (Nov. 29).
- *Monday Night Football* and The Manningcast with the **Carolina Panthers** visiting **Christian McCaffrey** and the **San Francisco 49ers** (Nov. 24).
- An NBA tripleheader featuring the **Detroit Pistons at Boston Celtics**, **Minnesota Timberwolves at Oklahoma City Thunder**, and **Houston Rockets at Golden State Warriors** (Nov. 26).

top college football rivalry games like **Texas A&M at Texas** (Nov. 28), **Georgia at Georgia Tech** (Nov. 28); and the Iron Bowl between **Alabama and Auburn** (Nov. 29).

- **Monday Night Football** and The Manningcast with the **Carolina Panthers** visiting **Christian McCaffrey** and the **San Francisco 49ers** (Nov. 24).
- An NBA tripleheader featuring the **Detroit Pistons at Boston Celtics**, **Minnesota Timberwolves at Oklahoma City Thunder**, and **Houston Rockets at Golden State Warriors** (Nov. 26).
- NHL action with the **New York Rangers visiting the Boston Bruins** on Black Friday (Nov. 28)
- Late season Formula 1 races like the **Las Vegas Grand Prix** (Nov. 22) and **Qatar Grand Prix** (Nov. 30).
- Plus top **men's and women's college basketball games** on ESPN, ESPN2, and TNT.

At Sling, our commitment to flexibility and consumer choice is not just a marketing slogan but a mission statement that guides all of our product innovations. We're excited to share this limited-time offer with new and former subscribers so they can discover our flexibility for themselves.

To try the Day Pass by Sling for just \$1 during this limited time offer from November 19 to 30, click the link below.

Try Day Pass For \$1

[Offer details](#)

Most Popular



Day, Week & Weekend Pass by Sling - Information & Details



Sling Select - Information & Details on the New Sling Package



MeTV is Now Available with Sling Orange and Blue



Sling's New Features Make it Easier Than Ever To Stream What You Love



Sling 10 Year Anniversary Offers and Free Previews



Unlimited DVR is Now Available on Sling

| Shop               | Watch         | Sports                  | About             | Work With Us        |     |
|--------------------|---------------|-------------------------|-------------------|---------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Services           | Free Live TV  | General Sports          | What is Sling TV  | Advertise with Us   | <a href="#">Boost Mobile</a>                                                                                                                                                                                                                                                                                                                            |
| Sling Orange       | Channels      | Sports Schedules        | Value             | Become an Affiliate | <a href="#">Dish Network</a>                                                                                                                                                                                                                                                                                                                            |
| Sling Blue         | Sling TV Blog | ESPN                    | Supported Devices | Job Opportunities   | <a href="#">OnTech</a>                                                                                                                                                                                                                                                                                                                                  |
| Day Pass           | Programming   | NBA                     | Help Center       |                     |                                                                                                                                                                                                                                                                                                                                                         |
| Add-ons            | Live News     | WNBA                    | Newsroom          |                     |                                                                                                                                                                                                                                                                                                                                                         |
| Streaming Services |               | NFL Football            | Service Status    |                     |                                                                                                                                                                                                                                                                                                                                                         |
| Offers             |               | NCAA College Football   | Sling Arcade      |                     |                                                                                                                                                                                                                                                                                                                                                         |
| Gift Cards         |               | NHL                     | Sling Rewards     |                     |                                                                                                                                                                                                                                                                                                                                                         |
|                    |               | Tennis                  |                   |                     |                                                                                                                                                                                                                                                                                                                                                         |
|                    |               | NFL Redzone             |                   |                     |                                                                                                                                                                                                                                                                                                                                                         |
|                    |               | Soccer                  |                   |                     |                                                                                                                                                                                                                                                                                                                                                         |
|                    |               | NCAA College Basketball |                   |                     |                                                                                                                                                                                                                                                                                                                                                         |



below.

Try Day Pass For \$1

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Day, Week & Weekend Pass by Sling - Information & Details



Sling Select - Information & Details on the New Sling Package



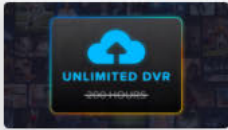
MeTV is Now Available with Sling Orange and Blue



Sling's New Features Make it Easier Than Ever To Stream What You Love



Sling 10 Year Anniversary Offers and Free Previews



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Sling Rewards

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# EXHIBIT I

Document title: Sling TV Celebrates Court Win With \$1 Day Pass Offer, Vows to Continue Fight for Consumer Choice - Nov 19, 2025

Capture URL: <https://news.sling.com/2025-11-19-Sling-TV-Celebrates-Court-Win-With-1-Day-Pass-Offer,-Vows-to-Continue-Fight-for-Consumer-Choice>

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## SLING TV CELEBRATES COURT WIN WITH \$1 DAY PASS OFFER, VOWS TO CONTINUE FIGHT FOR CONSUMER CHOICE



Get the \$1 Sling Day Pass subscription now through November 30, 2025, as many times as you want.

The announcement follows Sling's recent legal victory in which a federal court denied Disney's request for a preliminary injunction, allowing Sling to continue offering its flexible, customer-first subscription model.

ENGLEWOOD, Colo., Nov. 19, 2025 /PRNewswire/ -- Sling TV, the most flexible streaming TV service, today announced it will offer **\$1 Day Pass** subscriptions to Sling Orange, regularly \$4.99, to new and returning customers through November 30, 2025, giving viewers affordable, instant access to their favorite live TV channels with no long-term contracts or commitments. The limited-time offer celebrates Sling's recent court victory after a federal court denied Disney's request for a preliminary injunction, allowing Sling to continue offering customers the flexibility and control they deserve in how and when they watch TV with Sling TV Day, Weekend and Week Pass subscriptions.

"The court's decision is a win for consumers and a validation of what Sling stands for," said Seth Van Sickle, Senior Vice President, Sling TV. "For too long, traditional 'big media' companies have intentionally stifled innovation and forced customers to pay for more content than they want or need. We believe customers deserve the flexibility to stream the content they want, whenever they want it, at a price they can afford. Consumers deserve affordable TV, not bound by long-term contracts or bloated offerings. The \$1 Day Pass is our way of saying thank you to the customers we fight for every day."

### A Win for Consumers

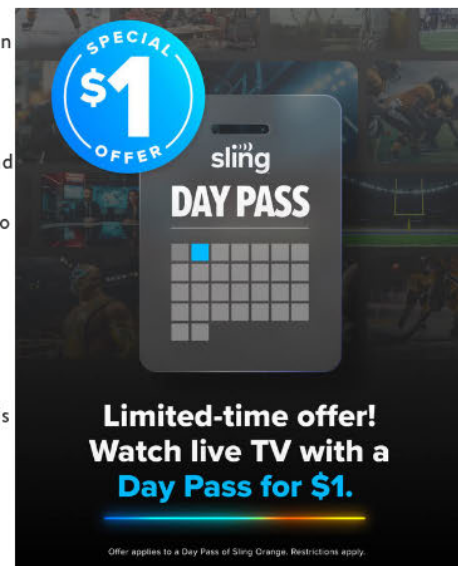
Sling's recent court win reinforces its mission to redefine television by championing consumer choice and flexibility. The Sling Day, Weekend, and Week Pass subscriptions offer access to live sports, entertainment and news without a long-term contract, giving customers pay-as-you-want, instant access to top live channels at an affordable price.

"This fight isn't just about Sling. It's about the future of television, one where consumers have the freedom and power to watch what they want, when and how they want," added Van Sickle. "EchoStar, Sling TV's parent company, has a 45-year legacy of empowering consumers and challenging industry norms. From ad-skipping technology, to bringing local channels to satellite TV, to being the first to offer live streaming television, EchoStar has consistently innovated to lower costs and expand choice for customers."

### Get the Day Pass

Now through November 30, 2025, new and returning customers can get a Sling Day Pass subscription for \$1 by visiting [www.sling.com](http://www.sling.com). The Day Pass provides 24 hours of instant access to live sports, entertainment and news with no long-term commitment required.

Day Pass subscribers can also add Sling Extras, add-on channel packages, to customize their channel lineup by category. Sling Extra packages include: Sports Extra, News Extra,



**Get the Day Pass**

Now through November 30, 2025, new and returning customers can get a Sling Day Pass subscription for \$1 by visiting [www.sling.com](http://www.sling.com). The Day Pass provides 24 hours of instant access to live sports, entertainment and news with no long-term commitment required.

Day Pass subscribers can also add Sling Extras, add-on channel packages, to customize their channel lineup by category. Sling Extra packages include: Sports Extra, News Extra, Entertainment Extra, Hollywood Extra, Lifestyle Extra, Heartland Extra and Kids Extra. Fans can add Sling Extras to their Day Pass subscription for only \$1.

Day Pass subscriptions include live and on-demand access to popular networks on Sling Orange like ESPN, ESPN2, ESPN3, TNT, A&E, TBS, Disney Channel, Comedy Central, History Channel, CNN and more.

For more information about Sling TV, visit [Sling.com](http://Sling.com).

**About Sling TV**

Sling TV is an Emmy® Award-winning live streaming TV service that provides more than 700 channels from today's most popular networks across its general market, Latino and international services. It is available on all major streaming devices, smart televisions, tablets, game consoles, computers and smartphones. Sling TV offers two general market streaming services, Sling Orange and Sling Blue, that collectively feature content from Disney/ESPN, FOX, NBC, AMC, A&E, AXS, Discovery, Scripps, Turner, Viacom, NBA TV, NFL Network, NHL Network, GSN, Hallmark, SHOWTIME, STARZ and MGM+. Sling TV offers customers access to free content via Sling Freestream, à la carte channels and services, plus Pay-Per-View events and movies on-demand. Sling TV provides a suite of stand-alone and add-on Spanish-language services and packages tailored to English-dominant, bilingual and Spanish-dominant U.S. households. Sling TV is the leading U.S. provider of foreign-language programming, with more than 400 channels in 27 languages.

SOURCE EchoStar Corporation

For further information: [news@sling.com](mailto:news@sling.com)

**WHAT TO WATCH**

Channels  
Live Sports  
What's On Sling  
Freestream

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Use of the Sling TV services and this Website constitutes acceptance of our Terms of Use and Privacy Policy. See our Free Trial Offer Details, Credits, and DMCA Policy.

Do Not Sell My Personal Information.

Interest-Based Ad Preferences.



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U.S. Patent Nos. 7,818,444; 8,402,156; 8,612,624; 8,868,772; 9,071,668; 9,407,564; 9,571,551; 9,998,516; 10,225,304; 10,469,554; and 10,469,555 apply to Sling TV's streaming services offered through all available Sling TV applications and platforms.

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Google and Google Nest Hub are trademarks of Google LLC.

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# EXHIBIT J

|                          |                                                                                                            |
|--------------------------|------------------------------------------------------------------------------------------------------------|
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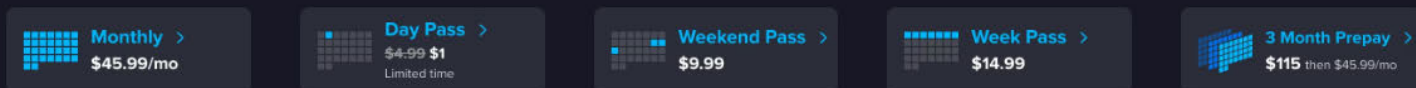


## Limited time offer—Sling Orange starting at \$1

Starting at \$1 for a limited time, grab a day, week, weekend, monthly, or prepaid subscription to get NCAA, WNBA, ESPN, TNT, Disney, and more. Add Sports Extra for SEC, ACC, ESPNU, and more.

[Buy Orange](#)[View channels](#)

### Subscription options



### Channels included in Sling Orange



## Features

- **Access 30+ Live Channels:** Including ESPN, Disney Channel, and CNN.
  - **1 Stream Included:** Enjoy your favorite shows and sports events uninterrupted on a single device.
- **Free On Demand Library:** Watch thousands of movies and shows at no extra cost.
  - **Customizable Experience:** Expand your lineup with add-ons like HBO Max®, Paramount+ with SHOWTIME®, STARZ®, and more.
- **Nationwide Availability:** Watch Sling TV anywhere in the U.S. with a reliable internet connection.
  - **No Contracts or Long-Term Commitments:** Flexibility to cancel or switch packages anytime.



### Watch on the Go

With Sling, you can watch on your favorite device so you'll never miss a moment of the action.



### Sports Scores

Sports Scores allows you to track other live football games and easily switch between channels so you never miss a big play!



### Watch & Win

With Sling Rewards, you could win up to \$10,000 in cash and prizes. With giveaways every single month, there's always a chance to win!



### DVR

You get 50 hours of free cloud DVR, and if you upgrade to our Unlimited DVR, you can get added benefits like unlimited storage and Replays.

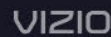
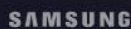
Get Orange

## Other plans to consider

| Bundle                                                                                                                  | Bundle                                                                                                                                        | Bundle                                                                                                                      | Bundle                                                                                                                    |
|-------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|
| <b>Orange + Sports Extra &gt;</b><br>Includes SEC, ACC, ESPNU channels & more.<br><br>45+ channels<br><b>\$56.99/mo</b> | <b>Orange + Entertainment Extra &gt;</b><br>Includes MTV, Cartoon Network, Paramount Network & more.<br><br>45+ channels<br><b>\$51.99/mo</b> | <b>Orange + Kids Extra &gt;</b><br>Includes Disney Jr, Nicktoons, TeenNick & more.<br><br>40+ channels<br><b>\$51.99/mo</b> | <b>Orange + Total TV Deal &gt;</b><br>Our most comprehensive Sling Orange plan.<br><br>100+ channels<br><b>\$66.99/mo</b> |

Compare plans

## Watch on 20+ top devices



See all our [supported devices](#)

## Frequently Asked Questions

We're here to help! Visit our [Help Center](#) if you have more questions.

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[What's on Sling?](#)

[Flexible passes](#)

[Save on Sling](#)

### ▲ What is Sling TV?

Sling is a flexible TV streaming service that connects you to the best live TV without rigid contracts.

Get monthly access to your favorite channels, add just the extras you'll watch, and stop paying for all the fluff.

Need more flexibility? Subscribe to a [Day](#), [Week](#), or [Weekend Pass](#) anytime to upgrade with minimal commitment or watch 600+ free channels with [Freestream](#).

### ▲ Can I record programs on Sling?

Subscribers can record live TV and save it to their DVR with 50 hours of free DVR storage, and can extend to unlimited storage by adding Unlimited DVR for just \$5/mo.

Sling's DVR is in the cloud, which means you can watch your recorded content from any logged-in device, wherever you have Wi-Fi.

Local Now, ESPN3, AAC Network Extra, SEC Network+, Pluto, and any local channels added with an over-the-air antenna can't be recorded.

### ▲ Can I watch Sling on multiple devices at the same time?

Sling Orange subscribers can watch on 1 device at a time.

Sling Blue, Sling Latino, and Sling International subscribers can watch on up to 3 devices at once.

Sling Orange & Blue subscribers can watch on up to 4 devices at a time. However

Sling Blue, Sling Latino, and Sling International subscribers can watch on up to 3 devices at once.

Sling Orange & Blue subscribers can watch on up to 4 devices at a time. However, there's a few channels exclusive to Sling Orange that cannot be streamed simultaneously. You can watch 1 of your Sling Orange exclusive channels and up to 3 other channels at once.

[Learn more about multi-device streaming.](#)

#### ▲ Are shows available on demand?

We have an ever-changing list of thousands of TV shows and movies available on demand!

Use the search bar in your guide to see if your favorites are available.

#### ▲ What if I want to cancel?

Monthly subscribers can cancel anytime by **visiting their account**. You'll continue to have access to Sling until the period you've paid for ends and won't be charged again until you resubscribe.

Cancellation isn't necessary for Day, Week, or Weekend Passes. Your subscription will end automatically and you won't be charged again until the next time you order a Sling pass or service.

Sling is proud to have flexible options. Come and go as you please!

#### ▲ How do I get started?

Start watching live sports, news, and entertainment in just a few steps.

1. **Create an account**
2. Choose your channel lineup
3. Start watching

You can also watch **Freestream** until you're ready to decide on the best plan for you! No account needed.

#### ▲ What do I need to get started with Sling?

You'll need a reliable internet connection of at least 3 Mbps and a **supported device**.

Sling works on streaming devices, smart TVs, mobile phones, computers, tablets, and more!

For a great experience watching on multiple devices, an internet speed of 25 Mbps is recommended. **Check your internet speed.**

#### ▲ Does Sling offer a free trial?

Although there's no free trial for Sling, a **Day Pass** is a great way to try out a Sling Orange subscription and decide if it's a good fit.

Anyone can watch limited channels on **Freestream** at no charge, and access doesn't end after a few days like a free trial!



2. Choose your channel lineup

3. Start watching

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| Sling Blue         | Sling blog   | ESPN                    | Supported devices   | Job opportunities   | OnTech                                                                                                                                                                                                                                                                                                                                                  |
| Day Pass           | Programming  | NBA                     | Help center         |                     |                                                                                                                                                                                                                                                                                                                                                         |
| Sling Select       | Live news    | NFL Football            | Newsroom            |                     |                                                                                                                                                                                                                                                                                                                                                         |
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# EXHIBIT K



HOME / BUSINESS / NEWS

## Sling TV Slices Up The Bundle, Launching Subscriptions For Day, Weekend And Full Week Starting At \$4.99



By [Dade Hayes](#)

August 12, 2025 6:00am

6  
COMMENTS



Courtesy



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1.0x

Sling TV is slicing up the traditional pay bundle, offering mini-subscriptions by the day, weekend or full week starting at \$4.99.

Timed with next week's start of [college football](#) season, with the [NFL](#) soon to follow, the launch addresses an ongoing pain point for sports fans. Rather than forcing customers to sign up for a regular Sling subscription, which starts at \$45.99 a month (with half off upon sign-up), the company is offering a way to hop on and off for big games, tournaments or series. Beyond sports, it also could have applications for award shows like the Oscars or other entertainment or news programming.

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Access for a single 24-hour period (the Day Pass) costs \$4.99, with the Weekend Pass priced at \$9.99 and access for a 7-day week at \$14.99.

## Watch on Deadline

One significant caveat about [EchoStar](#)-owned Sling (the streaming cousin of satellite TV provider Dish Network) is that it does not currently offer CBS stations. Anyone looking for a sporting event on the network would need to secure a premium add-on via Paramount+.

Seth Van Sichel, SVP, Product and Operations at Sling TV, said in an interview with Deadline that programming partners were briefed about the company's plans for the short-term subscriptions. As far as disclosing subscriber numbers, which the publicly traded EchoStar does each quarter, Van Sichel said the company would "report accordingly" as far as the financials. He didn't address specifics about whether one-day subscriptions would be added to traditionally open-ended general tallies. As of the June 30 end of the second quarter, Dish and Sling together had 7.1 million subscribers.

The initiative is the latest jab at the status quo by the company, though the TV component of EchoStar has diminished amid a broader pivot to wireless. About a decade ago, the company launched the Hopper, a DVR that automatically skipped ads, to the delight of many customers but to the consternation of broadcast networks. Multiple media companies sued over the technology, resulting in a settlement in 2016.

6 / Netflix Adds 10 To Cast Of Eugene Ashe Romance 'Don't Ever Wonder' Starring Nia Long & Larenz Tate



7 / Bob Iger Weighs In With Concerns Over Netflix 'Pricing Leverage Over The Consumer' If Streamer Acquires Warner Bros' Streaming & Studio Assets



8 / Disney Fires Off Cease-And-Desist Letter To Google Claiming Its AI Services Infringe On Copyright On A "Massive Scale"



9 / 'The Lincoln Lawyer' Sets Season 4 Premiere & Drops First-Look Photos



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Charlie Ergen, who co-founded Dish and is chairman of EchoStar's board of directors, was known for his pugnacious and erratic approach to negotiating carriage deals when he directly oversaw Dish as CEO. The CBS outage stemmed from that, and prominent networks like HBO and Univision have gone dark for long periods, some of them permanently, as Dish drew a firm line with programmers.

The mini-plans come as overall pay-TV penetration has retreated to 1980s levels as millions in the U.S. continue to cut the cord. Sports programming continues to anchor the bundle. Increasingly, though, major rights have been spreading to other platforms, with YouTube, Netflix, Amazon, Apple and Roku all locking up top-tier rights in recent years. Dish rival DirecTV recently created genre-specific packages, including one that is expressly geared toward sports, but that plan goes for \$70 a month.

"This launch is about putting control back in the hands of the fans," Van Sickle said, and the programming is available "without having to sign a long-term, binding contract."

Along with the launch of Day Pass, subscribers can also add Sling Extras, add-on channel packages, allowing customization by category. Current Sling Extra packages include, Sports Extra, News Extra, Entertainment Extra, Hollywood Extra, Lifestyle Extra, Heartland Extra and Kids Extra. Fans can add Sling Extras to their passes for \$1 on a Day Pass, \$2 for a weekend and \$3 for a week.

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## Marketplace

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HOU vs CLE, 7pm ET & NYK vs DAL, 9:30pm ET on ESPN. Watch with Orange Day Pass for \$1.

# Limited time offer!

Orange Day Pass for just \$1 ~~\$4.99~~

[See channels](#)

Get Day Pass

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SPECIAL \$1 OFFER

sling

DAY PASS

## We have your favorite channels

FOX NEWS Channel

MSNOW

ESPN

CNN

TNT

USA

LOCAL FOX

LOCAL NBC

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## Flexible subscription options for the way you watch

MOST POPULAR

Monthly

24/7 access

From \$45.99/mo

NEW

Day Pass

24-hour access

\$1

NEW

Weekend Pass

Access Fri-Sun

\$9.99

NEW

Week Pass

7-day access

\$14.99

BEST DEAL

3 Month Prepay

Pay 3 months upfront, then \$45.99/mo

From \$114.99



24/7 access  
From \$45.99/mo

24-hour access  
\$1

Access Fri-Sun  
\$9.99

7-day access  
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**Prepay**  
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Watch TV, 100% free.

Get 600+ free live TV channels plus free DVR and win cash! The only free streaming service that lets you do that. [Learn more.](#)

Stream Free



Watch on 20+ top devices



See all our [supported devices](#)



Catch live sports with Sling

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Don't miss top news stories and breaking news

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Live cricket, Arabic series, and more

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Enjoy endless entertainment

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Add premium channels to your lineup

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| Shop               | Watch        | Sports                  | About               | Work with us        |     |
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| Sling Blue         | Sling blog   | ESPN                    | Supported devices   | Job opportunities   | OnTech                                                                                                                                                                                                                                                                                                                                                  |
| Day Pass           | Programming  | NBA                     | Help center         |                     |                                                                                                                                                                                                                                                                                                                                                         |
| Sling Select       | Live news    | NFL Football            | Newsroom            |                     |                                                                                                                                                                                                                                                                                                                                                         |
| Add-ons            |              | NCAA College Football   | Sling Arcade        |                     |                                                                                                                                                                                                                                                                                                                                                         |
| Streaming services |              | NHL                     | Sling Rewards       |                     |                                                                                                                                                                                                                                                                                                                                                         |
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|                    |              | NCAA College Basketball |                     |                     |                                                                                                                                                                                                                                                                                                                                                         |
|                    |              | MLB                     |                     |                     |                                                                                                                                                                                                                                                                                                                                                         |
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Continue shopping:

## Day Pass by Sling TV

Limited time offer for 24 hours of access to Sling Orange—just \$1 \$4.99



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## The best of live TV

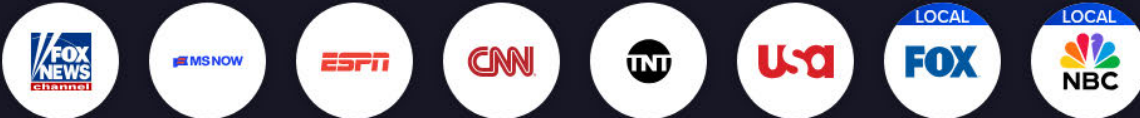
Get ESPN and more for half off your first month, as low as \$29.99

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## We have your favorite channels



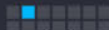
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## Flexible subscription options for the way you watch

**MOST POPULAR**



**NEW**



**NEW**



**NEW**



**BEST DEAL**



MOST POPULAR



### Monthly

24/7 access

From \$45.99/mo

NEW



### Day Pass

24-hour access

\$1

NEW



### Weekend Pass

Access Fri-Sun

\$9.99

NEW



### Week Pass

7-day access

\$14.99

BEST DEAL



### 3 Month Prepay

Pay 3 months upfront, then \$45.99/mo

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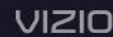
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See all our [supported devices](#)

### Catch live sports with Sling



Follow your favorite teams across NBA, NCAA Basketball, NHL and more with [top sports channels](#) like [ESPN](#), FS1, TBS, TNT, and more!

### Don't miss top news stories and breaking news



Watch breaking news as it happens and stay connected to the latest events with [your favorite news channels](#) like FOX News, CNN, MSNBC, and BBC World News. Then tell your uninformed friends what's going on.

### Live cricket, Arabic series, and more



Access IPL 2025 and the best of Desi entertainment in five languages with [Desi Binge Plus](#) and [Dakshin Flex](#). Enjoy top channels like Willow HD, SonyLIV, Simply South, Hotstar Specials, and more starting at \$10/mo.

Sling also brings you 2025's newest [Arabic](#) series from Shahid, MTV, MBC and more with AI Ostoura pack.

Enjoy also [French](#), [Brazilian](#), and other international packages.

### Enjoy endless entertainment



Drama, comedy, food, kids shows, reality TV...Sling has the [entertainment channels](#) you're looking for. Unless, of course, you're looking for entertainment that's not entertaining. We don't offer that. We tried it once and it was boring, so we decided to never do it again.

### Add premium channels to your lineup



Sling features [premium streaming](#) content from [Paramount+ with SHOWTIME](#), [MGM+](#), [AMC+](#), [STARZ](#), and more! You can add and drop services at any time with no long-term contracts and get the shows and movies you want. Taking control of your channel lineup? Sounds impossible, right? Sling lets you do that.

Still have questions? [Chat with us](#) or [visit our Help Center](#)

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# EXHIBIT M

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Celebrate a win for customer choice with a **\$1 Day Pass.**

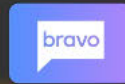
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Limited time offer—Get a Sling Orange Day Pass for just \$1 \$4.99

## Orange & Blue

MONTHLYPREPAY





STARTING AT ~~\$60.99~~ **\$29.99** /mo.

Get HALF OFF your first month with the best sports, news, and entertainment in one place.

Shop Orange & Blue

## Orange

DAYWEEKWEEKENDMONTHLYPREPAY





SPECIAL OFFER ~~\$4.99~~ **\$1** /day

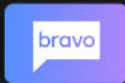
A combination of sports and entertainment—great for football fans and the whole family.

Shop Orange

## Blue

MONTHLYPREPAY





STARTING AT **\$45.99** /mo.

Stay in the know and on the edge of your seat with more news, reality TV, and drama.

Shop Blue

## Select

MONTHLY





STARTING AT **\$19.99** /mo.

A small pack of must-have channels like FOX News and NFL Network at a lower price.

Shop Select

news, reality TV, and drama.

network at a lower price.

Shop Blue

Shop Select

## International

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Hundreds of channels in 20+ languages. Great for native speakers and language learners.

Shop International

## Freestream

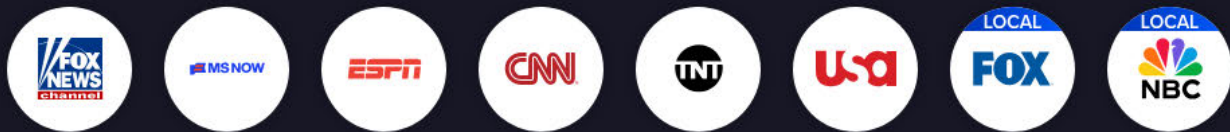
FREE ANYTIME



Watch hit shows, movies, and breaking news—all for free. No credit card or subscription required.

Explore Freestream

## We have your favorite channels



[See all channels](#)

## More from Sling



More from Sling



Premium Channels

Enjoy original series and premium movies.

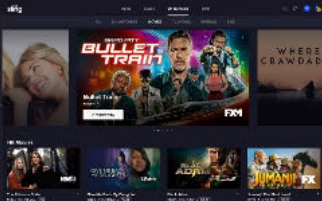
Premium Channels



Local Channels

Watch live local channels in select areas.

Local Channels



Movies

Stream hit movies online or On Demand.

Movies



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Create an endless entertainment library.

Unlimited Storage

Prepay and save

Get 3 months of your favorite TV, starting at \$49.99

Get 3 Month Prepay



Our best deals

Save on sports, news, and entertainment

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Frequently Asked Questions

We're here to help! Visit our [Help Center](#) if you have more questions.

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- ▼ What is Sling TV?
- ▼ Can I record programs on Sling?
- ▼ Can I watch Sling on multiple devices at the same time?
- ▼ Are shows available on demand?
- ▼ What if I want to cancel?
- ▼ How do I get started?

- Can I record programs on Sling?
- Can I watch Sling on multiple devices at the same time?
- Are shows available on demand?
- What if I want to cancel?
- How do I get started?
- What do I need to get started with Sling?
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| Sling Blue         | Sling blog   | ESPN                    | Supported devices   | Job opportunities   | OnTech                                                                                                                                                                                                                                                                                                                                          |
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| Add-ons            |              | NCAA College Football   | Sling Arcade        |                     |                                                                                                                                                                                                                                                                                                                                                 |
| Streaming services |              | NHL                     | Sling Rewards       |                     |                                                                                                                                                                                                                                                                                                                                                 |
| Offers             |              | Tennis                  | Features & benefits |                     |                                                                                                                                                                                                                                                                                                                                                 |
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|                    |              | Soccer                  |                     |                     |                                                                                                                                                                                                                                                                                                                                                 |
|                    |              | NCAA College Basketball |                     |                     |                                                                                                                                                                                                                                                                                                                                                 |
|                    |              | MLB                     |                     |                     |                                                                                                                                                                                                                                                                                                                                                 |
|                    |              | Cricket                 |                     |                     |                                                                                                                                                                                                                                                                                                                                                 |

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| Operating system:        | Linux (Node 22.19.0)                                                                                       |
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| Display Name:            | Igarnette                                                                                                  |

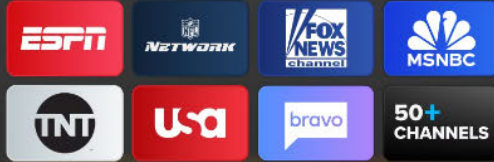
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### Orange & Blue

MONTHLY

PREPAY



STARTING AT ~~\$60.99~~ **\$29.99** /mo.

Get HALF OFF your first month with the best sports, news, and entertainment in one place.

[Shop Orange & Blue](#)

### Orange

DAY

WEEK

WEEKEND

MONTHLY

PREPAY



SPECIAL OFFER ~~\$4.99~~ **\$1** /day

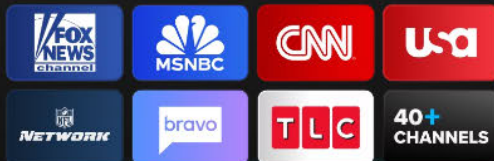
A combination of sports and entertainment—great for football fans and the whole family.

[Shop Orange](#)

### Blue

MONTHLY

PREPAY



STARTING AT **\$45.99** /mo.

Stay in the know and on the edge of your seat with more news, reality TV, and drama.

[Shop Blue](#)

### Select

MONTHLY



STARTING AT **\$19.99** /mo.

A small pack of must-have channels like FOX News and NFL Network at a lower price.

[Shop Select](#)

### International

### Freestream

## International

MONTHLY



Hundreds of channels in 20+ languages. Great for native speakers and language learners.

[Shop International](#)

## Freestream

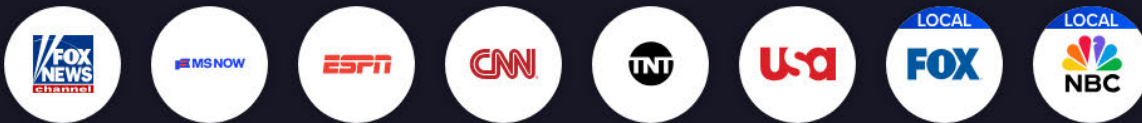
FREE ANYTIME



Watch hit shows, movies, and breaking news—all for free. No credit card or subscription required.

[Explore Freestream](#)

## We have your favorite channels

[See all channels](#)

## More from Sling



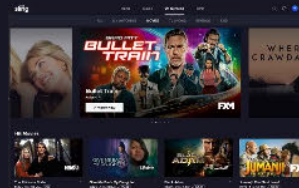
## Premium Channels

Enjoy original series and premium movies.



## Local Channels

Watch live local channels in select areas.



## Movies

Stream hit movies online or On Demand.



## Unlimited DVR

Create an endless entertainment library.



### Premium Channels

Enjoy original series and premium movies.

Premium Channels

### Local Channels

Watch live local channels in select areas.

Local Channels

### Movies

Stream hit movies online or On Demand.

Movies

### Unlimited DVR

Create an endless entertainment library.

Unlimited Storage

### Prepay and save

Get 3 months of your favorite TV, starting at \$49.99

Get 3 Month Prepay



### Our best deals

Save on sports, news, and entertainment

Get Deals



## Frequently Asked Questions

We're here to help! Visit our [Help Center](#) if you have more questions.

[About](#)[What's on Sling?](#)[Flexible passes](#)[Save on Sling](#)

▲ **What is Sling TV?**

Sling is a flexible TV streaming service that connects you to the best live TV without rigid contracts.

Get monthly access to your favorite channels, add just the extras you'll watch, and stop paying for all the fluff.

Need more flexibility? Subscribe to a [Day](#), [Week](#), or [Weekend Pass](#) anytime to upgrade with minimal commitment or watch 600+ free channels with [Freestream](#).

▲ **Can I record programs on Sling?**

Subscribers can record live TV and save it to their DVR with 50 hours of free DVR storage, and can extend to unlimited storage by adding Unlimited DVR for just \$5/mo.

Sling's DVR is in the cloud, which means you can watch your recorded content from any logged-in device, wherever you have Wi-Fi.

Local Now, ESPN3, AAC Network Extra, SEC Network+, Pluto, and any local channels added with an over-the-air antenna can't be recorded.

▲ **Can I watch Sling on multiple devices at the same time?**

Sling Orange subscribers can watch on 1 device at a time.

Sling Blue, Sling Latino, and Sling International subscribers can watch on up to 2



#### ▲ Can I watch Sling on multiple devices at the same time?

Sling Orange subscribers can watch on 1 device at a time.

Sling Blue, Sling Latino, and Sling International subscribers can watch on up to 3 devices at once.

Sling Orange & Blue subscribers can watch on up to 4 devices at a time. However, there's a few channels exclusive to Sling Orange that cannot be streamed simultaneously. You can watch 1 of your Sling Orange exclusive channels and up to 3 other channels at once.

[Learn more about multi-device streaming.](#)

#### ▲ Are shows available on demand?

We have an ever-changing list of thousands of TV shows and movies available on demand!

Use the search bar in your guide to see if your favorites are available.

#### ▲ What if I want to cancel?

Monthly subscribers can cancel anytime by **visiting their account**. You'll continue to have access to Sling until the period you've paid for ends and won't be charged again until you resubscribe.

Cancellation isn't necessary for Day, Week, or Weekend Passes. Your subscription will end automatically and you won't be charged again until the next time you order a Sling pass or service.

Sling is proud to have flexible options. Come and go as you please!

#### ▲ How do I get started?

Start watching live sports, news, and entertainment in just a few steps.

1. **Create an account**
2. Choose your channel lineup
3. Start watching

You can also watch **Freestream** until you're ready to decide on the best plan for you! No account needed.

#### ▲ What do I need to get started with Sling?

You'll need a reliable internet connection of at least 3 Mbps and a **supported device**.

Sling works on streaming devices, smart TVs, mobile phones, computers, tablets, and more!

For a great experience watching on multiple devices, an internet speed of 25 Mbps is recommended. **Check your internet speed.**

#### ▲ Does Sling offer a free trial?

Although there's no free trial for Sling, a **Day Pass** is a great way to try out a Sling Orange subscription and decide if it's a good fit.

2. Choose your channel lineup
3. Start watching

You can also watch **Freestream** until you're ready to decide on the best plan for you! No account needed.

▲ **What do I need to get started with Sling?**

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Sling works on streaming devices, smart TVs, mobile phones, computers, tablets, and more!

For a great experience watching on multiple devices, an internet speed of 25 Mbps is recommended. **Check your internet speed.**

▲ **Does Sling offer a free trial?**

Although there's no free trial for Sling, a **Day Pass** is a great way to try out a Sling Orange subscription and decide if it's a good fit.

Anyone can watch limited channels on **Freestream** at no charge, and access doesn't end after a few days like a free trial!

| Shop               | Watch        | Sports                  | About               | Work with us        |              |
|--------------------|--------------|-------------------------|---------------------|---------------------|--------------|
| Services           | Free live TV | General sports          | What is Sling?      | Advertise with us   | Boost Mobile |
| Sling Orange       | Channels     | Sports schedules        | Value               | Become an affiliate | Dish Network |
| Sling Blue         | Sling blog   | ESPN                    | Supported devices   | Job opportunities   | OnTech       |
| Day Pass           | Programming  | NBA                     | Help center         |                     |              |
| Sling Select       | Live news    | NFL Football            | Newsroom            |                     |              |
| Add-ons            |              | NCAA College Football   | Sling Arcade        |                     |              |
| Streaming services |              | NHL                     | Sling Rewards       |                     |              |
| Offers             |              | Tennis                  | Features & benefits |                     |              |
| Gift cards         |              | NFL Redzone             |                     |                     |              |
|                    |              | Soccer                  |                     |                     |              |
|                    |              | NCAA College Basketball |                     |                     |              |
|                    |              | MLB                     |                     |                     |              |
|                    |              | Cricket                 |                     |                     |              |

# EXHIBIT N

Filed Under Seal

Confidential

# EXHIBIT O

Filed Under Seal

Confidential

# EXHIBIT P

# Sling TV Terms of Use

Effective June 16, 2025

Welcome to Sling TV! Our goal is to provide you with a variety of choice television content, including live and on-demand sports, entertainment, and news.

Please note that the terms and conditions contained herein, together with any applicable promotional terms agreed to by you ("Promotional Terms" and together with the [Privacy Policy](#) and [End User License Agreement](#) ("EULA") each of which is hereby incorporated in these Terms of Use by this reference in its entirety, collectively, these "Terms of Use") include embedded hyperlinks that may only be accessed through our websites. If you are reviewing these Terms of Use through certain applications or other platforms, then you may need to visit <https://www.sling.com/offer-details/disclaimers/terms-of-use> in your browser to review any hyperlinked terms incorporated herein. These Terms of Use set forth the terms and conditions pursuant to which Sling TV will agree to provide or otherwise make our Services available to you. Your access and use is conditioned on your acceptance of these Terms of Use and are effective until we change or replace them.

Sling TV L.L.C. and its affiliates (referred to as, "we," "us," "our," or "Sling TV") endeavors to provide you and other users of our websites ("Websites") and our applications ("Apps") with access to a variety of content (such Websites and Apps, together with any other "Sling TV" branded memberships, features, functionalities, products, services, and any and all content contained therein, are collectively referred to in these Terms of Use as, "Services"). You and other users of our Services are collectively referred to in these Terms of Use as "you," "your," and "Users." Certain of our Services, including transaction and subscription based Services provided in exchange for a fee, may be accessed and used only by those Users who have registered with us and created a membership account (such account, a "Membership Account", and each such User, an "Authenticated User"). Certain of our Services may be accessed and used by Users without any requirement to pay a fee, register, or create a Membership Account. Any and all access and use of any and all our Services by Users (whether or not Authenticated Users) are governed by these Terms of Use. Notwithstanding anything to the contrary set forth in these Terms of Use, if you purchase our Services in Puerto Rico, "we," "us," "our," or "Sling TV" refers to DISH Network Puerto Rico L.L.C.

SUBJECT TO CERTAIN EXCEPTIONS SET FORTH BELOW IN [SECTION 11](#), THESE SLING TV TERMS OF USE REQUIRE THE USE OF MANDATORY AND BINDING ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES (AS THAT TERM IS DEFINED IN [SECTION 11.A](#). BELOW, RATHER THAN, AMONG OTHER THINGS, JURY TRIALS OR CLASS ACTIONS (SEE [SECTION 11](#) BELOW).

## Terms of Use: Table of Contents

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- [Section 11: DISPUTE RESOLUTION, ARBITRATION AGREEMENT AND CLASS ACTION WAIVER](#)
- [Section 12: MISCELLANEOUS](#)
- Privacy Policy: [Click here](#).
- End-User License Agreement: [Click here](#).

## Section 1: Acceptance of Terms of Use

A. Acceptance. Our Services are not intended to be used by children without involvement and approval of a parent or other legal guardian. Some programming available in our Services is of an adult nature and not intended for viewing by persons under 18 years of age, including programming that is "Rated R" or "TV-MA" or contains scenes of nudity, sexual content, or graphic violence that may be offensive to certain viewers. If you are under the age of 18, then you are not permitted to register with us or provide your personal information to us. These Terms of Use govern your use of all of our Services and your relationship with us. By accessing, visiting, downloading, or using any of our Services (e.g., if you download any of our Apps onto any device) you confirm that you have read and agreed to these Terms of Use. If you do not agree to these Terms of Use, then do not access or use any of our Services. If you are an existing user and do not wish to accept any revised Terms of Use, then you must immediately stop using all of our Services (including, for clarity, permanently removing all Apps from your devices), except as set forth in Section 11 below.



programming available in our Services is of an adult nature and not intended for viewing by persons under 18 years of age, including programming that is "Rated R" or "TV-MA" or contains scenes of nudity, sexual content, or graphic violence that may be offensive to certain viewers. If you are under the age of 18, then you are not permitted to register with us or provide your personal information to us. These Terms of Use govern your use of all of our Services and your relationship with us. By accessing, visiting, downloading, or using any of our Services (e.g., if you download any of our Apps onto any device) you confirm that you have read and agreed to these Terms of Use. If you do not agree to these Terms of Use, then do not access or use any of our Services. If you are an existing user and do not wish to accept any revised Terms of Use, then you must immediately stop using all of our Services (including, for clarity, permanently removing all Apps from your devices), except as set forth in Section 11 below.

**B. Changes to these Terms of Use.** These Terms of Use are effective until we change them. Because we are continuously working to improve, enhance, expand, and modify our Services to provide you with the best experience, these Terms of Use will change from time to time, and we suggest that you check back regularly in order to understand our Services, including our practices related to personal information as described in the [Privacy Policy](#), the rights and restrictions related to certain of our Services granted in the [EULA](#), and all other terms and conditions governing your access and use of our Services. You acknowledge and agree that we may change all or any portion of these C. Terms of Use at any time and from time to time, in our sole and absolute discretion, by publishing a revised version of these Terms of Use at: <https://www.sling.com/terms-of-use#membership>. Any revised version of these Terms of Use will be effective immediately, except that, solely with respect to existing Authenticated Users, such revised version will be effective 30 days following the day on which the revisions were first posted, unless expressly and specifically stated otherwise. Except as otherwise set forth in Section 2.E., in the event that you are an existing Authenticated User and you do not wish to accept any revised version of the Terms of Use, then you must immediately send a notice to us at: Attn: General Counsel's Office, 9601 S. Meridian Blvd., Englewood, CO 80112, and we will, at our option, either cancel your Membership Account at the end of the then-current billing period or allow you to continue to receive your Subscription Services under the previous version of these Terms of Use.

**Certain Restrictions on Use; Private and Personal Use Only.** Some programming is the copyrighted material of the third party that supplies it, is protected by copyright and other applicable laws and may not be reproduced, published, rebroadcast, rewritten, or redistributed without the written permission of the third party that supplied it (except as permitted by the "fair use" or other applicable provisions of the U.S. copyright laws) or by our agreements with such third parties. Our Services, including all content viewed through our Services, are solely for private, personal, non-commercial use, not for use in the operation of a business or service bureau, and not for any other public viewing, for profit or for the benefit of any person or entity other than the User; and your limited rights to use our Services as set forth in our EULA are subject to your understanding of, and agreement to, these Terms of Use in their entirety.

## Section 2: OUR SERVICES

**A. Our Services.** By accessing or using our Services, you receive access to and use of: (i) certain software, technology, and other intellectual property rights (including all functionality and data contained therein) (e.g., adaptive streaming and third-party platform authentication) owned or operated by us (regardless whether available for download directly or indirectly from Sling TV) (e.g., applications that are hosted or downloaded, accessories, tools, features and/or functionality related to and/or made available by us); (ii) websites owned, operated, or otherwise controlled by, or on behalf of, us; (iii) the content accessible by you (e.g., any and all transaction and subscription video, audio, data, interactive, programming, advertising and other content); and (iv) any and all other products and/or services accessed, provided, used, or otherwise made available to you, including to enhance past or then-current Services.

**B. Internet Connection.** In order to access and use our Services, you must have a broadband, wireless, or similar internet connection, and you will need to obtain such internet connection (including sufficient levels and required equipment related thereto) from a third-party internet or similar wireless service provider at your sole cost and expense ("Internet Connectivity"). It is your responsibility to obtain and maintain the Internet Connectivity necessary to access and use our Services. Sling TV is not responsible for your Internet Connectivity (or the amount of data consumed by you in connection with your use of any of our Services). The time it takes to access and use any of our Services (e.g., watching a movie or TV show) will vary based on a number of factors, including your location, your Internet Connectivity, the available bandwidth at the time of your request, the format of our Services you are attempting to access, the device(s) you use to access our Services, and other factors outside of our control. Sling TV makes no representations or warranties about the speed or quality of your watching experience on your or any device, and reserves the right change our Services (e.g., the format) based on the specifications of your Internet Connectivity (e.g., if your Internet Connection or device do not meet our required standards for accessing and viewing high-definition ("HD") content, then any HD content accessed by you may be automatically re-formatted by us in an attempt to improve your experience). We suggest that you ensure that your Internet Connectivity, Permitted Device(s) (as defined below) and configuration are compatible with our Services and the format thereof. You can review our minimum requirements and recommended levels for Internet Connectivity at: <https://www.sling.com/help/en/learn-about-sling/get-started/guide>. By accessing or using our Services, you agree to look solely to the entity that provides your Internet Connection for any issues related to such connection and/or its compatibility with, or sufficiency for accessing and using, any of our Services.

**C. Devices.** Not all devices are compatible, or permissible, for use with our Services. For a current list of devices permitted for use with our Services ("Permitted Devices") please visit and review the devices listed at: [www.sling.com/devices](http://www.sling.com/devices). Permitted Devices are manufactured and sold by entities other than Sling TV. In order to use our Services, you must have a Permitted Device, and you will need to obtain such Permitted Device from a third-party provider of such device at your sole cost and expense. You may use more than one Permitted Device, but the number of Authenticated User(s) concurrently accessing or using our Services may be limited to one (1) Permitted Device at any time. In addition, certain of our Services, or portions of the functionality thereof, may be "black-out" or not-available on certain Permitted Device(s). By accessing or using any of our Services, you agree to look solely to the third party that manufactured and/or sold you the device for any issues related to such device, the operating system thereon, and/or its or their compatibility with any of our Services.

**D. Use of Adaptive Bitrate Streaming.** Our Services, including, without limitation, live TV channels and the DVR (as defined below), use adaptive bitrate streaming ("ABS") which creates multiple versions of each program, recorded at different bitrates, to optimize playback of the applicable audiovisual



provider of such device at your sole cost and expense. You may use more than one Permitted Device, but the number of Authenticated User(s) concurrently accessing or using our Services may be limited to one (1) Permitted Device at any time. In addition, certain of our Services, or portions of the functionality thereof, may be "blackened-out" or not-available on certain Permitted Device(s). By accessing or using any of our Services, you agree to look solely to the third party that manufactured and/or sold you the device for any issues related to such device, the operating system thereon, and/or its or their compatibility with any of our Services.

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E. Service Changes; Packaging of Services. In addition to, and without limiting any other provisions in these Terms of Use, Sling TV may, permanently or temporarily, add, delete, rearrange, alter, interrupt, change, and/or eliminate: (i) any and all prices, fees, and/or charges; (ii) packages, programming, programming suppliers, services offered by suppliers; (iii) availability of the DVR with respect to any particular programming and/or programming suppliers, (iv) software, applications, features and/or functionalities, and technical and/or functional requirements, (v) Permitted Devices, (vi) compatible operating systems, (vii) and/or minimum Internet Connectivity required to use the Services, from time to time and at any time. In the event that we add, alter, and/or change any prices, fees, and/or charges, then you agree to pay such added, altered, and/or changed prices, fees, and/or charges. In the event that we add, delete, rearrange, alter, change, and/or eliminate any packages, availability of the DVR with respect to any particular programming and/or programming suppliers, software, applications, features and/or functionalities, then you acknowledge and agree that (a) we have no obligation to replace or supplement such packages, availability of the DVR with respect to any particular programming and/or programming suppliers, software, applications, features and/or functionalities, and (b) you are not entitled to any credits, refunds, price reductions, or any other form of compensation because of any such addition, deletion, rearrangement, alteration, change, and/or elimination. You further acknowledge and agree that such additions, deletions, rearrangements, alterations, changes, and/or eliminations are not a discretionary act by us if they are due, in whole or in part, to the termination, suspension, or expiration of our legal right to provide such packages, availability of the DVR with respect to any particular programming and/or programming suppliers, software, applications, features and/or functionalities.

F. Programming Content and Restrictions. Certain of our Services may be "blackened out" in your viewing area (e.g., local broadcast channels, sporting events, and/or other content for which you do not have the rights to access); if you circumvent or attempt to circumvent any of these "blackouts," then you may be subject to legal action brought by us or third parties. Certain of our Services may have additional restrictions and your access to such Services will be subject to those restrictions.

G. The DVR. For our DVR product, we do not warrant or guarantee: (a) access to or recording of any particular programming; (b) the length of time any particular recorded program may remain available for your viewing; or (c) that the DVR (I) is error-free, (II) will not be interrupted, (III) will not erroneously delete programming that you record, or (IV) will not fail to schedule, make, store, or play back recordings. If you program the DVR to record more programming than it can hold in the space available, then some programs that you have previously recorded may be deleted. We reserve the right to terminate the DVR (and/or all or any portion of your access to the DVR) at any time in our sole and absolute discretion and, for the avoidance of doubt, we may terminate the DVR (and/or all or any portion of your access to the DVR) even if you have not decided to cancel the DVR. In the event that the DVR (and/or your access to the DVR) is cancelled or terminated for any reason or no reason whatsoever, you will no longer have access to any recordings that you have made with the DVR. If your Membership Account is disconnected, suspended, or terminated for non-payment, or for any other reason (or no reason) whatsoever (see, e.g., Section 5.E. below), then, even if you pay to restart your subscription(s) to our Services, recordings that you made with the DVR prior to such disconnection, suspension, or termination may no longer be available.

H. Compliance with Law. You agree to use our Services, including all features and functionalities associated therewith, in accordance with all applicable laws (e.g., public performance limitations or other restrictions on any use of our Services or content therein). You agree not to archive, download (other than through caching necessary for personal use), reproduce, distribute, modify, display, perform, publish, license, create derivative works from, offer for sale, or otherwise use or gain access to all or any portion of our Services, except as explicitly authorized in these Terms of Use, without express written permission from Sling TV. You also agree not to: circumvent, remove, alter, deactivate, degrade, thwart, or otherwise interfere with any of our Services; use any robot, spider, scraper, or other automated means to access our Services; decompile, reverse engineer, or disassemble any of our Services (e.g., software or other products); insert any code or product, or otherwise manipulate or interfere with our Services (e.g., running any of our Services on a device not permitted for use by us); or, use any data mining, data gathering, or extraction method. In addition, you agree not to upload, post, e-mail, or otherwise send or transmit any material designed to interrupt, interfere with, destroy, or limit the functionality of any of our Services, or other software, hardware, or telecommunications equipment associated with our Services (e.g., any software viruses or any other computer code, files, or programs). In the event that we learn that you are using any Service in a manner that constitutes infringement of third-party intellectual property rights, including rights granted by U.S. copyright law, your Membership Account will be terminated.

I. Multiple Services. Sling Orange + Sling Blue consists of two separate Sling TV services—Sling Orange and Sling Blue—offered together for a multi-service discount. By subscribing to both services in Sling Orange + Sling Blue, you acknowledge that you can watch only one stream at a time of any Sling Orange channel using your Sling Orange service. In addition, you can watch three streams of Sling Blue channels at the same time using your Sling Blue service. In total, you can watch up to four simultaneous streams—one stream via your Sling Orange service and three streams via your Sling Blue service.

### Section 3: MEMBERSHIP ACCOUNTS

A. Membership Account; Login Credentials. Prior to accessing certain of our Services, you will be required to provide certain personal information determined by us as necessary to create a Membership Account. To become an Authenticated User you must first register with us for a Membership Account. You will be required to create login credentials, comprised of a user name and password ("Login Credentials") designed to enable access and

### Section 3: MEMBERSHIP ACCOUNTS

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B. Requests for Information. You should be mindful of any communication requesting that you submit any personal or other sensitive information (e.g., your personal information, credit or debit card account information, Login Credentials, or secrets questions), and before confirming any such request, you should contact Customer Service immediately by communicating with an agent via the chat function. Please be aware that providing your information in response to these types of communications can result in, among other things, identity theft or fraud. Always access your account information (e.g., your personal information, credit or debit card account information, Login Credentials, or secrets questions) via our Websites or Apps, or by contacting Customer Service directly by communicating with an agent via the chat function. In order to protect Sling TV and its affiliates, media providers, device providers, business partners, or other service providers or licensors (collectively, "Contributors"), we reserve the right, and may, from time to time and at any time, without providing notice to you, place on hold (or otherwise suspend) your Membership Account in connection with any activity that we believe to be fraudulent, illegal, in violation of these Terms of Use, or otherwise suspicious. We may evaluate or elect to provide credits, refunds, price adjustments or other discounts, compensation or recompense, from time to time and at any time, in our sole and absolute discretion, BUT WE ARE NOT OBLIGATED, AND YOU ARE NOT ENTITLED AND HEREBY WAIVE ANY RIGHT, TO ANY CREDIT, REFUND, PRICE ADJUSTMENT, OR ANY OTHER DISCOUNT, COMPENSATION, OR RECOMPENSE FOR HOLDS PLACED ON YOUR ACCOUNT, IF ANY.

C. Device Deactivation. If your device is transferred, lost, or stolen, then you must immediately contact Customer Service by communicating with an agent via the chat function. It is your sole responsibility to notify us of any transferred, lost, or stolen devices, and to prevent any unauthorized access to our Services and your Membership Account. Please review the risks and responsibilities of allowing third-party access to your Membership Account (see Section 3.A. above) that may result from your failure to notify us that your device was transferred, lost, or stolen.

### Section 4: TRANSACTIONAL AND SUBSCRIPTION SERVICES; PACKAGES AND LEVELS; PROMOTIONS AND OTHER PACKAGES

A. Transactional Services. After you create a Membership Account, certain of our Services may be made available by us without requiring any commitment from you to pay any fees or other amounts (e.g., certain paid "a-la-carte" video-on-demand rentals or pay-per-view offerings) (collectively, "Transactional Services"). Your access to, and use of, any Transactional Services are governed by these Terms of Use, and once you create or request a Membership Account to access certain of our Services, you will be a member until you or we permanently cancel your Membership Account and all Subscription Services with us. For example, you must abide by these Terms of Use in connection with your creation and use of any Membership Account used solely to access our Services, regardless of whether you ever provide payment information for any other paid Transactional Services. You may be required to provide a payment method and necessary billing information in order to receive certain other Transactional Services. Any and all users that create a Membership Account automatically enroll in membership to our Services UNLESS AND UNTIL YOU CONTACT US TO PERMANENTLY CANCEL AND DELETE INFORMATION RELATED TO YOUR MEMBERSHIP ACCOUNT BY CONTACTING CUSTOMER SERVICE BY COMMUNICATING WITH AN AGENT VIA THE CHAT FUNCTION, or until we elect to permanently cancel your Membership Account and Subscription Services (as defined below) for any purpose (e.g., in accordance with our standard information retention and destruction processes).

B. Subscription Services. After you create a Membership Account, certain of our Services may be made available by us solely in connection with your agreement to purchase a subscription to such Services for a set period (e.g., monthly or yearly subscription term) (collectively, "Subscription Services").



required to provide a payment method and necessary billing information in order to receive certain other Transactional Services. Any and all users that create a Membership Account and/or utilize access to membership services UNLESS AND UNTIL YOU CONTACT US TO PERMANENTLY CANCEL AND DELETE INFORMATION RELATED TO YOUR MEMBERSHIP ACCOUNT BY CONTACTING CUSTOMER SERVICE BY COMMUNICATING WITH AN AGENT VIA THE CHAT FUNCTION, or until we elect to permanently cancel your Membership Account and Subscription Services (as defined below) for any purpose (e.g., in accordance with our standard information retention and destruction processes).

B. Subscription Services. After you create a Membership Account, certain of our Services may be made available by us solely in connection with your agreement to purchase a subscription to such Services for a set period (e.g., monthly or yearly subscription term) (collectively, "Subscription Services"). Regardless of the period for which you purchased any Subscription Services, following the completion of any such subscription period, your Subscription Services will automatically renew on a month-to-month basis at the then-current standard rates for monthly access to the same Subscription Services, unless and until they are cancelled or changed by you or Sling TV in accordance with these Terms of Use.

C. Packages of Subscription Services. We may offer a number of different packages of Subscription Services, including special promotional packages, each governed by any supplemental Promotional Terms provided at the time of your first access or use of such Services. Some promotional packages may be offered by third parties in conjunction with the provision of their own products and services. We are not responsible for the products and services provided by such third parties. We reserve the right to modify, terminate, or otherwise amend the Subscription Services offered by us, and the contents of the packages and levels thereof.

D. Minimum Requirements. Sling TV reserves the right to require and/or change minimum programming package requirements, from time to time and at any time, in its sole and absolute discretion. For example, Sling TV may require a minimum commitment term, or Sling TV may require you to subscribe to a minimum level or package of our Services in order to view certain content or obtain access to purchase additional levels or packages of Subscription Services. In order to purchase certain packages, you may be required to first subscribe to Services for a set term (e.g., a year-long subscription).

E. Promotional Offers. You may initially accept a promotional offer for a certain package of Services that later becomes unavailable. Promotional offers do not automatically renew and may not be available at the end of, or during, the applicable promotional period, and following the completion of any such promotion, the Subscription Services will automatically renew on a month-to-month basis at the then-current standard rates for monthly access to the same Subscription Services, unless and until they are cancelled or changed by you or Sling TV, in accordance with these Terms of Use.

F. Only One Promotion per Account Owner. Promotional offers may not be combined with other promotional offers associated with any account that you own, unless otherwise expressly permitted in the applicable Promotional Terms. Sling TV reserves the right, in its sole and absolute discretion, to determine your eligibility for any promotional offer pursuant to the applicable Promotional Terms. Sling TV reserves the right to change, amend, and alter then-current promotional offers or Promotional Terms as well as institute new promotional offers, from time to time and at any time, in its sole and absolute discretion. We do not guarantee that any promotional offers are or will be available to you at all, or in connection with any Services desired by you.

G. Cancellation Policies. Your Subscription Services are prepaid on a monthly billing period basis and you may contact us to cancel them at any time by visiting [www.sling.com/account](http://www.sling.com/account) or by contacting Customer Service by communicating with an agent via the chat function. Cancellation requests are not accepted via email. Because charges are prepaid each billing period, when you call to cancel your Subscription Services, your subscription will continue, and you will be able to enjoy your Subscription Services through the end of, the then-current billing period (except as otherwise provided herein to the contrary (see Section 5.D.) or in any Promotional Terms). Refunds are not issued for a partial billing period. When you cancel your Subscription Services, you may be subject to certain charges and fees as set forth in any applicable Promotional Terms, and if you have taken advantage of a promotional offer that required you to pre-pay for a minimum period of time (e.g., 3 months), then your cancellation will not become effective until the end of that minimum period of time, and in such case, for purposes of such promotional offer, your initial "billing period" will mean such minimum period of time. Your cancellation of Subscription Services does not automatically cancel your Membership Account or access to our Transactional Services. If you pay for the Services through your account with a third party (e.g., Amazon, Roku) and want to cancel your Membership Account or access to our other Services, then you may need to do so through your account with such third party.

## Section 5: BILLING

A. Fees and Charges. We will bill you monthly in advance for your Subscription Services. Charges are billed to the credit or debit card you registered with your Membership Account. Sling TV may, from time to time and at any time, change the amount of or basis for determining any fees or charges, and/or institute new fees, surcharges, or other charges as determined by us (e.g., surcharges imposed for transmission of programming content in certain jurisdictions). You agree to pay all amounts billed for our Services, as well as all taxes, fees, and other charges, if any, that are now or may in the future be assessed in connection with any of our Services you access or use, and any other charges due and owing to us. We may apply interest and late fees for any amounts paid following the date when due, and we may terminate or suspend your account for any failure to timely pay any amounts or maintain up-to-date payment method information within your account. State and local taxes or reimbursement charges for gross earnings taxes in some states may apply.

B. Registration of Credit or Debit Card. If you do not already have an account, you will be required to establish an account to access certain of our Services. To access certain Services (e.g., video-on-demand rentals), you will also be required to register a valid credit or debit card to process payments of the associated fees. When you register a credit or debit card for a new account, you authorize Sling TV to place a pending charge to your credit or debit card to verify your billing address and the validity of your credit or debit card; such pending charges are temporary and will not be converted into an actual charge to you. Pending charges, while pending, will, however, reduce the available amount of credit on your credit card or funds available to your debit card. You are solely responsible for any and all fees charged to your credit or debit card by the issuer, bank, or financial institution, including fees for membership, any overdraft or other insufficient funds, or for exceeding any applicable credit limit. Once your account is authenticated, the credit or debit card that you registered with your account will be charged for each transaction without having to reenter your credit or debit card information. You agree that the issuer of any credit or debit card you registered with your Membership Account will accept these Terms of Use as your authorization



of the associated fees. When you register a credit or debit card for a new account, you authorize Sling TV to place a pending charge to your credit or debit card to verify your billing address and the validity of your credit or debit card. Such pending charges are temporary and will not be converted into an actual charge to you. Pending charges, while pending, will, however, reduce the available amount of credit on your credit card or funds available to your debit card. You are solely responsible for any and all fees charged to your credit or debit card by the issuer, bank, or financial institution, including fees for membership, any overdraft or other insufficient funds, or for exceeding any applicable credit limit. Once your account is authenticated, the credit or debit card that you registered with your account will be charged for each transaction without having to reenter your credit or debit card information. You agree that the issuer of any credit or debit card you registered with your Membership Account will accept these Terms of Use as your authorization and pay all amounts billed in connection with use of your account without Sling TV's submitting a signed receipt.

C. Billing Cycle. The fees for all Subscription Services and Transactional Services will be billed in advance. For Subscription Services, we automatically bill you each month on the calendar day corresponding to the date on which you first commenced payment for Subscription Services. Membership Account fees for Subscription Services and Transactional Services are fully earned upon payment. If your paid membership to any Subscription Service began on a day not contained in a given month, then we may bill you on a day in the applicable month or such other day as we deem appropriate (e.g., if you are regularly billed on the 31st, then we may bill you on the 28th or 30th of the calendar months that do not have 31 days). Although we endeavor to bill you as described in this paragraph, we reserve the right to change the timing of our billing as necessary, from time to time, and at any time. We may authorize your payment method in anticipation of membership or service-related charges. As used in these Terms of Use, "billing" shall indicate a charge, debit, or other payment clearance, as applicable, against your registered credit or debit card information. For the purposes of this paragraph, "month" or "monthly" refers to your billing cycle.

D. No Returns, Credits or Refunds. YOU UNDERSTAND AND AGREE THAT PAYMENTS ARE NONREFUNDABLE. WE ARE NOT OBLIGATED, AND YOU ARE NOT ENTITLED AND HEREBY WAIVE ANY RIGHT, TO ANY CREDIT, REFUND, PRICE ADJUSTMENT OR ANY OTHER DISCOUNT, COMPENSATION OR RECOMPENSE FOR ANY PARTIALLY USED OR UNUSED SERVICE (E.G., SUBSCRIPTION SERVICES NOT USED OR TRANSACTIONAL SERVICES NOT DOWNLOADED OR FULLY VIEWED). Notwithstanding the forgoing, although not required or obligated, we reserve the right to evaluate or elect to provide credits, refunds, price adjustments or other discount, compensation or recompense, from time to time, and at any time, in our sole and absolute discretion; provided that any such elections to offer any such credits, refund, price adjustment or other discount, compensation or recompense in one instance does not entitle you to the same or any such benefit in the future for similar or unrelated instances, nor does it create any obligation whatsoever for us to offer such benefit to you or any other user in connection with any past, present, or future request under any circumstance whatsoever.

E. Restarting your Services. If you do not make timely payment for your Services, we may disconnect, suspend, limit, or terminate your access to such Services, and in such event, we will be immediately and forever wholly relieved from any and all of our duties and obligations to you under these Terms of Use. If your Membership Account is disconnected for non-payment, or for any other reason whatsoever, then Sling TV may require that you pay, and you agree to pay, any amount due (regardless of how long outstanding, and including all past due charges and all outstanding balances accrued through the date of such disconnection) before we reconnect your access to any of our Services. We are not obligated to reconnect your access to any of our Services. If your Services are disconnected for non-payment, or for any other reason whatsoever, then you may no longer be eligible, even if you pay to restart your Subscription Services, to receive any remaining credits or promotional pricing that you would have been eligible to receive had your Subscription Services, or any of our other Services, not been disconnected, suspended, limited, or terminated. Unless required by applicable law, deposits will not be held segregated from other funds and will not earn or accrue interest. Promotional pricing is valid only at the time of initial purchase of such promotional Subscription Service or Transactional Service, and we reserve the right to stop any promotion at any time for any reason whatsoever.

F. Attorney's Fees/Collections. If we use an attorney or a collection agency to collect any money you owe us, or to assert any other right that we may have against you (e.g., any breach of any agreement you may have with Sling TV or any of our affiliates), then you hereby agree to pay the reasonable costs of such collection or other action. These costs may include the costs of a collection agency, reasonable attorneys' fees, and court costs. If you believe you have been billed in error, you must contact our Customer Service immediately, and in no event more than 15 days following the date you receive any bill for which you are seeking correction. Failure to timely notify us of any dispute will constitute your acceptance of the corresponding billed amounts. You must pay undisputed portions of any billing statement when due, or, without limitation to any other rights or remedies available to Sling TV at law, in equity, under contract (including these Terms of Use), or otherwise, all of which are hereby expressly reserved (e.g., we may elect to suspend or terminate your Subscription Services or any of our Services), permanently or temporarily, in whole or in part. All payments for our Services must be made directly by you to us, unless we authorize otherwise; and except as otherwise authorized, Sling TV shall have no obligation to provide Services for which payment is made by you to a third party or for which payment is made by a third party on your behalf.

G. Puerto Rico. If you reside in Puerto Rico, please note that the fees for all Subscription Services and Transactional Services will be billed to you by "sling.com" even though you are conducting business with DISH Network Puerto Rico L.L.C.

## Section 6: CUSTOMER SUPPORT SERVICES AND RELATED COMMUNICATIONS

A. Customer Support Services. Sling TV may elect to provide Membership Account support services or other assistance in connection with your Membership Account ("Customer Service(s)"). The levels, methods, and availability of our Customer Service offered is determined by us, in our sole and absolute discretion; we have no obligation to provide any Customer Services whatsoever in connection with our Services. If we make available or otherwise provide Customer Services, then such Customer Services are considered part of our Services for purposes of these Terms of Use, including any and all restrictions, disclaimers, and limitations herein.

B. Communications. By registering for a Membership Account, you hereby consent to receive electronic communications from us and other Contributors related to such account and our Services. These communications may involve sending emails to the email address you provided during registration, or delivering electronic communications via your Membership Account, and will include notices about your Membership Account (e.g., payment authorizations, password or payment method changes, confirmation e-mails, notices, and other similar or transactional information related to such

B. Communications. By registering for a Membership Account, you hereby consent to receive electronic communications from us and other Contributors related to such account and our Services. These communications may involve sending emails to the email address you provided during registration, or delivering electronic communications via your Membership Account, and will include notices about your Membership Account (e.g., payment authorizations, password or payment method changes, confirmation e-mails, notices, and other similar or transactional information related to such account); these communications are part of our Services and your relationship with us. You agree that any notice, agreements, disclosures, or other communications that we send to you electronically, as described herein, will satisfy any legal communication requirements (e.g., that such communications be in writing and through an appropriate method). You also consent to receiving other electronic communications from us, such as newsletters about new Services features and content, special offers, promotional announcements, and customer surveys. If you no longer want to receive certain non-transactional communications via email, please contact Customer Service by communicating with an agent via the chat function, click on the "Unsubscribe" link contained in any email, or on any other link that indicates that you would like to be removed from future, similar non-transactional communications.

C. Text Messages. By providing your telephone number, you consent to Sling TV, or its authorized representative, or any debt collection agency hired by Sling TV to use this number to contact you regarding Services, or regarding your Membership Account through an automated or predictive dialing system or prerecorded message system; regardless of whether the number is on any do-not-call lists or is otherwise registered as a wireless telephone number. You understand that you do not need to provide a cellular phone number to receive Services.

By electing to receive text messages from us, you hereby consent to the following additional terms:

- i. Message and data rates may apply depending on wireless carrier plan. See wireless plan or contact carrier for details.
- ii. Your receipt of text messages from us is subject to carrier participation. Current participating carriers are as follows: AT&T, T-Mobile®, Verizon Wireless, Sprint, Boost, U.S. Cellular, Cellular One, MetroPCS, Cellcom, Cellular South, Carolina West Wireless, Interop, ClearSky, nTelos, and Virgin Mobile.
- iii. T-Mobile® Liability Notice: T-Mobile® does not guarantee that alerts will be delivered and will not be liable for delayed or undelivered messages.
- iv. You must give us immediate notice of any change in your telephone number or other contact information associated with your account.

In addition, upon receipt of a text message from us, you may reply via text with HELP for Help and STOP to request that you stop receiving such messages.

## Section 7: INTELLECTUAL PROPERTY

A. Sling Property. The "Sling TV" Services, including any and all content made available in connection with your access and use of our Services, is protected by domestic and international copyright, trade secret, trademark, and other intellectual property laws. "Sling Television," "Sling" and "Sling TV" are registered trademarks of Sling TV L.L.C., and Sling TV L.L.C. and its affiliates have patents that apply to our Services.

B. End-User License Agreement. Our Websites, Apps, and other software and technologies are developed by, or for, us and are designed to enable our provision of certain content through Permitted Devices. Our Websites, Apps, and other software and technologies may vary by Permitted Device, operating system, or other medium and the functionalities thereof may also differ among Permitted Devices. BY USING ANY OF OUR SERVICES, YOU ACKNOWLEDGE AND AGREE TO OUR [END USER LICENSE AGREEMENT](#) (I.E., OUR [EULA](#)) AND TO RECEIVE, WITHOUT FURTHER NOTICE OR PROMPTING, UPDATED VERSIONS OF OUR WEBSITES, APPS, AND OTHER SOFTWARE AND TECHNOLOGIES, INCLUDING RELATED THIRD-PARTY SOFTWARE. IF YOU DO NOT ACCEPT THESE TERMS AND CONDITIONS SET FORTH IN OUR [EULA](#), THEN DO NOT USE ANY OF OUR SERVICES.

C. Reporting Claims. If you have a reasonable belief that your or any other's protected works have been reproduced or distributed in a way that constitutes copyright infringement, or are otherwise aware of any content available in connection with the Services that may be infringing, violating, or otherwise misappropriating the your rights or such other party's rights, then please notify us immediately by sending us a written statement to the Notice Address set forth in Section 11.B. below, which written statement must set forth as much detail as is available, including, at a minimum: (i) your name; (ii) your address; (iii) your Membership Account number (if any); and (iv) a clear and detailed statement about the applicable concern of copyright infringement and/or related claim or by clicking on the "DMCA Policy" link at [www.sling.com](http://www.sling.com) and providing us with notice of your claim and other information as instructed.

D. Warning against Piracy and Infringement. Any direct or indirect act or attempted act to engage or assist in any unauthorized interception, reception, display, or other transmission or access of any portion of our Services, is a violation of various U.S. federal and state laws and of these Terms of Use. The penalties for violating applicable laws can include imprisonment and civil damage awards of up to \$110,000 per violation. Section 605(e)4 of Title 47 of the United States Code makes it a federal crime to modify your device or our Services to receive encrypted (scrambled) television programming without payment of required subscriptions (e.g., Subscription Services). Conviction can result in a fine of up to \$500,000 and imprisonment for five years, or both. Any person who procures any hardware or software that has been so modified is an accessory to that offense and may be punished in the same manner. Investigative authority for violations lies with the Federal Bureau of Investigation. In the event that we learn that you are using any Service in a manner that constitutes infringement of third-party intellectual property rights, including rights granted by U.S. copyright law, your Membership Account will be terminated.

## Section 8: DISCLAIMER OF WARRANTIES



## Section 8: DISCLAIMER OF WARRANTIES

YOU EXPRESSLY UNDERSTAND AND AGREE THAT:

A. YOUR USE OF OUR SERVICES IS AT YOUR SOLE RISK. OUR SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN THESE TERMS OF USE, SLING TV (ON BEHALF OF ITSELF AND THE OTHER CONTRIBUTORS) HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF SATISFACTION, ENJOYMENT, QUALITY, TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. SLING TV DOES NOT TAKE ANY RESPONSIBILITY WHATSOEVER OR OTHERWISE WARRANT THE PERFORMANCE OF ANY DEVICE, INCLUDING THE CONTINUING COMPATIBILITY OF THE DEVICE (OR ITS OPERATING SYSTEM) WITH ANY OF OUR SERVICES, OR ANY INTERNET CONNECTION, INCLUDING ITS SPEED, BANDWIDTH, OR COMPATIBILITY WITH ANY DEVICE OR SLING TV SERVICE. FURTHERMORE, WE DO NOT MAKE ANY PROMISES ON BEHALF OF ANY THIRD PARTY, INCLUDING THE OTHER CONTRIBUTORS, AND YOU ACKNOWLEDGE AND AGREE THAT YOU HAVE NOT RELIED ON ANY PROMISES MADE BY US RELATED TO SUCH PARTIES OR THE PRODUCTS AND SERVICES PROVIDED BY THEM. The disclaimers set forth in these Terms of Use expressly apply to any terms hyperlinked and incorporated herein, including any Promotional Terms, the Privacy Policy, and the [EULA](#), and including the software contained in our Services and your use of such software. We do not warrant that any issues, errors, or other defects or failures in or related to the software or our Services will be corrected.

B. NEITHER SLING TV NOR ANY OTHER CONTRIBUTOR MAKES ANY WARRANTY WHATSOEVER THAT: (i) THE SERVICE WILL MEET YOUR REQUIREMENTS OR REASONABLE SATISFACTION; (ii) THE SERVICE WILL ALLOW YOU TO COPY, RECORD, VIEW, SKIP, OR TRANSFER ANY PARTICULAR MEDIA, PROGRAMMING, OR PART THEREOF, OR PROVIDE OR CONTINUE TO PROVIDE ANY OTHER PARTICULAR FUNCTIONALITY; (iii) THE SERVICE WILL PERFORM AT A PARTICULAR SPEED, BANDWIDTH, OR DATA-THROUGHPUT RATE, BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE; (iv) INFORMATION RELATED TO YOUR ACCOUNT OBTAINED FROM THE USE OF THE SERVICE WILL BE ACCURATE OR RELIABLE; OR (v) THE VARIETY, QUANTITY, OR QUALITY OF ANY MEDIA, PRODUCTS, SERVICES, ACCESSORIES, INFORMATION, OR OTHER MATERIAL RENTED OR OBTAINED BY YOU THROUGH OUR SERVICES WILL MEET YOUR EXPECTATIONS, OR ANY ERRORS IN THE SERVICE WILL BE CORRECTED.

C. SLING TV MAY RECOMMEND CERTAIN LEVELS OF INTERNET CONNECTION FOR USE WITH CERTAIN OF OUR SERVICES; PROVIDED, HOWEVER, THAT YOU HEREBY AGREE AND UNDERSTAND THAT SLING TV WILL HAVE NO RESPONSIBILITY WHATSOEVER FOR YOUR INTERNET CONNECTIVITY AND SLING TV DOES NOT WARRANT OR GUARANTEE THE AVAILABILITY OR PERFORMANCE OF ANY INTERNET CONNECTIVITY, INCLUDING THE SPEED, BANDWIDTH, COMPATIBILITY, SUFFICIENCY, EQUIPMENT, OR DELIVERY OF ANY INTERNET CONNECTION OR THAT ANY CERTAIN INTERNET CONNECTIVITY WILL IMPROVE OUR SERVICE(S). PLEASE BE AWARE THAT CERTAIN OF OUR SERVICES MAY REQUIRE THE USE OF ADDITIONAL DATA, AND THAT ANY INCREASED COSTS, FEES, OR OTHER AMOUNTS DUE TO BE PAID BY YOU AS A RESULT OF ANY INCREASE IN USAGE (E.G., USAGE OF DATA) IN CONNECTION WITH THE SERVICES WILL BE YOUR SOLE RESPONSIBILITY.

D. SLING TV MAY RECOMMEND OR LIST THE NAMES OF CERTAIN DEVICES PERMITTED FOR USE WITH CERTAIN OF OUR SERVICES, BUT YOU HEREBY AGREE AND UNDERSTAND THAT SLING TV DOES NOT TAKE ANY RESPONSIBILITY WHATSOEVER FOR AND SLING TV DOES NOT WARRANT THE PERFORMANCE OF ANY DEVICE OR GUARANTEE THAT SUCH DEVICE (OR THE APPLICABLE OPERATING SYSTEM OR VERSION) WILL BE (OR REMAIN) COMPATIBLE WITH ANY OF OUR SERVICES. YOU MAY ONLY USE OUR SERVICES ON PERMITTED DEVICES.

E. WE HEREBY DISCLAIM ANY, AND YOU AGREE THAT WE HAVE NO, OBLIGATION WHATSOEVER TO REPLACE OR SUPPLEMENT ANY SERVICES, PACKAGE OF SERVICES, OR PORTION OF ANY SERVICE(S) THAT WE CHANGE. WE ARE NOT OBLIGATED, AND YOU ARE NOT ENTITLED AND HEREBY WAIVE ANY RIGHT, TO ANY CREDIT, REFUND, PRICE ADJUSTMENT, OR ANY OTHER DISCOUNT, COMPENSATION, OR RECOMPENSE FOR ANY AMOUNT PAID BY YOU TO RECEIVE REPLACEMENT, SUPPLEMENTAL, OR ALTERNATE SERVICES, PACKAGES OF SERVICES, AND/OR PORTION OF SERVICES AS A RESULT OF ANY CHANGE.

F. ANY MEDIA, SOFTWARE, OR OTHER MATERIAL OR CONTENT DOWNLOADED, STREAMED, OR OTHERWISE OBTAINED THROUGH USE OF OUR SERVICES IS DONE AT YOUR OWN DISCRETION AND RISK. YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR TELEVISION, RECEIVER, DEVICE, OR OTHER HARDWARE, OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD, STREAMING, OR OBTAINING OF ANY SUCH MEDIA, SOFTWARE, OR OTHER MATERIAL OR CONTENT. NEITHER SLING TV NOR ANY OTHER CONTRIBUTOR ASSUMES ANY RESPONSIBILITY, AND WILL NOT BE LIABLE FOR ANY DAMAGES TO, OR VIRUSES THAT MAY INFECT, CORRUPT, OR OTHERWISE HARM ANY OF YOUR PROPERTY OR THE PROPERTY OF ANY THIRD PARTY, INCLUDING YOUR SOFTWARE, DEVICE, OR OTHER HARDWARE.

G. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM SLING TV OR THE OTHER CONTRIBUTORS, OR VIA YOUR MEMBERSHIP ACCOUNT OR USE OF THE SERVICES WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TERMS OF USE.

## Section 9: LIMITATION OF LIABILITY

A. Indirect Damages. YOU EXPRESSLY UNDERSTAND AND AGREE THAT NEITHER SLING TV NOR ANY OTHER CONTRIBUTORS WILL BE LIABLE TO YOU FOR ANY INDIRECT OR CONSEQUENTIAL DAMAGES (E.G., INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, OR OTHER INDIRECT DAMAGES, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA, OR OTHER INTANGIBLE LOSSES EVEN IF SLING TV OR ANY OF SUCH OTHER CONTRIBUTORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) ARISING FROM, OR OTHERWISE RESULTING DIRECTLY OR INDIRECTLY FROM: (i) USE OF ANY OF OUR SERVICES; (ii) ACTIONS, OMISSIONS, AND OTHER ACTIVITY UNDER YOUR MEMBERSHIP ACCOUNT (INCLUDING USE NOT AUTHORIZED BY US); (iii) THE PERFORMANCE OR NON-PERFORMANCE OF OUR SERVICES; OR (iv) THE

A. Indirect Damages. YOU EXPRESSLY UNDERSTAND AND AGREE THAT NEITHER SLING TV NOR ANY OTHER CONTRIBUTORS WILL BE LIABLE TO YOU FOR ANY INDIRECT OR CONSEQUENTIAL DAMAGES (E.G., INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, OR OTHER INDIRECT DAMAGES, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA, OR OTHER INTANGIBLE LOSSES EVEN IF SLING TV OR ANY OF SUCH OTHER CONTRIBUTORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) ARISING FROM, OR OTHERWISE RESULTING DIRECTLY OR INDIRECTLY FROM: (i) USE OF ANY OF OUR SERVICES; (ii) ACTIONS, OMISSIONS, AND OTHER ACTIVITY UNDER YOUR MEMBERSHIP ACCOUNT (INCLUDING USE NOT AUTHORIZED BY US); (iii) THE PERFORMANCE OR NON-PERFORMANCE OF OUR SERVICES; OR (iv) THE INSTALLATION, MAINTENANCE, REMOVAL, OR TECHNICAL SUPPORT OF OUR SERVICES, EVEN IF SUCH DAMAGES RESULT FROM THE NEGLIGENCE OR GROSS NEGLIGENCE OF SLING TV OR THE OTHER CONTRIBUTORS.

B. Force Majeure. NEITHER SLING TV NOR ANY OTHER CONTRIBUTORS WILL BE LIABLE TO YOU FOR ANY FAILURE TO PERFORM THAT IS CAUSED BY OR OTHERWISE RESULTS FROM ANY ACTS OF GOD, FIRES, EARTHQUAKES, FLOODS, POWER OR TECHNICAL FAILURE, SERVER, INTERNET, SATELLITE OR UPLINK FAILURE, ACTS OF ANY GOVERNMENTAL BODY, OR ANY OTHER CAUSE BEYOND OUR REASONABLE CONTROL.

C. Limitation of Liability. IN ADDITION TO ANY OTHER LIMITATIONS SET FORTH IN THESE TERMS OF USE, NEITHER SLING TV NOR ANY OTHER CONTRIBUTORS, WILL BE LIABLE FOR ANY ADDITION, DELETION, REARRANGEMENT, ALTERATION, INTERRUPTION, CHANGE, AND/OR ELIMINATION IN ANY SERVICES OR FOR ANY DELAY, FOR THE AVOIDANCE OF DOUBT, INCLUDING: (i) IF SUCH ADDITION, DELETION, REARRANGEMENT, ALTERATION, INTERRUPTION, CHANGE AND/OR ELIMINATION, OR DELAY ARISES IN CONNECTION WITH THE TERMINATION OR SUSPENSION OF SLING TV'S ACCESS TO ALL OR ANY PORTION OF OUR SERVICES FOR ANY REASON WHATSOEVER; (ii) THE RELOCATION OF ALL OR ANY PORTION OF OUR SERVICES TO DIFFERENT SERVER(S); (iii) ANY ADDITION, DELETION, REARRANGEMENT, ALTERATION, INTERRUPTION, CHANGE, AND/OR ELIMINATION IN THE FEATURES AND/OR FUNCTIONALITY AVAILABLE WITH YOUR PERMITTED DEVICE(S) OR OUR SERVICES; (iv) ANY SOFTWARE OR OTHER DOWNLOADS INITIATED BY US OR OUR CONTRIBUTORS; OR (v) ISSUES RESULTING FROM YOUR DEVICE OR INTERNET CONNECTION, INCLUDING, LACK OF SUFFICIENT BANDWIDTH. FURTHERMORE, NONE OF SLING TV, ITS PROVIDERS, DEVICE PROVIDERS OR SERVICE PROVIDERS, OR ANY OF ITS OR THEIR THIRD-PARTY LICENSORS WILL BE LIABLE FOR ANY ADDITION, DELETION, REARRANGEMENT, ALTERATION, INTERRUPTION, CHANGE, AND/OR ELIMINATION OF OR TO ANY DEVICE(S), FOR THE AVOIDANCE OF DOUBT, INCLUDING REMOVING OR DISABLING SOFTWARE, FEATURES, AND/OR FUNCTIONALITY.

D. Limitation of Direct Damages. EXCEPT AS SPECIFICALLY AND EXPRESSLY SET FORTH IN SECTION 11, THE MAXIMUM AGGREGATE LIABILITY OF SLING TV FOR ANY AND ALL CLAIMS UNDER OR RELATING TO EACH: (i) MEMBERSHIP ACCOUNT INCLUDING ALL AUTHENTICATED USERS THEREUNDER (IF MORE THAN ONE IS PERMITTED BY US), or (ii) YOU ONLY, IF YOU ARE NOT AN AUTHENTICATED USER UNDER ANY MEMBERSHIP ACCOUNT, IS LIMITED TO AN AMOUNT EQUAL TO THE AGGREGATE OF THE FEES THAT WERE PAID BY YOU UNDER THESE TERMS OF USE DURING THE SIX MONTHS BEFORE THE APPLICABLE CLAIM, OR IF DURING THE FIRST SIX MONTHS OF ANY ACCESS OR USAGE TERM, THEN THE FIXED FEES TO BE PAID BY YOU UNDER SUCH TERMS OF USE DURING THE FIRST SIX MONTHS OF SUCH USAGE TERM.

E. Applicability. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU, BUT ONLY TO THE EXTENT SUCH LIMITATIONS ARE EXPRESSLY DISALLOWED UNDER THE APPLICABLE LAW(S).

## Section 10: INDEMNIFICATION

You hereby agree to indemnify, defend, and hold Sling TV and its parents and affiliates, each of its and their present and future media providers, device providers, business partners, service providers, licensors, contractors, subcontractors, authorized distributors, authorized subdistributors, authorized retailers, directors, members, managers, officers, agents, employees, and other Users, and each of their respective assigns, heirs, successors, and legal representatives (the "Protected Group") harmless from, against, and with respect to any and all actions, claims, disputes or demands, including reasonable attorneys' fees and costs, that are incurred in connection with, arising out of, or relating to access to or use of our Services by you or in connection with your Membership Account, including any User thereof, your connection to our Services, your devices, your violation of these Terms of Use, or your violation of any rights of another User.

## Section 11: DISPUTE RESOLUTION, MANDATORY AND BINDING ARBITRATION AND CLASS ACTION WAIVER (THE "ARBITRATION PROVISION")

**BEFORE WE GET STARTED, YOU SHOULD KNOW THAT AN ARBITRATION PROVISION AND CLASS ACTION WAIVER APPLIES TO THIS AGREEMENT. IF WE CAN'T WORK OUT A DISPUTE WITH YOU, THIS AGREEMENT REQUIRES ARBITRATION OR SMALL CLAIMS COURT AND DOESN'T ALLOW CLASS ACTIONS. YOU'LL HAVE TO WAIVE YOUR ABILITY TO BRING A CLASS ACTION, OR TO HAVE A TRIAL BY JURY.**

A. Mandatory Binding Arbitration. If you and Sling TV have a Dispute (as defined below), Sling TV will first try to resolve it informally with you. If we can't, then you and Sling TV agree to resolve the Dispute either through binding arbitration or in small claims court, instead of courts of general jurisdiction (i.e. courts other than small claims courts), unless the Dispute is covered by one of the few exceptions we describe below, under "Exceptions." You acknowledge and agree that, if you or Sling TV start an action in small claims court to resolve a Dispute, but the small claims court can't resolve the Dispute for any reason (for example, if it does not have jurisdiction over the claim), then the Dispute can only be resolved by arbitration. Arbitration means that you and Sling TV will have a hearing before a neutral arbitrator rather than before a judge or jury in a court. The arbitrator is the person who will oversee and decide the Dispute. Arbitrators can award the same remedies that a court can award. In arbitration, discovery (where you and Sling TV get to ask each other for information about a dispute) is limited, and decisions made by arbitrators are final and only subject to limited review by courts.

BY ENTERING INTO THIS AGREEMENT, YOU AND SLING TV ARE EACH AGREEING TO WAIVE THE RIGHT TO A TRIAL BY JURY OR BY A JUDGE



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courts other than small claims courts), unless the Dispute is covered by one of the few exceptions we describe below, under "Exceptions." You acknowledge and agree that if you or Sling TV has an arbitration agreement to resolve a Dispute, the small claims court cannot resolve the Dispute for any reason (for example, if it does not have jurisdiction over the claim), then the Dispute can only be resolved by arbitration. Arbitration means that you and Sling TV will have a hearing before a neutral arbitrator rather than before a judge or jury in a court. The arbitrator is the person who will oversee and decide the Dispute. Arbitrators can award the same remedies that a court can award. In arbitration, discovery (where you and Sling TV get to ask each other for information about a dispute) is limited, and decisions made by arbitrators are final and only subject to limited review by courts.

BY ENTERING INTO THIS AGREEMENT, YOU AND SLING TV ARE EACH AGREEING TO WAIVE THE RIGHT TO A TRIAL BY JURY OR BY A JUDGE (OTHER THAN IN SMALL CLAIMS COURT), EXCEPT WHERE PROHIBITED OR OTHERWISE PROVIDED IN THIS AGREEMENT.

You and Sling TV both agree that the Federal Arbitration Act (the "FAA") governs this Arbitration provision. You still have the right to bring any concerns you may have to the attention of federal, state or local agencies (for example, the Federal Communications Commission) and if the law allows, those agencies can seek relief against us on your behalf.

B. Dispute Defined. When we use the term "Dispute" (with the capital D), it means any and all claims, disputes, or disagreements you and Sling TV currently have, might have in the future, or had in the past. A Dispute can be about anything related to our Services, and can involve Terms of Use, Promotional Terms, any type of law (such as a statute, regulation or ordinance), tort (examples are fraud, misrepresentation, fraudulent inducement, negligence or any other intentional tort) or anything else that courts or arbitrators have the authority to decide. Whether the Arbitration Provision is valid or enforceable, and what it covers, is one type of Dispute. "Dispute" should be interpreted as broadly as is allowed. Some other examples of what a Dispute

might be based on are:

- a. The Services, the Promotional Terms, or any other agreement between you and us;
- b. Sling TV products or services;
- c. Billing, collection and credit reporting;
- d. Telephone calls, texts, faxes and emails from Sling TV and/or a party acting or claiming to act for us; and/ore. Sling TV's or our agents' collection, retention and/or disclosure of your personally identifiable information.

For purposes of this Arbitration Provision, any reference to "Sling TV" includes DISH Network L.L.C., EchoStar Corporation, and any of its direct and indirect subsidiaries, past or present.

C. Informal Dispute Resolution; Notice and Opportunity to Resolve. Before starting an arbitration or small claims matter, you and Sling TV both agree to try to resolve any Dispute informally ("Informal Process"). This means that neither you nor Sling TV is allowed to start arbitration or an action in small claims court for at least sixty (60) days after you or Sling TV give notice of a Dispute to the other. Either you or Sling TV may start the Informal Process to resolve a dispute by sending the other a written document titled a "Dispute Resolution Notice." A Dispute Resolution Notice must include the following information:

- a. Your name, account number, and contact information;
- b. A description of what the Dispute is about; and
- c. How the party giving the Dispute Resolution Notice wants to resolve the Dispute.

You must send your Dispute Resolution Notice to: Sling TV L.L.C., Attn: Dispute Resolution, P.O. Box 9033, Littleton, Colorado 80120 ("Legal Dispute Notice Address"). We must send our Dispute Resolution Notice to the address we have for you in our records when we sent it. If you and Sling TV can't resolve the Dispute within sixty (60) days after the Dispute Resolution Notice is received, then either you or Sling TV have the right to start binding arbitration or begin an action in small claims court, according to the procedures explained in this Arbitration Provision.

D. Arbitration Procedures. This paragraph explains how you and Sling TV participate in an arbitration to resolve a Dispute. Unless you and Sling TV agree to different procedures in writing, the Consumer Arbitration Rules (the "AAA Rules") of the American Arbitration Association ("AAA") will apply (except that any rules for class or collective actions will not apply). The AAA will run the arbitration process, and a single, neutral arbitrator will be in charge of the Dispute. The AAA Rules are available online at the AAA's website (as of May 28, 2024, [www.adr.org/rules](http://www.adr.org/rules)). If you prefer, we will give you a copy of the AAA Rules if you make a written request to Sling TV L.L.C., Attn: Dispute Resolution, P.O. Box 9033, Littleton, Colorado 80120-9033. The party who decides to start arbitration must open a case by filing a "Demand for Arbitration" with the AAA. To start arbitration, the requesting party must:

1. Make a demand in writing for arbitration;
2. Pay the administrative filing fee; and
3. Give the AAA a copy of this Arbitration Provision.

This process can be completed using an "AAA WebFile" (you can find this on the AAA's website ([www.adr.org](http://www.adr.org)), or at any AAA office, even if the hearing will not be in that location. The arbitration will take place in the county where your billing address is located (according to our records on the date the Dispute Resolution Notice is sent). However, you and Sling TV can instead agree, or the arbitrator can order, that the arbitration will: happen at a different location; be remote, using video or telephones; or be based only on things you and Sling TV submit in writing. The arbitrator will be bound by the terms of Terms of Use and Promotional Terms, including this Arbitration Provision. The arbitrator, and not any agency or court, will make the decisions about the Dispute.

E. The Arbitrator's Decision (aka The Arbitrator's Award). The arbitrator's decision will resolve each of the Disputes presented by the Demand for Arbitration (including things such as the amount one side has to pay the other, and things one side might have to do, etc.) and explain in writing his or her



will not be in that location. The arbitration will take place in the county where your billing address is located (according to our records on the date the Dispute Resolution Notice is sent). However, you and Sling TV can instead agree on the arbitrator can order that the arbitration will happen at a different location; be remote, using video or telephones; or be based only on things you and Sling TV submit in writing. The arbitrator will be bound by the terms of Terms of Use and Promotional Terms, including this Arbitration Provision. The arbitrator, and not any agency or court, will make the decisions about the Dispute.

E. The Arbitrator's Decision (aka The Arbitrator's Award). The arbitrator's decision will resolve each of the Disputes presented by the Demand for Arbitration (including things such as the amount one side has to pay the other, and things one side might have to do, etc.) and explain in writing his or her important findings and conclusions. The arbitrator's decision is a final and binding resolution of the Disputes between you and us, but shall not be binding on Sling TV with regard to any other Sling TV customer. If you or Sling TV ask a court to review the decision, the court's ability to review is limited. An Award by the arbitrator can be filed with any court with jurisdiction (which means the legal power of a court to review the Arbitrator's decision), in order to enforce the award.

F. Costs of Arbitration. If you start the arbitration process and agree to seek less than \$75,000 in damages, once Sling TV receives notice of arbitration, then we will reimburse you for the filing fee. We will also pay the AAA directly for any fees it charges for case management and for the arbitrator's services. However, if you start arbitration and don't agree to seek less than \$75,000 from us, or if we start the arbitration process, then AAA Rules will apply to determine who pays any fees.

G. Class Action Waiver. All Disputes between you and Sling TV must be resolved on an individual basis. Except as otherwise specified herein, you and Sling TV agree that all Disputes between you and Sling TV will be litigated in small claims court individually or arbitrated individually.

NEITHER YOU NOR SLING TV SHALL BE ENTITLED TO JOIN OR COMBINE CLAIMS MADE BY, OR AGAINST, OTHER PEOPLE OR OTHER ENTITIES, OR BRING A CLAIM AS A REPRESENTATIVE, INCLUDING BUT NOT LIMITED TO, AS PART OF A CLASS ACTION OR AS A "PRIVATE ATTORNEY GENERAL" FOR ANY DISPUTE.

Additionally, unless both you and Sling TV agree in writing:

- a. the arbitrator may not combine any dispute with other claims, and
- b. the arbitrator may not preside over any kind of representative or class action.

If any of this Arbitration Provision is found to be unenforceable, then, except for choice of law and informal dispute resolution provisions, this entire Arbitration Provision is null and void.

H. Small Claims. As noted above, either you or Sling TV may choose to have appropriate Disputes against each other resolved in small claims court, if the Dispute falls within the applicable small claims court's jurisdiction and does not fall within an exception identified in this Arbitration Provision. A small claims court includes any court designated as small claims, or any similar court of limited jurisdiction in which claims are only resolved on an individual basis. Either you or Sling TV may elect to have an eligible Dispute resolved in small claims court by filing their claim in the small claims court or, after the other party has filed a claim in arbitration, by sending written notice to the other party and the AAA of this election within fifteen (15) days after receipt of notice of an arbitration, in which case the arbitration-filing party must re-file in small claims court in order to pursue the claim. In the event that there is any disagreement between you and Sling TV concerning whether the Dispute is within the jurisdiction of the small claims court, only the small claims court (and not an arbitrator or an arbitration administrator) may resolve that disagreement. If the small claims court determines that it lacks jurisdiction to hear the Dispute, then the Dispute shall be submitted to arbitration in accordance with the terms of this Arbitration Provision, unless the Dispute falls within an exception identified in this Arbitration Provision. If the small claims court determines that it has jurisdiction over part of that Dispute, then that part shall first be resolved in small claims court, and any remaining issues in the Dispute shall be resolved thereafter in accordance with the terms of this Arbitration Provision. After receiving timely notice of an election to move a Dispute from arbitration to small claims court, the AAA shall suspend the arbitration unless and until the small claims court denies its jurisdiction altogether or completes its exercise of jurisdiction over the parts of the Dispute to which its jurisdiction extends.

I. Applicable Law. For Disputes in small claims court, the law of the state that court is located in applies. For Disputes in arbitration, the law of the state that your billing address is in (according to Sling TV's records on the date the Dispute Resolution Notice is sent) will apply. If, for any reason, the Dispute does not go to arbitration or to a small claims court, or this Arbitration Provision is found to be invalid, then the laws of Colorado will apply to the Terms of Use and Promotional Terms and everything relating to these terms, including Sling TV's products and Services.

J. Rights to Opt-Out. If you do not agree to this Arbitration Provision, you have 30 days after you set up an account with us or you start your Services, whichever happens first, to opt out of this Arbitration Provision. To do that, send a written notice to Sling TV, Attn: Dispute Resolution, P.O. Box 9033, Littleton, Colorado 80120-9033.

You may download and use the form Opt-Out Notice from our website. (<https://www.sling.com/offer-details/disclaimers/terms-of-use/arbitration>) If you decide to opt out of this Arbitration Provision, it won't negatively affect your relationship with us or our delivery of Services. If we get a notice to opt out postmarked after the thirty-day period described above, it won't be valid and you will be bound by this Arbitration Provision.

K. Future Changes to this Arbitration Provision; Costs. We may make changes to this Arbitration Provision in the future. If we do, unless it's a change to the Legal Dispute Notice Address, you may reject those changes by sending a written notice to the Legal Dispute Notice Address within thirty (30) days after we inform you of the changes (or at any time if we don't inform you of the changes). If you reject changes we make in the future, you are still required to resolve Disputes using the version of the Arbitration Provision that doesn't include those changes.

The thirty (30) day period for you to reject the change starts when we give you notice of the change. We will be deemed to have given you notice of changes to this Arbitration Provision as follows:

1. In the event that we send you notice by U.S. mail (including, without limitation, on a mailed bill, bill insert, notice, letter, or postcard), then it will be considered given three (3) days after it is first deposited in the U.S. mail, addressed to you at your billing address then appearing in our records;



The thirty (30) day period for you to reject the change starts when we give you notice of the change. We will be deemed to have given you notice of changes to this Arbitration Provision as follows:

1. In the event that we send you notice by U.S. mail (including, without limitation, on a mailed bill, bill insert, notice, letter, or postcard), then it will be considered given three (3) days after it is first deposited in the U.S. mail, addressed to you at your billing address then appearing in our records;
2. In the event that we send you notice electronically (including, without limitation, via an e-mail, text message, electronic bill, social media message, or attachment), then it will be considered given at the time we first send an electronic communication containing such notice or notifying you of the availability of such notice (or the electronic bill in which it is included) to the electronic contact information (including, without limitation, e-mail address, phone number, or social media (e.g., Facebook, Twitter) identifier) then appearing in our records; and
3. In the event that we send you notice via broadcast on a television channel, or on your Sling TV app (including, without limitation, through pop-up messages) or through publication on [sling.com](http://sling.com) or other website, then it will be considered given when first broadcast, sent, or published.

L. Expenses Outside of Arbitration. If either you or Sling TV start a case with a court of general jurisdiction, that case involves a Dispute that was supposed to go to arbitration under this Arbitration Provision, and the sued party successfully gets the Dispute sent to arbitration, then the party that started the case must pay the sued party's reasonable attorneys' fees, expenses, and court costs related to moving the case to arbitration.

M. Exceptions. If you are getting Services from us that you were not authorized to receive and that you didn't pay for, whether through theft or otherwise, then that Dispute shall not be covered by this Arbitration Provision and may only be decided by a court with appropriate authority. In addition, if either you or Sling TV bring a claim that seeks "public injunctive relief" (an injunction that seeks to prevent injury to members of the public, other than just the party seeking the injunction), then that claim may only be decided by a court with appropriate authority. However, any related claim for damages based on a Dispute must still be resolved on an individual basis in arbitration or small claims court. In the case of each exception, you and Sling TV agree that the arbitrator lacks the authority to decide such claims.

## Section 12: MISCELLANEOUS

A. Notice. Any notice required or permitted to be given by Sling TV under these Terms of Use may be provided by any reasonable means, including by mail, by publication on the [www.sling.com](http://www.sling.com) website, via your Membership Account for our Services (e.g., by sending an electronic message to your Membership Account), by telephone, or by e-mail. If we send you notice by mail, it will be considered given the day after it is deposited in the U.S. mail, addressed to you at your physical address of record as then-currently stated in our records. If we send you notice to your personal e-mail or through your Membership Account e-mail, including notice directing you to changes published on our Website, such notice will be considered given upon sending to your e-mail address of record as then-currently stated in our records and associated with your Membership Account or upon sending to your Membership Account. If we give you notice by telephone, it will be considered given when personally delivered to you or when left as a message at your phone number of record as then-currently stated in our records. Unless otherwise specified in these Terms of Use, any notice required or permitted to be given by you under these Terms of Use must be in writing and be sent to Sling TV at the Notice Address, by certified mail; and will be deemed given only when such notice is received by us at the Notice Address. If your name, contact information, or other account information is no longer accurate or otherwise changes, then you must promptly access and correct such information associated with your Membership Account as further described under the "Your Rights" section of our [Privacy Policy](#).

B. Entire Agreement. These Terms of Use, including those terms hyperlinked and incorporated herein, constitute the entire agreement between Sling TV and you regarding the subject matter hereof. If you are an existing User of any websites, products, or other services provided by our affiliates (e.g., direct broadcast satellite programming services), then your acceptance and agreement to these Terms of Use is independent of, and without modification to, any such other agreement and will not amend, modify, or otherwise affect any such relationship governed thereby. With respect to any of our Services, these Terms of Use govern your use of such Services, and supersede any prior agreements or understandings between you and Sling TV with respect to the subject matter hereof. For clarity, if you access, use, or purchase our Services from a third party or through any third-party platform (e.g., Services sold by our business partners) or use any third-party device (e.g., PC, Mac, Android, iPhone, Amazon Fire TV, Chromecast, Xbox, Roku or any combination thereof), then their terms and conditions (or other agreements agreed to by you) governing those devices will govern your use of such device and relationship with such third party.

C. Applicable Law. These Terms of Use, including all matters relating to their validity, construction, performance, and enforcement, and any claim, complaint, or dispute arising out of or related to these Terms of Use, your relationship to Sling TV, and/or otherwise related to our Services will be governed by the laws of the State of Colorado without giving effect to its conflict of law provisions. If any provision in these Terms of Use is declared to be illegal, invalid, or is otherwise in conflict with any law, then such provision will automatically be considered modified to the minimum extent necessary to make such provision legal, binding, and no longer in conflict with such law, without affecting the validity of any other provisions of such Terms of Use, and any and all other provisions will remain in full force and effect to the fullest extent permitted by law.

D. Choice of Forum. You agree that any action at law, in equity, under contract (including under these Terms of Use), or otherwise that is excluded from, or otherwise not subject to arbitration or small claims court must be filed, and that venue properly lies, only in the state or federal courts located in the city and county of Denver, Colorado, United States of America and you hereby irrevocably consent and submit to the personal jurisdiction of such courts for the purpose of litigating such action.

E. Assignment. You agree that Sling TV may assign or otherwise transfer (e.g., sell) your agreement to these Terms of Use with Sling TV to any third party without your prior consent. You may not assign or otherwise transfer (e.g., via the sale of any Permitted Device) any agreement(s) with us without first



A. Notice. Any notice required or permitted to be given by Sling TV under these Terms of Use may be provided by any reasonable means, including by mail, by publication on the [www.sling.com](http://www.sling.com) Website, via your Membership Account for our Services (e.g., by sending an electronic message to your Membership Account), by telephone, or by e-mail. If we send you notice by mail, it will be considered given the day after it is deposited in the U.S. mail, addressed to you at your physical address of record as then-currently stated in our records. If we send you notice to your personal e-mail or through your Membership Account e-mail, including notice directing you to changes published on our Website, such notice will be considered given upon sending to your e-mail address of record as then-currently stated in our records and associated with your Membership Account or upon sending to your Membership Account. If we give you notice by telephone, it will be considered given when personally delivered to you or when left as a message at your phone number of record as then-currently stated in our records. Unless otherwise specified in these Terms of Use, any notice required or permitted to be given by you under these Terms of Use must be in writing and be sent to Sling TV at the Notice Address, by certified mail; and will be deemed given only when such notice is received by us at the Notice Address. If your name, contact information, or other account information is no longer accurate or otherwise changes, then you must promptly access and correct such information associated with your Membership Account as further described under the "Your Rights" section of our [Privacy Policy](#).

B. Entire Agreement. These Terms of Use, including those terms hyperlinked and incorporated herein, constitute the entire agreement between Sling TV and you regarding the subject matter hereof. If you are an existing User of any websites, products, or other services provided by our affiliates (e.g., direct broadcast satellite programming services), then your acceptance and agreement to these Terms of Use is independent of, and without modification to, any such other agreement and will not amend, modify, or otherwise affect any such relationship governed thereby. With respect to any of our Services, these Terms of Use govern your use of such Services, and supersede any prior agreements or understandings between you and Sling TV with respect to the subject matter hereof. For clarity, if you access, use, or purchase our Services from a third party or through any third-party platform (e.g., Services sold by our business partners) or use any third-party device (e.g., PC, Mac, Android, iPhone, Amazon Fire TV, Chromecast, Xbox, Roku or any combination thereof), then their terms and conditions (or other agreements agreed to by you) governing those devices will govern your use of such device and relationship with such third party.

C. Applicable Law. These Terms of Use, including all matters relating to their validity, construction, performance, and enforcement, and any claim, complaint, or dispute arising out of or related to these Terms of Use, your relationship to Sling TV, and/or otherwise related to our Services will be governed by the laws of the State of Colorado without giving effect to its conflict of law provisions. If any provision in these Terms of Use is declared to be illegal, invalid, or is otherwise in conflict with any law, then such provision will automatically be considered modified to the minimum extent necessary to make such provision legal, binding, and no longer in conflict with such law, without affecting the validity of any other provisions of such Terms of Use, and any and all other provisions will remain in full force and effect to the fullest extent permitted by law.

D. Choice of Forum. You agree that any action at law, in equity, under contract (including under these Terms of Use), or otherwise that is excluded from, or otherwise not subject to arbitration or small claims court must be filed, and that venue properly lies, only in the state or federal courts located in the city and county of Denver, Colorado, United States of America and you hereby irrevocably consent and submit to the personal jurisdiction of such courts for the purpose of litigating such action.

E. Assignment. You agree that Sling TV may assign or otherwise transfer (e.g., sell) your agreement to these Terms of Use with Sling TV to any third party without your prior consent. You may not assign or otherwise transfer (e.g., via the sale of any Permitted Device) any agreement(s) with us without first obtaining our prior written consent, which consent may be withheld, delayed, or conditioned for any reason whatsoever (e.g., your Membership Account reflects an outstanding unpaid balance).

F. No Waiver; Remedies Cumulative. Except as otherwise expressly provided in these Terms of Use, the failure of a party to exercise or enforce any right or provision of these Terms of Use will not constitute a waiver of such right or provision. The rights and remedies provided under these Terms of Use to Sling TV in case of your default or breach of these Terms of Use are cumulative and without prejudice to any other rights and remedies that Sling TV or you may have at law, in equity, under contract (including under these Terms of Use), or otherwise, all of which are hereby expressly reserved.

G. No Third-Party Beneficiaries; Claim Limitation. You agree that, except as otherwise expressly provided in these Terms of Use, there are no third-party beneficiaries to your agreement to these Terms of Use. You agree that regardless of any law to the contrary, any claim, Dispute, or cause of action by you arising out of or related to our Services pursuant to these Terms of Use must be filed within one year following the date on which such claim, Dispute, or cause of action arose; and if not filed within such one-year period, then you hereby irrevocably waive any and all rights to pursue such claim(s), Disputes, or other cause(s) of action.

H. Headings. The section titles and paragraph headings in these Terms of Use are for convenience only and have no legal or contractual effect. Any and all examples or references to "include," "includes," or "including" set forth in these Terms of Use are by way of example only and will be interpreted as non-limiting. Any reference in these Terms of Use to the singular form of a word will include the plural form of the word, if applicable, and any reference to the plural will include the singular, if applicable. In addition, the term "days" when used in these Terms of Use, unless specified as a 'business day' means a calendar day. For the purposes of these Terms of Use, a 'business day' means a weekday (other than a Saturday or a Sunday) excluding any national (United States) holiday.

I. Survival. Any provision of these Terms of Use that logically would be expected to survive the suspension, completion, expiration, or earlier termination of your Membership Account, Subscription Services, and/or other Services or your agreement to these Terms of Use will survive such suspension, completion, expiration, or earlier termination, including any and all representations and warranties contained in these Terms of Use and any and all provisions and agreements regarding indemnification obligations, confidentiality obligations, dispute resolution, binding arbitration and class action waivers, the "Miscellaneous" provisions in this Section 12, limitations of liability, and disclaimers.

\* \* \* \* \*

# Sling TV Terms of Use

Effective September 12, 2025

Welcome to Sling TV! Our goal is to provide you with a variety of choice television content, including live and on-demand sports, entertainment, and news.

Please note that the terms and conditions contained herein, together with any applicable promotional terms agreed to by you (“Promotional Terms” and together with the **Privacy Policy** (/offer-details/disclaimers/privacy-notice) and **End User License Agreement** (/offer-details/disclaimers/terms-of-use/eula) (“EULA”) each of which is hereby incorporated in these Terms of Use by this reference in its entirety, collectively, these “Terms of Use”) include embedded hyperlinks that may only be accessed through our websites. If you are reviewing these Terms of Use through certain applications or other platforms, then you may need to visit **<https://www.sling.com/offer-details/disclaimers/terms-of-use>** (/offer-details/disclaimers/terms-of-use) in your browser to review any hyperlinked terms incorporated herein. These Terms of Use set forth the terms and conditions pursuant to which Sling TV will agree to provide or otherwise make our Services available to you. Your access and use is conditioned on your acceptance of these Terms of Use and are effective until we change or replace them.

Sling TV L.L.C. and its affiliates (referred to as, “we,” “us,” “our,” or “Sling TV”) endeavors to provide you and other users of our websites (“Websites”) and our applications (“Apps”) with access to a variety of content (such Websites and Apps, together with any other “Sling TV” branded memberships, features, functionalities, products, services, and any and all content contained therein, are collectively referred to in these Terms of Use as, “Services”). You and other users of our Services are collectively referred to in these Terms of Use as “you,” “your,” and “Users.” Certain of our Services, including transaction and subscription based Services provided in exchange for a fee, may be accessed and used only by those Users who have registered with us and created a membership account (such account, a “Membership Account”, and each such User, an “Authenticated User”). Certain of our Services may be accessed and used by Users without any requirement to pay a fee, register, or create a Membership Account. Any and all access and use of any and all our Services by Users (whether or not Authenticated Users) are governed by these Terms of Use. Notwithstanding anything to the contrary set forth in these Terms of Use, if you purchase our Services in Puerto Rico, “we,” “us,” “our,” or “Sling TV” refers to DISH Network Puerto Rico L.L.C.

SUBJECT TO CERTAIN EXCEPTIONS SET FORTH BELOW IN **SECTION 11**, THESE SLING TV TERMS OF USE REQUIRE THE USE OF MANDATORY AND BINDING ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES (AS THAT TERM IS DEFINED IN **SECTION 11.A**. BELOW, RATHER THAN, AMONG OTHER THINGS, JURY TRIALS OR CLASS ACTIONS (SEE **SECTION 11** BELOW).

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## **Section 1: Acceptance of Terms of Use**

A. Acceptance. Our Services are not intended to be used by children without involvement and approval of a parent or other legal guardian. Some programming available in our Services is of an adult nature and not intended for viewing by persons



under 18 years of age, including programming that is “Rated R” or “TV-MA” or contains scenes of nudity, sexual content, or graphic violence that may be offensive to certain viewers. If you are under the age of 18, then you are not permitted to register with us or provide your personal information to us. These Terms of Use govern your use of all of our Services and your relationship with us. By accessing, visiting, downloading, or using any of our Services (e.g., if you download any of our Apps onto any device) you confirm that you have read and agreed to these Terms of Use. If you do not agree to these Terms of Use, then do not access or use any of our Services. If you are an existing user and do not wish to accept any revised Terms of Use, then you must immediately stop using all of our Services (including, for clarity, permanently removing all Apps from your devices), except as set forth in Section 11 below.

B. Changes to these Terms of Use. These Terms of Use are effective until we change them. Because we are continuously working to improve, enhance, expand, and modify our Services to provide you with the best experience, these Terms of Use will change from time to time, and we suggest that you check back regularly in order to understand our Services, including our practices related to personal information as described in the Privacy Policy (<https://www.sling.com/privacy>), the rights and restrictions related to certain of our Services granted in the **EULA** ([/offer-details/disclaimers/terms-of-use/eula](https://www.sling.com/offer-details/disclaimers/terms-of-use/eula)), and all other terms and conditions governing your access and use of our Services. You acknowledge and agree that we may change all or any portion of these C. Terms of Use at any time and from time to time, in our sole and absolute discretion, by publishing a revised version of these Terms of Use at: <https://www.sling.com/terms-of-use#membership>. Any revised version of these Terms of Use will be effective immediately, except that, solely with respect to existing Authenticated Users, such revised version will be effective 30 days following the day on which the revisions were first posted, unless expressly and specifically stated otherwise. Except as otherwise set forth in Section 2.E., in the event that you are an existing Authenticated User and you do not wish to accept any revised version of the Terms of Use, then you must immediately send a notice to us at: Attn: General Counsel’s Office, 9601 S. Meridian Blvd., Englewood, CO 80112, and we will, at our option, either cancel your Membership Account at the end of the then-current billing period or allow you to continue to receive your Subscription Services under the previous version of these Terms of Use.

Certain Restrictions on Use; Private and Personal Use Only. Some programming is the copyrighted material of the third party that supplies it, is protected by copyright and other applicable laws and may not be reproduced, published, rebroadcast, rewritten, or redistributed without the written permission of the third party that supplied it (except as permitted by the “fair use” or other applicable provisions of the U.S. copyright laws) or by our agreements with such third parties. Our Services, including all content viewed through our Services, are solely for private, personal, non-commercial use, not for use in the operation of a business or service bureau, and not for any other public viewing, for



profit or for the benefit or any person or entity other than the User; and your limited rights to use our Services as set forth in our EULA are subject to your understanding of, and agreement to, these Terms of Use in their entirety.

## **Section 2: OUR SERVICES**

A. Our Services. By accessing or using our Services, you receive access to and use of: (i) certain software, technology, and other intellectual property rights (including all functionality and data contained therein) (e.g., adaptive streaming and third-party platform authentication) owned or operated by us (regardless whether available for download directly or indirectly from Sling TV) (e.g., applications that are hosted or downloaded, accessories, tools, features and/or functionality related to and/or made available by us); (ii) websites owned, operated, or otherwise controlled by, or on behalf of, us; (iii) the content accessible by you (e.g., any and all transaction and subscription video, audio, data, interactive, programming, advertising and other content); and (iv) any and all other products and/or services accessed, provided, used, or otherwise made available to you, including to enhance past or then-current Services.

B. Internet Connection. In order to access and use our Services, you must have a broadband, wireless, or similar internet connection, and you will need to obtain such internet connection (including sufficient levels and required equipment related thereto) from a third-party internet or similar wireless service provider at your sole cost and expense ("Internet Connectivity"). It is your responsibility to obtain and maintain the Internet Connectivity necessary to access and use our Services. Sling TV is not responsible for your Internet Connectivity (or the amount of data consumed by you in connection with your use of any of our Services). The time it takes to access and use any of our Services (e.g., watching a movie or TV show) will vary based on a number of factors, including your location, your Internet Connectivity, the available bandwidth at the time of your request, the format of our Services you are attempting to access, the device(s) you use to access our Services, and other factors outside of our control. Sling TV makes no representations or warranties about the speed or quality of your watching experience on your or any device, and reserves the right change our Services (e.g., the format) based on the specifications of your Internet Connectivity (e.g., if your Internet Connection or device do not meet our required standards for accessing and viewing high-definition ("HD") content, then any HD content accessed by you may be automatically re-formatted by us in an attempt to improve your experience). We suggest that you ensure that your Internet Connectivity, Permitted Device(s) (as defined below) and configuration are compatible with our Services and the format thereof. You can review our minimum requirements and recommended levels for Internet Connectivity at: <https://www.sling.com/help/en/learn-about-sling/get-started/guide> (<https://www.sling.com/help/en/learn-about-sling/get-started/guide>). By accessing or

using our Services, you agree to look solely to the entity that provides your Internet Connection for any issues related to such connection and/or its compatibility with, or sufficiency for accessing and using, any of our Services.

C. Devices. Not all devices are compatible, or permissible, for use with our Services. For a current list of devices permitted for use with our Services ("Permitted Devices") please visit and review the devices listed at: **[www.sling.com/devices](http://www.sling.com/devices)** (<https://www.sling.com/devices>). Permitted Devices are manufactured and sold by entities other than Sling TV. In order to use our Services, you must have a Permitted Device, and you will need to obtain such Permitted Device from a third-party provider of such device at your sole cost and expense. You may use more than one Permitted Device, but the number of Authenticated User(s) concurrently accessing or using our Services may be limited to one (1) Permitted Device at any time. In addition, certain of our Services, or portions of the functionality thereof, may be "blacked-out" or not-available on certain Permitted Device(s). By accessing or using any of our Services, you agree to look solely to the third party that manufactured and/or sold you the device for any issues related to such device, the operating system thereon, and/or its or their compatibility with any of our Services.

D. Use of Adaptive Bitrate Streaming. Our Services, including, without limitation, live TV channels and the DVR (as defined below), use adaptive bitrate streaming ("ABS"), which creates multiple versions of each program, recorded at different bitrates, to optimize playback of the applicable audiovisual content at any given time based upon the capabilities of the applicable playback device and available internet bandwidth. If you choose to use the DVR, you are directing that playback be provided using ABS.

E. Service Changes; Packaging of Services. In addition to, and without limiting any other provisions in these Terms of Use, Sling TV may, permanently or temporarily, add, delete, rearrange, alter, interrupt, change, and/or eliminate: (i) any and all prices, fees, and/or charges; (ii) packages, programming, programming suppliers, services offered by suppliers; (iii) availability of the DVR with respect to any particular programming and/or programming suppliers, (iv) software, applications, features and/or functionalities, and technical and/or functional requirements, (v) Permitted Devices, (vi) compatible operating systems, (vii) and/or minimum Internet Connectivity required to use the Services, from time to time and at any time. In the event that we add, alter, and/or change any prices, fees, and/or charges, then you agree to pay such added, altered, and/or changed prices, fees, and/or charges. In the event that we add, delete, rearrange, alter, change, and/or eliminate any packages, availability of the DVR with respect to any particular programming and/or programming suppliers, software, applications, features and/or functionalities, then you acknowledge and agree that (a) we have no obligation to replace or supplement such packages, availability of the DVR with respect to any particular programming and/or programming suppliers, software,

applications, features and/or functionalities, and (b) you are not entitled to any credits, refunds, price reductions, or any other form of compensation because of any such addition, deletion, rearrangement, alteration, change, and/or elimination. You further acknowledge and agree that such additions, deletions, rearrangements, alterations, changes, and/or eliminations are not a discretionary act by us if they are due, in whole or in part, to the termination, suspension, or expiration of our legal right to provide such packages, availability of the DVR with respect to any particular programming and/or programming suppliers, software, applications, features and/or functionalities.

F. Programming Content and Restrictions. Certain of our Services may be “blackout” in your viewing area (e.g., local broadcast channels, sporting events, and/or other content for which you do not have the rights to access); if you circumvent or attempt to circumvent any of these “blackouts,” then you may be subject to legal action brought by us or third parties. Certain of our Services may have additional restrictions and your access to such Services will be subject to those restrictions.

G. The DVR. For our DVR product, we do not warrant or guarantee: (a) access to or recording of any particular programming; (b) the length of time any particular recorded program may remain available for your viewing; or (c) that the DVR (I) is error-free, (II) will not be interrupted, (III) will not erroneously delete programming that you record, or (IV) will not fail to schedule, make, store, or play back recordings. If you program the DVR to record more programming than it can hold in the space available, then some programs that you have previously recorded may be deleted. We reserve the right to terminate the DVR (and/or all or any portion of your access to the DVR) at any time in our sole and absolute discretion and, for the avoidance of doubt, we may terminate the DVR (and/or all or any portion of your access to the DVR) even if you have not decided to cancel the DVR. In the event that the DVR (and/or your access to the DVR) is cancelled or terminated for any reason or no reason whatsoever, you will no longer have access to any recordings that you have made with the DVR. If your Membership Account is disconnected, suspended, or terminated for non-payment, or for any other reason (or no reason) whatsoever (see, e.g., Section 5.E. below), then, even if you pay to restart your subscription(s) to our Services, recordings that you made with the DVR prior to such disconnection, suspension, or termination may no longer be available.

H. Compliance with Law. You agree to use our Services, including all features and functionalities associated therewith, in accordance with all applicable laws (e.g., public performance limitations or other restrictions on any use of our Services or content therein). You agree not to archive, download (other than through caching necessary for personal use), reproduce, distribute, modify, display, perform, publish, license, create derivative works from, offer for sale, or otherwise use or gain access to all or any portion of our Services, except as explicitly authorized in these Terms of Use, without express written permission from Sling TV. You also agree not to: circumvent, remove, alter,

deactivate, degrade, thwart, or otherwise interfere with any of our Services; use any robot, spider, scraper, or other automated means to access our Services; decompile, reverse engineer, or disassemble any of our Services (e.g., software or other products); insert any code or product, or otherwise manipulate or interfere with our Services (e.g., running any of our Services on a device not permitted for use by us); or, use any data mining, data gathering, or extraction method. In addition, you agree not to upload, post, e-mail, or otherwise send or transmit any material designed to interrupt, interfere with, destroy, or limit the functionality of any of our Services, or other software, hardware, or telecommunications equipment associated with our Services (e.g., any software viruses or any other computer code, files, or programs). In the event that we learn that you are using any Service in a manner that constitutes infringement of third-party intellectual property rights, including rights granted by U.S. copyright law, your Membership Account will be terminated.

I. Multiple Services. Sling Orange + Sling Blue consists of two separate Sling TV services—Sling Orange and Sling Blue—offered together for a multi-service discount. By subscribing to both services in Sling Orange + Sling Blue, you acknowledge that you can watch only one stream at a time of any Sling Orange channel using your Sling Orange service. In addition, you can watch three streams of Sling Blue channels at the same time using your Sling Blue service. In total, you can watch up to four simultaneous streams—one stream via your Sling Orange service and three streams via your Sling Blue service.

### **Section 3: MEMBERSHIP ACCOUNTS**

A. Membership Account; Login Credentials. Prior to accessing certain of our Services, you will be required to provide certain personal information determined by us as necessary to create a Membership Account. To become an Authenticated User you must first register with us for a Membership Account. You will be required to create login credentials, comprised of a user name and password (“Login Credentials”) designed to enable access and use your Membership Account. You are responsible for any and all actions, omissions, or other activities related to your Membership Account, including any Authenticated Users you permit to be linked to your Membership Account (if any, and only to the extent, permitted by us). The person in whose name any Membership Account is used for access to our Services, and whose payment method is charged, if any, is referred to as the “Account Owner.” As an Account Owner you may have access to and control over your Membership Account, any Authenticated Users linked to your Membership Account, and the Services available in connection therewith. If you have a Membership Account, then your control of such Membership Account is exercised through your use and protection of your password. Please be aware that to maintain exclusive control and ensure compliance with these Terms of Use, you may not reveal or



share your Login Credentials with anyone. In addition, if you would like to ensure that others cannot access your Membership Account by contacting our Customer Service (as defined in Section 6 below) and potentially altering your control, then you should take the necessary precautions not to reveal any personal or sensitive information used to identify yourself in connection with a lost password or user name (e.g., billing information, government issued IDs, or secret question answers). If you believe that your Membership Account has been accessed by anyone other than you or any Authenticated Users you have permitted thereunder, or otherwise without permission or in any unauthorized manner, then you must contact us immediately by communicating with an agent via the chat function. You are responsible for updating and maintaining the truth and accuracy of the information provided to us relating to your Membership Account (e.g., current billing information for Subscription Services (as defined below)). YOU UNDERSTAND THAT BY SHARING ACCESS TO OUR SERVICES OR YOUR LOGIN CREDENTIALS, OR BY OTHERWISE ALLOWING OTHERS TO ACCESS YOUR ACCOUNT, YOU AGREE TO BE RESPONSIBLE FOR ASSURING THAT ANY AND ALL SUCH USERS COMPLY WITH THESE TERMS OF USE AND THAT YOU OR THE NAMED PERSON ON THE APPLICABLE MEMBERSHIP ACCOUNT SHALL BE RESPONSIBLE FOR ANY AND ALL ACTIONS, OMISSIONS, AND/OR OTHER USE ASSOCIATED WITH SUCH MEMBERSHIP ACCOUNT. PLEASE BE AWARE THAT IF YOU SHARE OR OTHERWISE MAKE YOUR ACCOUNT AVAILABLE TO ANY THIRD PARTY (E.G., FORGETTING TO LOG OUT OF YOUR MEMBERSHIP ACCOUNT ON A SHARED OR PUBLIC DEVICE), THEN SUCH THIRD PARTY(IES) MAY BE ABLE TO ACCESS ANY AND ALL INFORMATION CONTAINED IN YOUR MEMBERSHIP ACCOUNT (E.G., CERTAIN PERSONAL INFORMATION, BILLING INFORMATION, SETTINGS, VIDEO RENTAL AND VIEWING HISTORY, AND OTHER RELATED VIEWING PREFERENCES (IF ANY) ASSOCIATED WITH YOUR ACCOUNT).

B. Requests for Information. You should be mindful of any communication requesting that you submit any personal or other sensitive information (e.g., your personal information, credit or debit card account information, Login Credentials, or secrets questions), and before confirming any such request, you should contact Customer Service immediately by communicating with an agent via the chat function. Please be aware that providing your information in response to these types of communications can result in, among other things, identity theft or fraud. Always access your account information (e.g., your personal information, credit or debit card account information, Login Credentials, or secrets questions) via our Websites or Apps, or by contacting Customer Service directly by communicating with an agent via the chat function. In order to protect Sling TV and its affiliates, media providers, device providers, business partners, or other service providers or licensors (collectively, "Contributors"), we reserve the right, and may, from time to time and at any time, without providing notice to you, place on hold (or otherwise suspend) your Membership Account in connection with any

activity that we believe to be fraudulent, illegal, in violation of these Terms of Use, or otherwise suspicious. We may evaluate or elect to provide credits, refunds, price adjustments or other discounts, compensation or recompense, from time to time and at any time, in our sole and absolute discretion, BUT WE ARE NOT OBLIGATED, AND YOU ARE NOT ENTITLED AND HEREBY WAIVE ANY RIGHT, TO ANY CREDIT, REFUND, PRICE ADJUSTMENT, OR ANY OTHER DISCOUNT, COMPENSATION, OR RECOMPENSE FOR HOLDS PLACED ON YOUR ACCOUNT, IF ANY.

C. Device Deactivation. If your device is transferred, lost, or stolen, then you must immediately contact Customer Service by communicating with an agent via the chat function. It is your sole responsibility to notify us of any transferred, lost, or stolen devices, and to prevent any unauthorized access to our Services and your Membership Account. Please review the risks and responsibilities of allowing third-party access to your Membership Account (see Section 3.A. above) that may result from your failure to notify us that your device was transferred, lost, or stolen.

## **Section 4: TRANSACTIONAL AND SUBSCRIPTION SERVICES; PACKAGES AND LEVELS; PROMOTIONS AND OTHER PACKAGES**

A. Transactional Services. After you create a Membership Account, certain of our Services may be made available by us without requiring any commitment from you to pay any fees or other amounts (e.g., certain paid “a-la-carte” video-on-demand rentals or pay-per-view offerings) (collectively, “Transactional Services”). Your access to, and use of, any Transactional Services are governed by these Terms of Use, and once you create or request a Membership Account to access certain of our Services, you will be a member until you or we permanently cancel your Membership Account and all Subscription Services with us. For example, you must abide by these Terms of Use in connection with your creation and use of any Membership Account used solely to access our Services, regardless of whether you ever provide payment information for any other paid Transactional Services. You may be required to provide a payment method and necessary billing information in order to receive certain other Transactional Services. Any and all users that create a Membership Account automatically enroll in membership to our Services UNLESS AND UNTIL YOU CONTACT US TO PERMANENTLY CANCEL AND DELETE INFORMATION RELATED TO YOUR MEMBERSHIP ACCOUNT BY CONTACTING CUSTOMER SERVICE BY COMMUNICATING WITH AN AGENT VIA THE CHAT FUNCTION, or until we elect to permanently cancel your Membership Account and Subscription Services (as defined below) for any purpose (e.g., in accordance with our standard information retention and destruction processes).

B. Subscription Services. After you create a Membership Account, certain of our Services may be made available by us solely in connection with your agreement to purchase a subscription to such Services for a set period (e.g., daily, multi-day, weekly, monthly or yearly subscription term) (collectively, "Subscription Services"). Except for certain short-term non-renewing Subscription Services (e.g., Passes), following the completion of such subscription period, your Subscription Services will automatically renew on a month-to-month basis at the then-current standard rates for monthly access to the same Subscription Services, unless and until they are cancelled or changed by you or Sling TV in accordance with these Terms of Use.

C. Packages of Subscription Services. We may offer a number of different packages of Subscription Services, including short-term non-renewing subscription Passes and special promotional packages, each governed by any supplemental offer details or Promotional Terms provided at the time of your first access or use of such Services. Some promotional packages may be offered by third parties in conjunction with the provision of their own products and services. We are not responsible for the products and services provided by such third parties. We reserve the right to modify, terminate, or otherwise amend the Subscription Services offered by us, and the contents of the packages and levels thereof.

D. Minimum Requirements. Sling TV reserves the right to require and/or change minimum programming package requirements, from time to time and at any time, in its sole and absolute discretion. For example, Sling TV may require a minimum commitment term, or Sling TV may require you to subscribe to a minimum level or package of our Services in order to view certain content or obtain access to purchase additional levels or packages of Subscription Services. In order to purchase certain packages, you may be required to first subscribe to Services for a set term (e.g., a year-long subscription).

E. Promotional Offers. You may initially accept a promotional offer for a certain package of Services that later becomes unavailable. Promotional offers do not automatically renew and may not be available at the end of, or during, the applicable promotional period, and following the completion of any such promotion, the Subscription Services will automatically renew on a month-to-month basis at the then-current standard rates for monthly access to the same Subscription Services, unless and until they are cancelled or changed by you or Sling TV, in accordance with these Terms of Use.

F. Only One Promotion per Account Owner. Promotional offers may not be combined with other promotional offers associated with any account that you own, unless otherwise expressly permitted in the applicable Promotional Terms. Sling TV reserves the right, in its sole and absolute discretion, to determine your eligibility for any promotional offer pursuant to the applicable Promotional Terms. Sling TV reserves the right to change, amend, and alter then-current promotional offers or Promotional Terms

as well as institute new promotional offers, from time to time and at any time, in its sole and absolute discretion. We do not guarantee that any promotional offers are or will be available to you at all, or in connection with any Services desired by you.

G. Cancellation Policies. Except for certain short-term non-renewing Subscription Services (e.g., Passes), your Subscription Services are prepaid on a monthly billing period basis and you may contact us to cancel them at any time by visiting **www.sling.com/account** (<http://www.sling.com/account>) or by contacting Customer Service by communicating with an agent via the chat function. Cancellation requests are not accepted via email. Because charges are prepaid each billing period, when you call to cancel your Subscription Services, your subscription will continue, and you will be able to enjoy your Subscription Services through the end of, the then-current billing period (except as otherwise provided herein to the contrary (see Section 5.D.) or in any Promotional Terms). Refunds are not issued for a partial billing period. When you cancel your Subscription Services, you may be subject to certain charges and fees as set forth in any applicable Promotional Terms, and if you have taken advantage of a promotional offer that required you to pre-pay for a minimum period of time (e.g., 3 months), then your cancellation will not become effective until the end of that minimum period of time, and in such case, for purposes of such promotional offer, your initial “billing period” will mean such minimum period of time. Your cancellation of Subscription Services does not automatically cancel your Membership Account or access to our Transactional Services. If you pay for the Services through your account with a third party (e.g., Amazon, Roku) and want to cancel your Membership Account or access to our other Services, then you may need to do so through your account with such third party.

## **Section 5: BILLING**

A. Fees and Charges. Except for certain short-term non-renewing Subscription Services (e.g., Passes), we will bill you monthly in advance for your Subscription Services. Charges are billed to the credit or debit card you registered with your Membership Account. Sling TV may, from time to time and at any time, change the amount of or basis for determining any fees or charges, and/or institute new fees, surcharges, or other charges as determined by us (e.g., surcharges imposed for transmission of programming content in certain jurisdictions). You agree to pay all amounts billed for our Services, as well as all taxes, fees, and other charges, if any, that are now or may in the future be assessed in connection with any of our Services you access or use, and any other charges due and owing to us. We may apply interest and late fees for any amounts paid following the date when due, and we may terminate or suspend your account for any



failure to timely pay any amounts or maintain up-to-date payment method information within your account. State and local taxes or reimbursement charges for gross earnings taxes in some states may apply.

B. Registration of Credit or Debit Card. If you do not already have an account, you will be required to establish an account to access certain of our Services. To access certain Services (e.g., video-on-demand rentals), you will also be required to register a valid credit or debit card to process payments of the associated fees. When you register a credit or debit card for a new account, you authorize Sling TV to place a pending charge to your credit or debit card to verify your billing address and the validity of your credit or debit card; such pending charges are temporary and will not be converted into an actual charge to you. Pending charges, while pending, will, however, reduce the available amount of credit on your credit card or funds available to your debit card. You are solely responsible for any and all fees charged to your credit or debit card by the issuer, bank, or financial institution, including fees for membership, any overdraft or other insufficient funds, or for exceeding any applicable credit limit. Once your account is authenticated, the credit or debit card that you registered with your account will be charged for each transaction without having to reenter your credit or debit card information. You agree that the issuer of any credit or debit card you registered with your Membership Account will accept these Terms of Use as your authorization and pay all amounts billed in connection with use of your account without Sling TV's submitting a signed receipt.

C. Billing Cycle. The fees for all Subscription Services and Transactional Services will be billed in advance. Except for certain short-term non-renewing Subscription Services (e.g., Passes), for Subscription Services, we automatically bill you each month on the calendar day corresponding to the date on which you first commenced payment for Subscription Services. Membership Account fees for Subscription Services and Transactional Services are fully earned upon payment. If your paid membership to any Subscription Service began on a day not contained in a given month, then we may bill you on a day in the applicable month or such other day as we deem appropriate (e.g., if you are regularly billed on the 31st, then we may bill you on the 28th or 30th of the calendar months that do not have 31 days). Although we endeavor to bill you as described in this paragraph, we reserve the right to change the timing of our billing as necessary, from time to time, and at any time. We may authorize your payment method in anticipation of membership or service-related charges. As used in these Terms of Use, "billing" shall indicate a charge, debit, or other payment clearance, as applicable, against your registered credit or debit card information. For the purposes of this paragraph, "month" or "monthly" refers to your billing cycle.

D. No Returns, Credits or Refunds. YOU UNDERSTAND AND AGREE THAT PAYMENTS ARE NONREFUNDABLE. WE ARE NOT OBLIGATED, AND YOU ARE NOT ENTITLED AND HEREBY WAIVE ANY RIGHT, TO ANY CREDIT, REFUND, PRICE ADJUSTMENT OR ANY

OTHER DISCOUNT, COMPENSATION OR RECOMPENSE FOR ANY PARTIALLY USED OR UNUSED SERVICE (E.G., SUBSCRIPTION SERVICES NOT USED OR TRANSACTIONAL SERVICES NOT DOWNLOADED OR FULLY VIEWED). Notwithstanding the forgoing, although not required or obligated, we reserve the right to evaluate or elect to provide credits, refunds, price adjustments or other discount, compensation or recompense, from time to time, and at any time, in our sole and absolute discretion; provided that any such elections to offer any such credits, refund, price adjustment or other discount, compensation or recompense in one instance does not entitle you to the same or any such benefit in the future for similar or unrelated instances, nor does it create any obligation whatsoever for us to offer such benefit to you or any other user in connection with any past, present, or future request under any circumstance whatsoever.

E. Restarting your Services. If you do not make timely payment for your Services, we may disconnect, suspend, limit, or terminate your access to such Services, and in such event, we will be immediately and forever wholly relieved from any and all of our duties and obligations to you under these Terms of Use. If your Membership Account is disconnected for non-payment, or for any other reason whatsoever, then Sling TV may require that you pay, and you agree to pay, any amount due (regardless of how long outstanding, and including all past due charges and all outstanding balances accrued through the date of such disconnection) before we reconnect your access to any of our Services. We are not obligated to reconnect your access to any of our Services. If your Services are disconnected for non-payment, or for any other reason whatsoever, then you may no longer be eligible, even if you pay to restart your Subscription Services, to receive any remaining credits or promotional pricing that you would have been eligible to receive had your Subscription Services, or any of our other Services, not been disconnected, suspended, limited, or terminated. Unless required by applicable law, deposits will not be held segregated from other funds and will not earn or accrue interest. Promotional pricing is valid only at the time of initial purchase of such promotional Subscription Service or Transactional Service, and we reserve the right to stop any promotion at any time for any reason whatsoever.

F. Attorney's Fees/Collections. If we use an attorney or a collection agency to collect any money you owe us, or to assert any other right that we may have against you (e.g., any breach of any agreement you may have with Sling TV or any of our affiliates), then you hereby agree to pay the reasonable costs of such collection or other action. These costs may include the costs of a collection agency, reasonable attorneys' fees, and court costs. If you believe you have been billed in error, you must contact our Customer Service immediately, and in no event more than 15 days following the date you receive any bill for which you are seeking correction. Failure to timely notify us of any dispute will constitute your acceptance of the corresponding billed amounts. You must pay undisputed portions of any billing statement when due, or, without limitation to any other rights or remedies available to Sling TV at law, in equity, under contract (including these

Terms of Use), or otherwise, all of which are hereby expressly reserved (e.g., we may elect to suspend or terminate your Subscription Services or any of our Services), permanently or temporarily, in whole or in part. All payments for our Services must be made directly by you to us, unless we authorize otherwise; and except as otherwise authorized, Sling TV shall have no obligation to provide Services for which payment is made by you to a third party or for which payment is made by a third party on your behalf.

G. Puerto Rico. If you reside in Puerto Rico, please note that the fees for all Subscription Services and Transactional Services will be billed to you by “sling.com” even though you are conducting business with DISH Network Puerto Rico L.L.C.

## **Section 6: CUSTOMER SUPPORT SERVICES AND RELATED COMMUNICATIONS**

A. Customer Support Services. Sling TV may elect to provide Membership Account support services or other assistance in connection with your Membership Account (“Customer Service(s)”). The levels, methods, and availability of our Customer Service offered is determined by us, in our sole and absolute discretion; we have no obligation to provide any Customer Services whatsoever in connection with our Services. If we make available or otherwise provide Customer Services, then such Customer Services are considered part of our Services for purposes of these Terms of Use, including any and all restrictions, disclaimers, and limitations herein.

B. Communications. By registering for a Membership Account, you hereby consent to receive electronic communications from us and other Contributors related to such account and our Services. These communications may involve sending emails to the email address you provided during registration, or delivering electronic communications via your Membership Account, and will include notices about your Membership Account (e.g., payment authorizations, password or payment method changes, confirmation e-mails, notices, and other similar or transactional information related to such account); these communications are part of our Services and your relationship with us. You agree that any notice, agreements, disclosures, or other communications that we send to you electronically, as described herein, will satisfy any legal communication requirements (e.g., that such communications be in writing and through an appropriate method). You also consent to receiving other electronic communications from us, such as newsletters about new Services features and content, special offers, promotional announcements, and customer surveys. If you no longer want to receive certain non-transactional communications via email, please contact Customer Service by communicating with an

agent via the chat function, click on the “Unsubscribe” link contained in any email, or on any other link that indicates that you would like to be removed from future, similar non-transactional communications.

C. Text Messages. By providing your telephone number, you consent to Sling TV, or its authorized representative, or any debt collection agency hired by Sling TV to use this number to contact you regarding Services, or regarding your Membership Account through an automated or predictive dialing system or prerecorded message system; regardless of whether the number is on any do-not-call lists or is otherwise registered as a wireless telephone number. You understand that you do not need to provide a cellular phone number to receive Services.

By electing to receive text messages from us, you hereby consent to the following additional terms:

- i. Message and data rates may apply depending on wireless carrier plan. See wireless plan or contact carrier for details.
- ii. Your receipt of text messages from us is subject to carrier participation. Current participating carriers are as follows: AT&T, T-Mobile®, Verizon Wireless, Sprint, Boost, U.S. Cellular, Cellular One, MetroPCS, Cellcom, Cellular South, Carolina West Wireless, Interop, ClearSky, nTelos, and Virgin Mobile.
- iii. T-Mobile® Liability Notice: T-Mobile® does not guarantee that alerts will be delivered and will not be liable for delayed or undelivered messages.
- iv. You must give us immediate notice of any change in your telephone number or other contact information associated with your account.

In addition, upon receipt of a text message from us, you may reply via text with HELP for Help and STOP to request that you stop receiving such messages.

## **Section 7: INTELLECTUAL PROPERTY**

A. Sling Property. The “Sling TV” Services, including any and all content made available in connection with your access and use of our Services, is protected by domestic and international copyright, trade secret, trademark, and other intellectual property laws. “Sling Television,” “Sling” and “Sling TV” are registered trademarks of Sling TV L.L.C., and Sling TV L.L.C. and its affiliates have patents that apply to our Services.

B. End-User License Agreement. Our Websites, Apps, and other software and technologies are developed by, or for, us and are designed to enable our provision of certain content through Permitted Devices. Our Websites, Apps, and other software and technologies may vary by Permitted Device, operating system, or other medium and the functionalities thereof may also differ among Permitted Devices. BY USING ANY OF



OUR SERVICES, YOU ACKNOWLEDGE AND AGREE TO OUR **END USER LICENSE AGREEMENT** (/offer-details/disclaimers/terms-of-use/eula) (I.E., OUR **EULA** (/offer-details/disclaimers/terms-of-use/eula)) AND TO RECEIVE, WITHOUT FURTHER NOTICE OR PROMPTING, UPDATED VERSIONS OF OUR WEBSITES, APPS, AND OTHER SOFTWARE AND TECHNOLOGIES, INCLUDING RELATED THIRD-PARTY SOFTWARE. IF YOU DO NOT ACCEPT THESE TERMS AND CONDITIONS SET FORTH IN OUR **EULA** (/offer-details/disclaimers/terms-of-use/eula), THEN DO NOT USE ANY OF OUR SERVICES.

C. Reporting Claims. If you have a reasonable belief that your or any other's protected works have been reproduced or distributed in a way that constitutes copyright infringement, or are otherwise aware of any content available in connection with the Services that may be infringing, violating, or otherwise misappropriating the your rights or such other party's rights, then please notify us immediately by sending us a written statement to the Notice Address set forth in Section 11.B. below, which written statement must set forth as much detail as is available, including, at a minimum: (i) your name; (ii) your address; (iii) your Membership Account number (if any); and (iv) a clear and detailed statement about the applicable concern of copyright infringement and/or related claim or by clicking on the "DMCA Policy" link at **www.sling.com** (<http://www.sling.com/>) and providing us with notice of your claim and other information as instructed.

D. Warning against Piracy and Infringement. Any direct or indirect act or attempted act to engage or assist in any unauthorized interception, reception, display, or other transmission or access of any portion of our Services, is a violation of various U.S. federal and state laws and of these Terms of Use. The penalties for violating applicable laws can include imprisonment and civil damage awards of up to \$110,000 per violation. Section 605(e)4 of Title 47 of the United States Code makes it a federal crime to modify your device or our Services to receive encrypted (scrambled) television programming without payment of required subscriptions (e.g., Subscription Services). Conviction can result in a fine of up to \$500,000 and imprisonment for five years, or both. Any person who procures any hardware or software that has been so modified is an accessory to that offense and may be punished in the same manner. Investigative authority for violations lies with the Federal Bureau of Investigation. In the event that we learn that you are using any Service in a manner that constitutes infringement of third-party intellectual property rights, including rights granted by U.S. copyright law, your Membership Account will be terminated.

## **Section 8: DISCLAIMER OF WARRANTIES**

YOU EXPRESSLY UNDERSTAND AND AGREE THAT:

A. YOUR USE OF OUR SERVICES IS AT YOUR SOLE RISK. OUR SERVICES ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN THESE TERMS OF USE, SLING TV (ON BEHALF OF ITSELF AND THE OTHER CONTRIBUTORS) HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF SATISFACTION, ENJOYMENT, QUALITY, TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. SLING TV DOES NOT TAKE ANY RESPONSIBILITY WHATSOEVER OR OTHERWISE WARRANT THE PERFORMANCE OF ANY DEVICE, INCLUDING THE CONTINUING COMPATIBILITY OF THE DEVICE (OR ITS OPERATING SYSTEM) WITH ANY OF OUR SERVICES, OR ANY INTERNET CONNECTION, INCLUDING ITS SPEED, BANDWIDTH, OR COMPATIBILITY WITH ANY DEVICE OR SLING TV SERVICE. FURTHERMORE, WE DO NOT MAKE ANY PROMISES ON BEHALF OF ANY THIRD PARTY, INCLUDING THE OTHER CONTRIBUTORS, AND YOU ACKNOWLEDGE AND AGREE THAT YOU HAVE NOT RELIED ON ANY PROMISES MADE BY US RELATED TO SUCH PARTIES OR THE PRODUCTS AND SERVICES PROVIDED BY THEM. The disclaimers set forth in these Terms of Use expressly apply to any terms hyperlinked and incorporated herein, including any Promotional Terms, the Privacy Policy, and the EULA (<https://www.sling.com/offer-details/disclaimers/terms-of-use/eula>), and including the software contained in our Services and your use of such software. We do not warrant that any issues, errors, or other defects or failures in or related to the software or our Services will be corrected.

B. NEITHER SLING TV NOR ANY OTHER CONTRIBUTOR MAKES ANY WARRANTY WHATSOEVER THAT: (i) THE SERVICE WILL MEET YOUR REQUIREMENTS OR REASONABLE SATISFACTION; (ii) THE SERVICE WILL ALLOW YOU TO COPY, RECORD, VIEW, SKIP, OR TRANSFER ANY PARTICULAR MEDIA, PROGRAMMING, OR PART THEREOF, OR PROVIDE OR CONTINUE TO PROVIDE ANY OTHER PARTICULAR FUNCTIONALITY; (iii) THE SERVICE WILL PERFORM AT A PARTICULAR SPEED, BANDWIDTH, OR DATA-THROUGHPUT RATE, BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE; (iv) INFORMATION RELATED TO YOUR ACCOUNT OBTAINED FROM THE USE OF THE SERVICE WILL BE ACCURATE OR RELIABLE; OR (v) THE VARIETY, QUANTITY, OR QUALITY OF ANY MEDIA, PRODUCTS, SERVICES, ACCESSORIES, INFORMATION, OR OTHER MATERIAL RENTED OR OBTAINED BY YOU THROUGH OUR SERVICES WILL MEET YOUR EXPECTATIONS, OR ANY ERRORS IN THE SERVICE WILL BE CORRECTED.

C. SLING TV MAY RECOMMEND CERTAIN LEVELS OF INTERNET CONNECTION FOR USE WITH CERTAIN OF OUR SERVICES; PROVIDED, HOWEVER, THAT YOU HEREBY AGREE AND UNDERSTAND THAT SLING TV WILL HAVE NO RESPONSIBILITY WHATSOEVER FOR YOUR INTERNET CONNECTIVITY AND SLING TV DOES NOT WARRANT OR GUARANTEE THE AVAILABILITY OR PERFORMANCE OF ANY INTERNET

CONNECTIVITY, INCLUDING THE SPEED, BANDWIDTH, COMPATIBILITY, SUFFICIENCY, EQUIPMENT, OR DELIVERY OF ANY INTERNET CONNECTION OR THAT ANY CERTAIN INTERNET CONNECTIVITY WILL IMPROVE OUR SERVICE(S). PLEASE BE AWARE THAT CERTAIN OF OUR SERVICES MAY REQUIRE THE USE OF ADDITIONAL DATA, AND THAT ANY INCREASED COSTS, FEES, OR OTHER AMOUNTS DUE TO BE PAID BY YOU AS A RESULT OF ANY INCREASE IN USAGE (E.G., USAGE OF DATA) IN CONNECTION WITH THE SERVICES WILL BE YOUR SOLE RESPONSIBILITY.

D. SLING TV MAY RECOMMEND OR LIST THE NAMES OF CERTAIN DEVICES PERMITTED FOR USE WITH CERTAIN OF OUR SERVICES, BUT YOU HEREBY AGREE AND UNDERSTAND THAT SLING TV DOES NOT TAKE ANY RESPONSIBILITY WHATSOEVER FOR AND SLING TV DOES NOT WARRANT THE PERFORMANCE OF ANY DEVICE OR GUARANTEE THAT SUCH DEVICE (OR THE APPLICABLE OPERATING SYSTEM OR VERSION) WILL BE (OR REMAIN) COMPATIBLE WITH ANY OF OUR SERVICES. YOU MAY ONLY USE OUR SERVICES ON PERMITTED DEVICES.

E. WE HEREBY DISCLAIM ANY, AND YOU AGREE THAT WE HAVE NO, OBLIGATION WHATSOEVER TO REPLACE OR SUPPLEMENT ANY SERVICES, PACKAGE OF SERVICES, OR PORTION OF ANY SERVICE(S) THAT WE CHANGE. WE ARE NOT OBLIGATED, AND YOU ARE NOT ENTITLED AND HEREBY WAIVE ANY RIGHT, TO ANY CREDIT, REFUND, PRICE ADJUSTMENT, OR ANY OTHER DISCOUNT, COMPENSATION, OR RECOMPENSE FOR ANY AMOUNT PAID BY YOU TO RECEIVE REPLACEMENT, SUPPLEMENTAL, OR ALTERNATE SERVICES, PACKAGES OF SERVICES, AND/OR PORTION OF SERVICES AS A RESULT OF ANY CHANGE.

F. ANY MEDIA, SOFTWARE, OR OTHER MATERIAL OR CONTENT DOWNLOADED, STREAMED, OR OTHERWISE OBTAINED THROUGH USE OF OUR SERVICES IS DONE AT YOUR OWN DISCRETION AND RISK. YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR TELEVISION, RECEIVER, DEVICE, OR OTHER HARDWARE, OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD, STREAMING, OR OBTAINING OF ANY SUCH MEDIA, SOFTWARE, OR OTHER MATERIAL OR CONTENT. NEITHER SLING TV NOR ANY OTHER CONTRIBUTOR ASSUMES ANY RESPONSIBILITY, AND WILL NOT BE LIABLE FOR ANY DAMAGES TO, OR VIRUSES THAT MAY INFECT, CORRUPT, OR OTHERWISE HARM ANY OF YOUR PROPERTY OR THE PROPERTY OF ANY THIRD PARTY, INCLUDING YOUR SOFTWARE, DEVICE, OR OTHER HARDWARE.

G. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM SLING TV OR THE OTHER CONTRIBUTORS, OR VIA YOUR MEMBERSHIP ACCOUNT OR USE OF THE SERVICES WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TERMS OF USE.

## **Section 9: LIMITATION OF LIABILITY**

A. Indirect Damages. YOU EXPRESSLY UNDERSTAND AND AGREE THAT NEITHER SLING TV NOR ANY OTHER CONTRIBUTORS WILL BE LIABLE TO YOU FOR ANY INDIRECT OR CONSEQUENTIAL DAMAGES (E.G., INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, OR OTHER INDIRECT DAMAGES, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA, OR OTHER INTANGIBLE LOSSES EVEN IF SLING TV OR ANY OF SUCH OTHER CONTRIBUTORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) ARISING FROM, OR OTHERWISE RESULTING DIRECTLY OR INDIRECTLY FROM: (i) USE OF ANY OF OUR SERVICES; (ii) ACTIONS, OMISSIONS, AND OTHER ACTIVITY UNDER YOUR MEMBERSHIP ACCOUNT (INCLUDING USE NOT AUTHORIZED BY US); (iii) THE PERFORMANCE OR NON-PERFORMANCE OF OUR SERVICES; OR (iv) THE INSTALLATION, MAINTENANCE, REMOVAL, OR TECHNICAL SUPPORT OF OUR SERVICES, EVEN IF SUCH DAMAGES RESULT FROM THE NEGLIGENCE OR GROSS NEGLIGENCE OF SLING TV OR THE OTHER CONTRIBUTORS.

B. Force Majeure. NEITHER SLING TV NOR ANY OTHER CONTRIBUTORS WILL BE LIABLE TO YOU FOR ANY FAILURE TO PERFORM THAT IS CAUSED BY OR OTHERWISE RESULTS FROM ANY ACTS OF GOD, FIRES, EARTHQUAKES, FLOODS, POWER OR TECHNICAL FAILURE, SERVER, INTERNET, SATELLITE OR UPLINK FAILURE, ACTS OF ANY GOVERNMENTAL BODY, OR ANY OTHER CAUSE BEYOND OUR REASONABLE CONTROL.

C. Limitation of Liability. IN ADDITION TO ANY OTHER LIMITATIONS SET FORTH IN THESE TERMS OF USE, NEITHER SLING TV NOR ANY OTHER CONTRIBUTORS, WILL BE LIABLE FOR ANY ADDITION, DELETION, REARRANGEMENT, ALTERATION, INTERRUPTION, CHANGE, AND/OR ELIMINATION IN ANY SERVICES OR FOR ANY DELAY, FOR THE AVOIDANCE OF DOUBT, INCLUDING: (i) IF SUCH ADDITION, DELETION, REARRANGEMENT, ALTERATION, INTERRUPTION, CHANGE AND/OR ELIMINATION, OR DELAY ARISES IN CONNECTION WITH THE TERMINATION OR SUSPENSION OF SLING TV'S ACCESS TO ALL OR ANY PORTION OF OUR SERVICES FOR ANY REASON WHATSOEVER; (ii) THE RELOCATION OF ALL OR ANY PORTION OF OUR SERVICES TO DIFFERENT SERVER(S); (iii) ANY ADDITION, DELETION, REARRANGEMENT, ALTERATION, INTERRUPTION, CHANGE, AND/OR ELIMINATION IN THE FEATURES AND/OR FUNCTIONALITY AVAILABLE WITH YOUR PERMITTED DEVICE(S) OR OUR SERVICES; (iv) ANY SOFTWARE OR OTHER DOWNLOADS INITIATED BY US OR OUR CONTRIBUTORS; OR (v) ISSUES RESULTING FROM YOUR DEVICE OR INTERNET CONNECTION, INCLUDING, LACK OF SUFFICIENT BANDWIDTH. FURTHERMORE, NONE OF SLING TV, ITS PROVIDERS, DEVICE PROVIDERS OR SERVICE PROVIDERS, OR ANY OF ITS OR THEIR THIRD-PARTY LICENSORS WILL BE LIABLE FOR ANY ADDITION, DELETION, REARRANGEMENT, ALTERATION,



INTERRUPTION, CHANGE, AND/OR ELIMINATION OF OR TO ANY DEVICE(S), FOR THE AVOIDANCE OF DOUBT, INCLUDING REMOVING OR DISABLING SOFTWARE, FEATURES, AND/OR FUNCTIONALITY.

D. Limitation of Direct Damages. EXCEPT AS SPECIFICALLY AND EXPRESSLY SET FORTH IN SECTION 11, THE MAXIMUM AGGREGATE LIABILITY OF SLING TV FOR ANY AND ALL CLAIMS UNDER OR RELATING TO EACH: (i) MEMBERSHIP ACCOUNT INCLUDING ALL AUTHENTICATED USERS THEREUNDER (IF MORE THAN ONE IS PERMITTED BY US), or (ii) YOU ONLY, IF YOU ARE NOT AN AUTHENTICATED USER UNDER ANY MEMBERSHIP ACCOUNT, IS LIMITED TO AN AMOUNT EQUAL TO THE AGGREGATE OF THE FEES THAT WERE PAID BY YOU UNDER THESE TERMS OF USE DURING THE SIX MONTHS BEFORE THE APPLICABLE CLAIM, OR IF DURING THE FIRST SIX MONTHS OF ANY ACCESS OR USAGE TERM, THEN THE FIXED FEES TO BE PAID BY YOU UNDER SUCH TERMS OF USE DURING THE FIRST SIX MONTHS OF SUCH USAGE TERM.

E. Applicability. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU, BUT ONLY TO THE EXTENT SUCH LIMITATIONS ARE EXPRESSLY DISALLOWED UNDER THE APPLICABLE LAW(S).

## **Section 10: INDEMNIFICATION**

You hereby agree to indemnify, defend, and hold Sling TV and its parents and affiliates, each of its and their present and future media providers, device providers, business partners, service providers, licensors, contractors, subcontractors, authorized distributors, authorized subdistributors, authorized retailers, directors, members, managers, officers, agents, employees, and other Users, and each of their respective assigns, heirs, successors, and legal representatives (the "Protected Group") harmless from, against, and with respect to any and all actions, claims, disputes or demands, including reasonable attorneys' fees and costs, that are incurred in connection with, arising out of, or relating to access to or use of our Services by you or in connection with your Membership Account, including any User thereof, your connection to our Services, your devices, your violation of these Terms of Use, or your violation of any rights of another User.

## **Section 11: DISPUTE RESOLUTION, MANDATORY AND BINDING ARBITRATION AND CLASS ACTION WAIVER (THE "ARBITRATION**

## **PROVISION")**

**BEFORE WE GET STARTED, YOU SHOULD KNOW THAT AN ARBITRATION PROVISION AND CLASS ACTION WAIVER APPLIES TO THIS AGREEMENT. IF WE CAN'T WORK OUT A DISPUTE WITH YOU, THIS AGREEMENT REQUIRES ARBITRATION OR SMALL CLAIMS COURT AND DOESN'T ALLOW CLASS ACTIONS. YOU'LL HAVE TO WAIVE YOUR ABILITY TO BRING A CLASS ACTION, OR TO HAVE A TRIAL BY JURY.**

A. Mandatory Binding Arbitration. If you and Sling TV have a Dispute (as defined below), Sling TV will first try to resolve it informally with you. If we can't, then you and Sling TV agree to resolve the Dispute either through binding arbitration or in small claims court, instead of courts of general jurisdiction (i.e. courts other than small claims courts), unless the Dispute is covered by one of the few exceptions we describe below, under "Exceptions." You acknowledge and agree that, if you or Sling TV start an action in small claims court to resolve a Dispute, but the small claims court can't resolve the Dispute for any reason (for example, if it does not have jurisdiction over the claim), then the Dispute can only be resolved by arbitration. Arbitration means that you and Sling TV will have a hearing before a neutral arbitrator rather than before a judge or jury in a court. The arbitrator is the person who will oversee and decide the Dispute. Arbitrators can award the same remedies that a court can award. In arbitration, discovery (where you and Sling TV get to ask each other for information about a dispute) is limited, and decisions made by arbitrators are final and only subject to limited review by courts.

BY ENTERING INTO THIS AGREEMENT, YOU AND SLING TV ARE EACH AGREEING TO WAIVE THE RIGHT TO A TRIAL BY JURY OR BY A JUDGE (OTHER THAN IN SMALL CLAIMS COURT), EXCEPT WHERE PROHIBITED OR OTHERWISE PROVIDED IN THIS AGREEMENT.

You and Sling TV both agree that the Federal Arbitration Act (the "FAA") governs this Arbitration provision. You still have the right to bring any concerns you may have to the attention of federal, state or local agencies (for example, the Federal Communications Commission) and if the law allows, those agencies can seek relief against us on your behalf.

B. Dispute Defined. When we use the term "Dispute" (with the capital D), it means any and all claims, disputes, or disagreements you and Sling TV currently have, might have in the future, or had in the past. A Dispute can be about anything related to our Services, and can involve Terms of Use, Promotional Terms, any type of law (such as a statute, regulation or ordinance), tort (examples are fraud, misrepresentation, fraudulent inducement, negligence or any other intentional tort) or anything else that courts or arbitrators have the authority to decide. Whether the Arbitration Provision is valid or

enforceable, and what it covers, is one type of Dispute. “Dispute” should be interpreted as broadly as is allowed. Some other examples of what a Dispute might be based on are:

- a. The Services, the Promotional Terms, or any other agreement between you and us;
- b. Sling TV products or services;
- c. Billing, collection and credit reporting;
- d. Telephone calls, texts, faxes and emails from Sling TV and/or a party acting or claiming to act for us; and/or. Sling TV’s or our agents’ collection, retention and/or disclosure of your personally identifiable information.

For purposes of this Arbitration Provision, any reference to “Sling TV” includes DISH Network L.L.C., EchoStar Corporation, and any of its direct and indirect subsidiaries, past or present.

C. Informal Dispute Resolution; Notice and Opportunity to Resolve. Before starting an arbitration or small claims matter, you and Sling TV both agree to try to resolve any Dispute informally (“Informal Process”). This means that neither you nor Sling TV is allowed to start arbitration or an action in small claims court for at least sixty (60) days after you or Sling TV give notice of a Dispute to the other. Either you or Sling TV may start the Informal Process to resolve a dispute by sending the other a written document titled a “Dispute Resolution Notice.” A Dispute Resolution Notice must include the following information:

- a. Your name, account number, and contact information;
- b. A description of what the Dispute is about; and
- c. How the party giving the Dispute Resolution Notice wants to resolve the Dispute.

You must send your Dispute Resolution Notice to: Sling TV L.L.C., Attn: Dispute Resolution, P.O. Box 9033, Littleton, Colorado 80120 (“Legal Dispute Notice Address”). We must send our Dispute Resolution Notice to the address we have for you in our records when we sent it. If you and Sling TV can’t resolve the Dispute within sixty (60) days after the Dispute Resolution Notice is received, then either you or Sling TV have the right to start binding arbitration or begin an action in small claims court, according to the procedures explained in this Arbitration Provision.

D. Arbitration Procedures. This paragraph explains how you and Sling TV participate in an arbitration to resolve a Dispute. Unless you and Sling TV agree to different procedures in writing, the Consumer Arbitration Rules (the “AAA Rules”) of the American Arbitration Association (“AAA”) will apply (except that any rules for class or collective actions will not apply). The AAA will run the arbitration process, and a single, neutral arbitrator will be in charge of the Dispute. The AAA Rules are available online at the

AAA's website (as of May 28, 2024, **www.adr.org/rules** (<http://www.adr.org/rules>)). If you prefer, we will give you a copy of the AAA Rules if you make a written request to Sling TV L.L.C., Attn: Dispute Resolution, P.O. Box 9033, Littleton, Colorado 80120-9033. The party who decides to start arbitration must open a case by filing a "Demand for Arbitration" with the AAA. To start arbitration, the requesting party must:

1. Make a demand in writing for arbitration;
2. Pay the administrative filing fee; and
3. Give the AAA a copy of this Arbitration Provision.

This process can be completed using an "AAA WebFile" (you can find this on the AAA's website (**www.adr.org** (<http://www.adr.org/>))), or at any AAA office, even if the hearing will not be in that location. The arbitration will take place in the county where your billing address is located (according to our records on the date the Dispute Resolution Notice is sent). However, you and Sling TV can instead agree, or the arbitrator can order, that the arbitration will: happen at a different location; be remote, using video or telephones; or be based only on things you and Sling TV submit in writing. The arbitrator will be bound by the terms of Terms of Use and Promotional Terms, including this Arbitration Provision. The arbitrator, and not any agency or court, will make the decisions about the Dispute.

E. The Arbitrator's Decision (aka The Arbitrator's Award). The arbitrator's decision will resolve each of the Disputes presented by the Demand for Arbitration (including things such as the amount one side has to pay the other, and things one side might have to do, etc.) and explain in writing his or her important findings and conclusions. The arbitrator's decision is a final and binding resolution of the Disputes between you and us, but shall not be binding on Sling TV with regard to any other Sling TV customer. If you or Sling TV ask a court to review the decision, the court's ability to review is limited. An Award by the arbitrator can be filed with any court with jurisdiction (which means the legal power of a court to review the Arbitrator's decision), in order to enforce the award.

F. Costs of Arbitration. If you start the arbitration process and agree to seek less than \$75,000 in damages, once Sling TV receives notice of arbitration, then we will reimburse you for the filing fee. We will also pay the AAA directly for any fees it charges for case management and for the arbitrator's services. However, if you start arbitration and don't agree to seek less than \$75,000 from us, or if we start the arbitration process, then AAA Rules will apply to determine who pays any fees.

G. Class Action Waiver. All Disputes between you and Sling TV must be resolved on an individual basis. Except as otherwise specified herein, you and Sling TV agree that all Disputes between you and Sling TV will be litigated in small claims court individually or arbitrated individually.



NEITHER YOU NOR SLING TV SHALL BE ENTITLED TO JOIN OR COMBINE CLAIMS MADE BY, OR AGAINST, OTHER PEOPLE OR OTHER ENTITIES, OR BRING A CLAIM AS A REPRESENTATIVE, INCLUDING BUT NOT LIMITED TO, AS PART OF A CLASS ACTION OR AS A “PRIVATE ATTORNEY GENERAL” FOR ANY DISPUTE.

Additionally, unless both you and Sling TV agree in writing:

- a. the arbitrator may not combine any dispute with other claims, and
- b. the arbitrator may not preside over any kind of representative or class action.

If any of this Arbitration Provision is found to be unenforceable, then, except for choice of law and informal dispute resolution provisions, this entire Arbitration Provision is null and void.

H. Small Claims. As noted above, either you or Sling TV may choose to have appropriate Disputes against each other resolved in small claims court, if the Dispute falls within the applicable small claims court’s jurisdiction and does not fall within an exception identified in this Arbitration Provision. A small claims court includes any court designated as small claims, or any similar court of limited jurisdiction in which claims are only resolved on an individual basis. Either you or Sling TV may elect to have an eligible Dispute resolved in small claims court by filing their claim in the small claims court or, after the other party has filed a claim in arbitration, by sending written notice to the other party and the AAA of this election within fifteen (15) days after receipt of notice of an arbitration, in which case the arbitration-filing party must re-file in small claims court in order to pursue the claim. In the event that there is any disagreement between you and Sling TV concerning whether the Dispute is within the jurisdiction of the small claims court, only the small claims court (and not an arbitrator or an arbitration administrator) may resolve that disagreement. If the small claims court determines that it lacks jurisdiction to hear the Dispute, then the Dispute shall be submitted to arbitration in accordance with the terms of this Arbitration Provision, unless the Dispute falls within an exception identified in this Arbitration Provision. If the small claims court determines that it has jurisdiction over part of that Dispute, then that part shall first be resolved in small claims court, and any remaining issues in the Dispute shall be resolved thereafter in accordance with the terms of this Arbitration Provision. After receiving timely notice of an election to move a Dispute from arbitration to small claims court, the AAA shall suspend the arbitration unless and until the small claims court denies its jurisdiction altogether or completes its exercise of jurisdiction over the parts of the Dispute to which its jurisdiction extends.

I. Applicable Law. For Disputes in small claims court, the law of the state that court is located in applies. For Disputes in arbitration, the law of the state that your billing address is in (according to Sling TV’s records on the date the Dispute Resolution Notice is sent) will apply. If, for any reason, the Dispute does not go to arbitration or to a small

claims court, or this Arbitration Provision is found to be invalid, then the laws of Colorado will apply to the Terms of Use and Promotional Terms and everything relating to these terms, including Sling TV's products and Services.

J. Rights to Opt-Out. If you do not agree to this Arbitration Provision, you have 30 days after you set up an account with us or you start your Services, whichever happens first, to opt out of this Arbitration Provision. To do that, send a written notice to Sling TV, Attn: Dispute Resolution, P.O. Box 9033, Littleton, Colorado 80120-9033.

You may download and use the form Opt-Out Notice from our website. (<https://www.sling.com/offer-details/disclaimers/terms-of-use/arbitration> (<https://www.sling.com/offer-details/disclaimers/terms-of-use/arbitration>)) If you decide to opt out of this Arbitration Provision, it won't negatively affect your relationship with us or our delivery of Services. If we get a notice to opt out postmarked after the thirty-day period described above, it won't be valid and you will be bound by this Arbitration Provision.

K. Future Changes to this Arbitration Provision; Costs. We may make changes to this Arbitration Provision in the future. If we do, unless it's a change to the Legal Dispute Notice Address, you may reject those changes by sending a written notice to the Legal Dispute Notice Address within thirty (30) days after we inform you of the changes (or at any time if we don't inform you of the changes). If you reject changes we make in the future, you are still required to resolve Disputes using the version of the Arbitration Provision that doesn't include those changes.

The thirty (30) day period for you to reject the change starts when we give you notice of the change. We will be deemed to have given you notice of changes to this Arbitration Provision as follows.

1. In the event that we send you notice by U.S. mail (including, without limitation, on a mailed bill, bill insert, notice, letter, or postcard), then it will be considered given three (3) days after it is first deposited in the U.S. mail, addressed to you at your billing address then appearing in our records;
2. In the event that we send you notice electronically (including, without limitation, via an e-mail, text message, electronic bill, social media message, or attachment), then it will be considered given at the time we first send an electronic communication containing such notice or notifying you of the availability of such notice (or the electronic bill in which it is included) to the electronic contact information (including, without limitation, e-mail address, phone number, or social media (e.g., Facebook, Twitter) identifier) then appearing in our records; and

3. In the event that we send you notice via broadcast on a television channel, or on your Sling TV app (including, without limitation, through pop-up messages) or through publication on [sling.com](https://www.sling.com) or other website, then it will be considered given when first broadcast, sent, or published.

L. Expenses Outside of Arbitration. If either you or Sling TV start a case with a court of general jurisdiction, that case involves a Dispute that was supposed to go to arbitration under this Arbitration Provision, and the sued party successfully gets the Dispute sent to arbitration, then the party that started the case must pay the sued party's reasonable attorneys' fees, expenses, and court costs related to moving the case to arbitration.

M. Exceptions. If you are getting Services from us that you were not authorized to receive and that you didn't pay for, whether through theft or otherwise, then that Dispute shall not be covered by this Arbitration Provision and may only be decided by a court with appropriate authority. In addition, if either you or Sling TV bring a claim that seeks "public injunctive relief" (an injunction that seeks to prevent injury to members of the public, other than just the party seeking the injunction), then that claim may only be decided by a court with appropriate authority. However, any related claim for damages based on a Dispute must still be resolved on an individual basis in arbitration or small claims court. In the case of each exception, you and Sling TV agree that the arbitrator lacks the authority to decide such claims.

## **Section 12: MISCELLANEOUS**

A. Notice. Any notice required or permitted to be given by Sling TV under these Terms of Use may be provided by any reasonable means, including by mail, by publication on the **[www.sling.com](https://www.sling.com)** (<https://www.sling.com/>) website, via your Membership Account for our Services (e.g., by sending an electronic message to your Membership Account), by telephone, or by e-mail. If we send you notice by mail, it will be considered given the day after it is deposited in the U.S. mail, addressed to you at your physical address of record as then-currently stated in our records. If we send you notice to your personal e-mail or through your Membership Account e-mail, including notice directing you to changes published on our Website, such notice will be considered given upon sending to your e-mail address of record as then-currently stated in our records and associated with your Membership Account or upon sending to your Membership Account. If we give you notice by telephone, it will be considered given when personally delivered to you or when left as a message at your phone number of record as then-currently stated in our records. Unless otherwise specified in these Terms of Use, any notice required or permitted to be given by you under these Terms of Use must be in writing and be sent to Sling TV at the Notice Address, by certified mail; and will be deemed given only when such notice is received by us at the Notice Address. If your name, contact information, or

other account information is no longer accurate or otherwise changes, then you must promptly access and correct such information associated with your Membership Account as further described under the “Your Rights” section of our **Privacy Policy** (/offer-details/disclaimers/privacy-notice).

B. Entire Agreement. These Terms of Use, including those terms hyperlinked and incorporated herein, constitute the entire agreement between Sling TV and you regarding the subject matter hereof. If you are an existing User of any websites, products, or other services provided by our affiliates (e.g., direct broadcast satellite programming services), then your acceptance and agreement to these Terms of Use is independent of, and without modification to, any such other agreement and will not amend, modify, or otherwise affect any such relationship governed thereby. With respect to any of our Services, these Terms of Use govern your use of such Services, and supersede any prior agreements or understandings between you and Sling TV with respect to the subject matter hereof. For clarity, if you access, use, or purchase our Services from a third party or through any third-party platform (e.g., Services sold by our business partners) or use any third-party device (e.g., PC, Mac, Android, iPhone, Amazon Fire TV, Chromecast, Xbox, Roku or any combination thereof), then their terms and conditions (or other agreements agreed to by you) governing those devices will govern your use of such device and relationship with such third party.

C. Applicable Law. These Terms of Use, including all matters relating to their validity, construction, performance, and enforcement, and any claim, complaint, or dispute arising out of or related to these Terms of Use, your relationship to Sling TV, and/or otherwise related to our Services will be governed by the laws of the State of Colorado without giving effect to its conflict of law provisions. If any provision in these Terms of Use is declared to be illegal, invalid, or is otherwise in conflict with any law, then such provision will automatically be considered modified to the minimum extent necessary to make such provision legal, binding, and no longer in conflict with such law, without affecting the validity of any other provisions of such Terms of Use, and any and all other provisions will remain in full force and effect to the fullest extent permitted by law.

D. Choice of Forum. You agree that any action at law, in equity, under contract (including under these Terms of Use), or otherwise that is excluded from, or otherwise not subject to arbitration or small claims court must be filed, and that venue properly lies, only in the state or federal courts located in the city and county of Denver, Colorado, United States of America and you hereby irrevocably consent and submit to the personal jurisdiction of such courts for the purpose of litigating such action.

E. Assignment. You agree that Sling TV may assign or otherwise transfer (e.g., sell) your agreement to these Terms of Use with Sling TV to any third party without your prior consent. You may not assign or otherwise transfer (e.g., via the sale of any Permitted

Device) any agreement(s) with us without first obtaining our prior written consent, which consent may be withheld, delayed, or conditioned for any reason whatsoever (e.g., your Membership Account reflects an outstanding unpaid balance).

F. No Waiver; Remedies Cumulative. Except as otherwise expressly provided in these Terms of Use, the failure of a party to exercise or enforce any right or provision of these Terms of Use will not constitute a waiver of such right or provision. The rights and remedies provided under these Terms of Use to Sling TV in case of your default or breach of these Terms of Use are cumulative and without prejudice to any other rights and remedies that Sling TV or you may have at law, in equity, under contract (including under these Terms of Use), or otherwise, all of which are hereby expressly reserved.

G. No Third-Party Beneficiaries; Claim Limitation. You agree that, except as otherwise expressly provided in these Terms of Use, there are no third-party beneficiaries to your agreement to these Terms of Use. You agree that regardless of any law to the contrary, any claim, Dispute, or cause of action by you arising out of or related to our Services pursuant to these Terms of Use must be filed within one year following the date on which such claim, Dispute, or cause of action arose; and if not filed within such one-year period, then you hereby irrevocably waive any and all rights to pursue such claim(s), Disputes, or other cause(s) of action.

H. Headings. The section titles and paragraph headings in these Terms of Use are for convenience only and have no legal or contractual effect. Any and all examples or references to “include,” “includes,” or “including” set forth in these Terms of Use are by way of example only and will be interpreted as non-limiting. Any reference in these Terms of Use to the singular form of a word will include the plural form of the word, if applicable, and any reference to the plural will include the singular, if applicable. In addition, the term “days” when used in these Terms of Use, unless specified as a ‘business day’ means a calendar day. For the purposes of these Terms of Use, a ‘business day’ means a weekday (other than a Saturday or a Sunday) excluding any national (United States) holiday.

I. Survival. Any provision of these Terms of Use that logically would be expected to survive the suspension, completion, expiration, or earlier termination of your Membership Account, Subscription Services, and/or other Services or your agreement to these Terms of Use will survive such suspension, completion, expiration, or earlier termination, including any and all representations and warranties contained in these Terms of Use and any and all provisions and agreements regarding indemnification obligations, confidentiality obligations, dispute resolution, binding arbitration and class action waivers, the “Miscellaneous” provisions in this Section 12, limitations of liability, and disclaimers.

\* \* \* \* \*





# EXHIBIT Q

|                          |                                                                                                           |
|--------------------------|-----------------------------------------------------------------------------------------------------------|
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# Introducing Select

Watch live TV starting at \$19.99/mo.

Get Select



## Flexible TV passes starting at \$4.99

The best live TV streaming service just got even better.

Shop all plans



## Sling Monthly TV Plans

No annual contracts. Customize with extras.

Orange\$45.99/mo30+ Channels1 stream

ESPN

ESPN2

ESPN3

ESPN4K

Freeform

MOTORTREND

INCLUDES ABC, FOX, NBC AND FOX 4K

Blue\$50.99/mo40+ Channels3 streams

FOX NEWS channel

MSNBC

USA

LOCAL abc

LOCAL FOX

INCLUDES ABC, FOX AND NBC

Select\$29.99/mo10+ Channels3 streams

FOX NEWS channel

NATIONAL GEOGRAPHIC

GRIT

FOX

FS1

Chat

ESPN4K

Freeform

MOTORTREND

Add

See other options

LOCAL abc

LOCAL FOX

Add

See other options

FX

FS1

Add

See other options

Best Offer

Orange + Blue  
Our best plan with 50+ channels

\$65.99/mo

Add

Not sure which plan is right for you?

Shop Channels

We have your favorite channels



See all channels

Flexible options for the way you watch

MOST POPULAR

Monthly

Monthly subscription, 24/7

NEW

Day Pass

One time charge, 24 hours

NEW

Weekend Pass

One time charge, access

NEW

Week Pass

One time charge, 7 days of

BEST DEAL

Season Pas

Pay 5 months upfront, t

Chat



Monthly

Monthly subscription, 24/7 access

From \$45.99/mo

Day Pass

One time charge, 24 hours of access

\$4.99

Weekend Pass

One time charge, access Fri-Sun

\$9.99

Week Pass

One time charge, 7 days of access

\$14.99

Season Pass

Pay 5 months upfront, then monthly

From \$199

[Compare plans](#)

Trending

Sports

News

Entertainment

Premium

International

Deals

sling

freestream

Watch TV, 100% free.

Get 600+ free live TV channels plus free DVR and win cash! The only free streaming service that lets you do that. [Learn more.](#)

Stream Free

Looks like a location issue. [11-6]

1) Make sure you aren't on VPN; 2) Enable location services if they aren't on (mobile devices only)

RETRY

Watch on 20+ top devices

apple tv

apple ios

roku

fire tv

android tv

lg

samsung

vizio

See all our [supported devices](#)

Chat

See all our [supported devices](#)

## CATCH LIVE SPORTS WITH SLING



Follow your favorite teams across NBA, NCAA Basketball, NHL and more with [top sports channels](#) like [ESPN](#), FS1, TBS, TNT, and more!

## DON'T MISS TOP NEWS STORIES AND BREAKING NEWS



Watch breaking news as it happens and stay connected to the latest events with [your favorite news channels](#) like FOX News, CNN, MSNBC, and BBC World News. Then tell your uninformed friends what's going on.

## LIVE CRICKET, ARABIC SERIES, AND MORE



Access IPL 2025 and the best of Desi entertainment in five languages with [Desi Binge Plus](#) and [Dakshin Flex](#). Enjoy top channels like Willow HD, SonyLIV, Simply South, Hotstar Specials, and more starting at \$10/mo.

Sling also brings you 2025's newest [Arabic](#) series from Shahid, MTV, MBC and more with Al Ostoura pack.

Enjoy also [French](#), [Brazilian](#), and other international packages.

## ENJOY ENDLESS ENTERTAINMENT



Drama, comedy, food, kids shows, reality TV...Sling has the [entertainment channels](#) you're looking for. Unless, of course, you're looking for entertainment that's not entertaining. We don't offer that. We tried it once and it was boring, so we decided to never do it again.

## ADD PREMIUM CHANNELS TO YOUR LINEUP



Sling features [premium streaming](#) content from [Paramount+ with SHOWTIME](#), [MGM+](#), [AMC+](#), [STARZ](#), and more! You can add and drop services at any time with no long-term contracts and get the shows and movies you want. Taking control of your channel lineup? Sounds impossible, right? Sling lets you do that.

Still have questions? [Chat with us](#) or [visit our Help Center](#)

Sign Up

Shop

Watch

Sports

About

Work with us



Services

Free live TV

General sports

What is Sling?

Advertise with us

Boost Mobile

Dish Network

HD, SonyLIV, Simply South, Hotstar Specials, and more starting at \$10/mo.

Sling also brings you 2025's newest **Arabic** series from Shahid, MTV, MBC and more with AI Ostoura pack.

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Sign Up

| Shop               | Watch        | Sports                  | About               | Work with us        |     |
|--------------------|--------------|-------------------------|---------------------|---------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Services           | Free live TV | General sports          | What is Sling?      | Advertise with us   | Boost Mobile                                                                                                                                                                                                                                                                                                                                            |
| Sling Orange       | Channels     | Sports schedules        | Value               | Become an affiliate | Dish Network                                                                                                                                                                                                                                                                                                                                            |
| Sling Blue         | Sling blog   | ESPN                    | Supported devices   | Job opportunities   | OnTech                                                                                                                                                                                                                                                                                                                                                  |
| Day Pass           | Programming  | NBA                     | Help center         |                     |                                                                                                                                                                                                                                                                                                                                                         |
| Sling Select       | Live news    | NFL Football            | Newsroom            |                     |                                                                                                                                                                                                                                                                                                                                                         |
| Add-ons            |              | NCAA College Football   | Sling Arcade        |                     |                                                                                                                                                                                                                                                                                                                                                         |
| Streaming services |              | NHL                     | Sling Rewards       |                     |                                                                                                                                                                                                                                                                                                                                                         |
| Offers             |              | Tennis                  | Features & benefits |                     |                                                                                                                                                                                                                                                                                                                                                         |
| Gift cards         |              | NFL Redzone             |                     |                     |                                                                                                                                                                                                                                                                                                                                                         |
|                    |              | Soccer                  |                     |                     |                                                                                                                                                                                                                                                                                                                                                         |
|                    |              | NCAA College Basketball |                     |                     |                                                                                                                                                                                                                                                                                                                                                         |
|                    |              | MLB                     |                     |                     |                                                                                                                                                                                                                                                                                                                                                         |
|                    |              | Cricket                 |                     |                     |                                                                                                                                                                                                                                                                                                                                                         |

|                          |                                                                                                           |
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Flexible subscription options

[Compare plans](#)

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## Orange Day Pass

24 hours of live TV for \$4.99

[Orange Day Pass](#)

\$4.99

## New Select Plan

FOX News & more for \$19.99/mo

[Get Select](#)



## Sling Monthly TV Plans

No annual contracts. Customize with extras.

**Orange**
\$45.99/mo

30+ Channels
 1 stream

[Add](#)

**Blue**
\$50.99/mo

40+ Channels
 3 streams

[Add](#)

**Select**
\$29.99/mo

10+ Channels
 3 streams

[Add](#)

[Chat](#)





Add

See other options



Add

See other options



Add

See other options

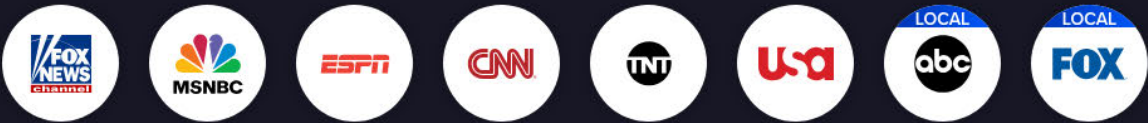
Best Offer

**Orange + Blue**  
Our best plan with 50+ channels

\$65.99/mo

Add

We have your favorite channels



See all channels

Flexible subscription options for the way you watch

MOST POPULAR



Monthly

24/7 access

From \$45.99/mo

NEW



Day Pass

24-hour access

\$4.99

NEW



Weekend Pass

Access Fri-Sun

\$9.99

NEW



Week Pass

7-day access

\$14.99

BEST DEAL



Season Pass

Pay 5 months upfront, then \$45.99/mo

From \$199

Compare plans

Chat

Trending

[Compare plans](#)

## Trending



Sports



News



Entertainment



Premium



International



Deals

sling  
freestream

## Watch TV, 100% free.

Get 600+ free live TV channels plus free DVR and win cash! The only free streaming service that lets you do that. [Learn more.](#)

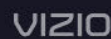
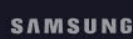
Stream Free

## Looks like a location issue. [11-6]

1) Make sure you aren't on VPN; 2)  
Enable location services if they aren't on  
(mobile devices only)

RETRY

## Watch on 20+ top devices

See all our [supported devices](#)

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## DON'T MISS TOP NEWS STORIES AND BREAKING NEWS

 Chat

DON'T MISS TOP NEWS STORIES AND BREAKING NEWS



Watch breaking news as it happens and stay connected to the latest events with [your favorite news channels](#) like FOX News, CNN, MSNBC, and BBC World News. Then tell your uninformed friends what's going on.

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Access IPL 2025 and the best of Desi entertainment in five languages with [Desi Binge Plus](#) and [Dakshin Flex](#). Enjoy top channels like Willow HD, SonyLIV, Simply South, Hotstar Specials, and more starting at \$10/mo.

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Drama, comedy, food, kids shows, reality TV...Sling has the [entertainment channels](#) you're looking for. Unless, of course, you're looking for entertainment that's not entertaining. We don't offer that. We tried it once and it was boring, so we decided to never do it again.

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Sling features [premium streaming](#) content from [Paramount+ with SHOWTIME](#), [MGM+](#), [AMC+](#), [STARZ](#), and more! You can add and drop services at any time with no long-term contracts and get the shows and movies you want. Taking control of your channel lineup? Sounds impossible, right? Sling lets you do that.

Still have questions? [Chat with us](#) or [visit our Help Center](#)

Sign Up

| Shop               | Watch        | Sports                | About               | Work with us        |     |
|--------------------|--------------|-----------------------|---------------------|---------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Services           | Free live TV | General sports        | What is Sling?      | Advertise with us   | Boost Mobile                                                                                                                                                                                                                                                                                                                                            |
| Sling Orange       | Channels     | Sports schedules      | Value               | Become an affiliate | Dish Network                                                                                                                                                                                                                                                                                                                                            |
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| Offers             |              | Tennis                | Features & benefits |                     |                                                                                                                                                                                                                                                                                                                                                         |

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

ESPN ENTERPRISES, INC.; ESPN, INC.; ABC CABLE NETWORKS GROUP; AMERICAN BROADCASTING COMPANIES, INC.; FX NETWORKS, LLC; INTERNATIONAL FAMILY ENTERTAINMENT, INC.; NGC NETWORK US, LLC; SOAPnet, L.L.C.; WABC TELEVISION (NEW YORK), LLC; WPVI TELEVISION (PHILADELPHIA), LLC; KABC TELEVISION, LLC; KFSN TELEVISION, LLC; KGO TELEVISION, INC.; KTRK TELEVISION, INC.; WLS TELEVISION, INC.; and WTVD TELEVISION LLC,

*Plaintiffs,*

-against-

DISH NETWORK L.L.C.,

*Defendant.*

DISH NETWORK L.L.C.,

*Defendant/Counterclaim Plaintiff,*

-against-

ESPN ENTERPRISES, INC.; ESPN, INC.; ABC CABLE NETWORKS GROUP; AMERICAN BROADCASTING COMPANIES, INC.; FX NETWORKS, LLC; INTERNATIONAL FAMILY ENTERTAINMENT, INC.; NGC NETWORK US, LLC; and SOAPNET, L.L.C.,

*Plaintiffs/Counterclaim Defendants,*

and

THE WALT DISNEY COMPANY; BABY NETWORK LIMITED; FUBOTV INC.; and FUBOTV MEDIA INC.,

*Counterclaim Defendants.*

Civil Action No.

1:25-cv-07169-AS-BCM

**DISH NETWORK L.L.C.'S  
ANSWER AND DEFENSES TO  
AMENDED COMPLAINT  
AND COUNTERCLAIMS**

**REDACTED**



**ANSWER**

Defendant DISH Network L.L.C. (“DISH”) hereby responds to the Amended Complaint dated December 19, 2025 as follows:

**“NATURE OF THE ACTION”**

1. In response to Paragraph 1, DISH admits that the “OTT Licensor” Plaintiffs seek an injunction and damages in this action and otherwise denies the allegations.

2. In response to Paragraph 2, DISH admits that it has an over-the-top digital license with the “OTT Licensor” Plaintiffs that authorizes DISH to distribute the “OTT Licensor” Plaintiffs’ programming as part of DISH’s streaming Sling TV service, and otherwise denies the allegations and respectfully refers the Court to the OTT License for a complete and accurate statement of its terms.

3. In response to Paragraph 3, DISH admits that it launched Sling Passes (including the Day Pass, Weekend Pass and Week Pass), an “industry-first” offering, on August 12, 2025. DISH further admits that it did not consult the OTT Licensor Plaintiffs in advance of launching Sling Passes, and avers that it had no contractual obligation to consult the OTT Licensor Plaintiffs prior to launching Sling Passes. In addition, DISH admits that a limited number of promotional materials for Sling Passes included the phrase “with no subscription,” which was inaccurate. DISH otherwise denies the allegations in Paragraph 3 and respectfully refers the Court to Exhibit E to the Amended Complaint for a complete and accurate statement of its contents.

4. In response to Paragraph 4, DISH denies the allegations.

5. In response to Paragraph 5, DISH denies the allegations, and avers that it has learned that YouTube TV has a non-renewing 20-minute free preview offering that allows

consumers to “Watch for 20 minutes free with no commitment. If you like what you see, start a free trial.”

6. In response to Paragraph 6, DISH denies the allegations.

7. In response to Paragraph 7, DISH admits that Exhibit G to the Amended Complaint states “popular sports channels like ESPN, ESPN2, and ESPN3” are among the 34 channels that can be streamed with the new Day Pass by Sling. DISH otherwise denies the allegations in Paragraph 7 and respectfully refers the Court to Exhibits G and H to the Amended Complaint for a complete and accurate statement of their contents.

8. In response to Paragraph 8, DISH admits that Exhibit I to the Amended Complaint states that “Sling’s recent court win reinforces its mission to reinvent television by championing consumer choice and flexibility. The Sling Day, Weekend and Week Pass subscriptions offer access to live sports, entertainment and news without a long-term contract, giving customers pay-as-you-want, instant access to top live channels at affordable prices.” DISH otherwise denies the allegations in Paragraph 8 and respectfully refers the Court to the OTT License for a complete and accurate statement of its terms.

9. In response to Paragraph 9, DISH denies the allegations.

10. In response to Paragraph 10, DISH denies the allegations.

11. In response to Paragraph 11, DISH admits that it refused to cease and desist from offering Sling Passes and that Plaintiffs seek an injunction and damages in this action, and otherwise denies the allegations.

12. In response to Paragraph 12, DISH admits that Exhibit B to the Amended Complaint is a DBS License between DISH and the DBS Licensor Plaintiffs and that Exhibit C to the Amended Complaint is an RCA License between DISH and the RCA Licensor Plaintiffs.

DISH otherwise denies the allegations and respectfully refers the Court to the OTT License, the DBS License and the RCA License for a complete and accurate statement of their terms.

**“PARTIES”**

13. In response to Paragraph 13, DISH admits that Plaintiffs are parties to license agreements with DISH. DISH denies Plaintiffs’ characterization of those licenses, and respectfully refers the Court to those licenses for a complete and accurate statement of their terms. Except as specifically admitted, DISH denies the allegations in Paragraph 13.

14. In response to Paragraph 14, DISH admits that the OTT Licensor Plaintiffs are parties to the OTT License with DISH and that certain of OTT Licensor Plaintiffs’ television networks and content are carried on the Sling Orange service, for which DISH offers Sling Passes. DISH denies Plaintiffs’ characterization of the OTT License, and respectfully refers the Court to the OTT License for a complete and accurate statement of its terms. DISH otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14 concerning the states of incorporation and principal places of business of the OTT Licensor Plaintiffs. Except as specifically admitted, DISH denies the allegations in Paragraph 14.

15. In response to Paragraph 15, DISH admits that the DBS Licensor Plaintiffs are parties to a DBS License with DISH. DISH denies Plaintiffs’ characterization of the DBS License, and respectfully refers the Court to the DBS License for a complete and accurate statement of its terms. DISH otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15 concerning the states of incorporation and principal places of business of the DBS Licensor Plaintiffs. Except as specifically admitted, DISH denies the allegations in Paragraph 15.

16. In response to Paragraph 16, DISH admits that the RCA Licensor Plaintiffs are parties to an RCA License with DISH, and respectfully refers the Court to the RCA License for a complete and accurate statement of its terms. DISH otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16 concerning the states of incorporation and principal places of business of RCA Licensor Plaintiffs. Except as specifically admitted, DISH denies the allegations in Paragraph 16.

17. In response to the first and second sentences in Paragraph 17, DISH denies that its name is “DISH Network LLC” (which is missing the periods in “L.L.C.”) and otherwise admits the allegations. In response to the third sentence in Paragraph 17, DISH admits that it is a counterparty to the OTT License, the DBS License, and the RCA License, denies the accuracy of Plaintiffs’ description of those agreements, and respectfully refers the Court to the OTT License, DBS License and RCA License for a complete and accurate statement of their terms.

#### **“JURISDICTION AND VENUE”**

18. In response to Paragraph 18, DISH admits that this Court has subject matter jurisdiction over this action. DISH further admits that it is a citizen of Colorado. DISH lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning the citizenship of each Plaintiff entity.

19. In response to Paragraph 19, DISH denies the allegations and denies that Plaintiffs have suffered any harm or injury.

20. In response to Paragraph 20, DISH admits that this Court has personal jurisdiction over it for purposes of this action.

21. In response to Paragraph 21, DISH admits that venue is proper in this Court.

**“LICENSOR’S VALUABLE TELEVISION PROGRAMMING AND DISTRIBUTION LICENSES”**

22. In response to the first and third sentences in Paragraph 22, DISH lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. In response to the second sentence in Paragraph 22, DISH admits the allegations.

23. In response to the first and second sentences in Paragraph 23, DISH admits the allegations. In response to the third sentence in Paragraph 23, DISH lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations.

24. In response to Paragraph 24, DISH denies the allegations.

25. In response to Paragraph 25, DISH denies the allegations.

26. In response to Paragraph 26, DISH denies the allegations.

27. In response to Paragraph 27, DISH denies the allegations.

28. In response to Paragraph 28, DISH admits that it has had license agreements with certain Plaintiffs applicable to its direct broadcast satellite service over the course of decades, and otherwise denies the allegations.

29. In response to Paragraph 29, DISH admits that it negotiated the OTT License with representatives of the OTT Licensor Plaintiffs in 2022 and otherwise denies the allegations.

30. In response to Paragraph 30, DISH admits that Seth VanSickel states in his Declaration dated September 29, 2025, “[i]nternally at DISH, we had been considering an offering along the lines of Sling Passes for approximately two years. In Spring 2025, we started moving toward making Sling Passes a reality,” and otherwise denies the allegations.



31. In response to the first sentence of Paragraph 31, DISH lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning Plaintiffs' license agreements with other entities, and on that basis denies the allegations. In response to the second sentence of Paragraph 31, DISH denies the allegations. In response to the third sentence of Paragraph 31, DISH lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations.

**“DISH ANNOUNCES UNAUTHORIZED ‘DAY PASS’ OFFERING”**

32. In response to Paragraph 32, DISH admits that it publicly announced Sling Passes on August 12, 2025 with a press release that contains the quoted language and that the retail price for a Sling Orange baseline monthly subscription is \$45.99. DISH respectfully refers this Court to the August 12, 2025 press release for a complete and accurate statement of its contents. DISH otherwise denies the allegations in Paragraph 32.

33. In response to Paragraph 33, DISH admits that Exhibit G to the Amended Compliant contains the quoted language, and otherwise denies the allegations. DISH avers that Sling Passes are subscriptions.

34. In response to Paragraph 34, DISH denies the allegations and respectfully refers the Court to the OTT License for a complete and accurate statement of its terms.

35. In response to Paragraph 35, DISH denies the allegations and respectfully refers the Court to the Frequently Asked Questions on the Sling website for a complete and accurate statement of its contents.

36. In response to Paragraph 36, DISH admits that Sling Passes provide subscribers with access to the Sling Orange service, and otherwise denies the allegations.

37. In response to the first sentence of Paragraph 37, DISH admits that it did not consult with the OTT Licensor Plaintiffs before announcing and offering Sling Passes, and

otherwise denies the allegations. In response to the second sentence of Paragraph 37, DISH lacks knowledge or information sufficient to form a belief as to how the OTT Licensor Plaintiffs learned of Sling Passes, and on that basis denies the allegations. In response to the third sentence of Paragraph 37, DISH admits that Deadline published an article about Sling Passes, respectfully refers the Court to that article for a complete and accurate statement of its contents, denies the accuracy of the quoted statement in the Deadline article, and otherwise denies the allegations. In response to the fourth sentence of Paragraph 37, DISH denies that it made any false representations to a Deadline reporter and otherwise denies the allegations. In response to the fifth sentence of Paragraph 37, DISH admits that it did not consult with Plaintiffs in advance of launching Sling Passes, and otherwise denies the allegations.

38. In response to the first sentence of Paragraph 38, DISH denies the allegations. In response to the second sentence of Paragraph 38, DISH admits that it refused to cease and desist from offering Sling Passes, and otherwise denies the allegations.

39. In response to Paragraph 39, DISH denies the allegations.

40. In response to Paragraph 40, DISH denies the allegations.

41. In response to the first sentence of Paragraph 41, DISH admits that the OTT Licensor Plaintiffs filed their original Complaint in this Court, along with a request that the Complaint be filed under seal, on August 26, 2025. In response to the second sentence of Paragraph 41, DISH admits that the original Complaint identified certain promotional materials inaccurately stating “no subscription,” and otherwise denies the allegations. In response to the third sentence of Paragraph 41, DISH denies the allegations.

42. In response to Paragraph 42, DISH admits that it revised a website FAQ response and otherwise denies the allegations.

43. In response to Paragraph 43, DISH admits that it updated its Terms of Use to address Sling Passes and otherwise denies the allegations.

44. In response to the first sentence of Paragraph 44, DISH denies the allegations. In response to the second sentence of Paragraph 44, DISH admits that Kurt Simon states in his Declaration dated September 29, 2025 that DISH “intended to differentiate the Sling Passes offering from the standard monthly streaming subscriptions that are familiar to consumers. That standard streaming subscription offering requires pre-payment on a monthly basis and auto-renews from month-to-month,” as well as “[a]side from the inartful use of the phrase ‘with no subscription,’ the Sling Passes marketing materials accurately describe the terms and features of Sling Passes,” and otherwise denies the allegations.

**“DISH CONTINUES TO CAPITALIZE ON DAY PASS’S UNAUTHORIZED AND  
UNIQUE MARKET ADVANTAGE”**

45. In response to Paragraph 45, DISH denies the allegations.

46. In response to the first sentence of Paragraph 46, DISH lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis denies the allegations. In response to the second and third sentences of Paragraph 46, DISH denies the allegations.

47. In response to Paragraph 47, DISH admits that the Sling account on the X platform posted the content shown in the embedded screen-shot in Paragraph 47, respectfully refers the Court to that post for a complete and accurate statement of its contents, and otherwise denies the allegations.

48. In response to Paragraph 48, DISH admits that the Sling account on the X platform reposted the content shown in the embedded screen-shot in Paragraph 48, respectfully

refers the Court to those reposts for a complete and accurate statement of their contents, and otherwise denies the allegations.

49. In response to Paragraph 49, DISH admits that it used its social media channels to promote Sling Passes, and respectfully refers the Court to those channels for a complete and accurate statement of their contents. DISH otherwise denies the allegations in Paragraph 49.

50. In response to Paragraph 50, DISH admits that it reposted certain comments on the X platform on November 8, and respectfully refers the Court to those reposts for a complete and accurate statement of their contents. DISH otherwise denies the allegations in Paragraph 50.

51. In response to Paragraph 51, DISH admits that it does not pay License Fees to the OTT Licensor Plaintiffs for Day Pass customers who do not subscribe to Sling Orange on the 21<sup>st</sup> day of the month, and otherwise denies the allegations.

52. In response to Paragraph 52, DISH admits that it issued the press release attached to the Amended Complaint as Exhibit I and that it ran a limited-time promotion for \$1 Day Passes from November 19 through November 30, 2025. DISH further admits that it advertised its limited-time Day Pass promotion on the Sling website. DISH respectfully refers the Court to Exhibit I, Exhibit L and Exhibit M for a complete and accurate statement of their contents, and otherwise denies the allegations in Paragraph 52.

**“DAY PASS BREACHES DISH’S LIMITED LICENSE TO DISTRIBUTE OTT SUBSCRIPTION NETWORKS ON A MONTHLY SUBSCRIPTION BASIS”**

**“Sling Orange Does Not Qualify as a ‘PSS Service’ for Day Pass Users.”**

53. In response to Paragraph 53, DISH respectfully refers the Court to the OTT License for a complete and accurate statement of its terms, denies that it is a “limited license” and that its foundation “is the standard monthly subscription model,” and otherwise denies the allegations to the extent that they vary from the terms of the OTT License.

54. In response to Paragraph 54, DISH respectfully refers the Court to the OTT License for a complete and accurate statement of its terms, and otherwise denies the allegations.

55. In response to Paragraph 55, DISH respectfully refers the Court to the OTT License for a complete and accurate statement of its terms, and otherwise denies the allegations.

56. In response to Paragraph 56, DISH respectfully refers the Court to the OTT License for a complete and accurate statement of its terms, and otherwise denies the allegations.

57. In response to Paragraph 57, DISH respectfully refers the Court to the OTT License for a complete and accurate statement of its terms, and otherwise denies the allegations.

58. In response to Paragraph 58, DISH denies the allegations.

**“The OTT License Includes No Payment Mechanism for Day Pass.”**

59. In response to Paragraph 59, DISH respectfully refers the Court to the OTT License for a complete and accurate statement of its terms, and otherwise denies the allegations.

60. In response to Paragraph 60, DISH respectfully refers the Court to the OTT License for a complete and accurate statement of its terms, and otherwise denies the allegations.

61. In response to Paragraph 61, DISH respectfully refers the Court to the OTT License for a complete and accurate statement of its terms, and otherwise denies the allegations.

62. In response to Paragraph 62, DISH respectfully refers the Court to the OTT License for a complete and accurate statement of its terms, and otherwise denies the allegations.

63. In response to Paragraph 63, DISH respectfully refers the Court to the OTT License for a complete and accurate statement of its terms, and otherwise denies the allegations.

64. In response to Paragraph 64, DISH denies the allegations.

65. In response to Paragraph 65, DISH admits that it revised the time parameters for the Weekend Pass on October 23, 2025 to begin at 1 a.m. MT on Fridays, and otherwise denies the allegations.



66. In response to Paragraph 66, DISH respectfully refers the Court to the OTT License for a complete and accurate statement of its terms, and otherwise denies the allegations.

**“The OTT License’s Reporting and Audit Provisions Confirm Day Pass Is Unauthorized.”**

67. In response to Paragraph 67, DISH denies the allegations.

68. In response to Paragraph 68, DISH respectfully refers the Court to the OTT License for a complete and accurate statement of its terms, and otherwise denies the allegations.

69. In response to Paragraph 69, DISH respectfully refers the Court to the OTT License for a complete and accurate statement of its terms, and otherwise denies the allegations.

70. In response to Paragraph 70, DISH denies the allegations.

71. In response to Paragraph 71, DISH admits that it produced Sling Pass data in connection with the preliminary injunction motion filed in this action and that the data was produced as Highly Confidential – Attorneys’ Eyes Only under the Protective Order in this action. DISH further admits that it received a December 1, 2025 request from Plaintiffs’ counsel for production of additional Sling Pass data and for DISH to downgrade its production of Sling Pass data to “Confidential.” Except as specifically admitted, DISH denies the allegations in Paragraph 71.

72. In response to Paragraph 72, DISH admits that it declined to produce additional Sling Pass data in response to the letter request from Plaintiffs’ counsel and that “[t]he OTT License’s reporting obligations do not include daily sales data.” Except as specifically admitted, DISH denies the allegations in Paragraph 72.

**“OTT Licensor Did Not Authorize DISH to Use Licensor Marks in Its Day Pass Materials.”**

73. In response to Paragraph 73, DISH respectfully refers the Court to the OTT License for a complete and accurate statement of its terms, and otherwise denies the allegations.

74. In response to Paragraph 74, DISH respectfully refers the Court to the OTT License for a complete and accurate statement of its terms, and otherwise denies the allegations.

75. In response to Paragraph 75, DISH admits that it has used “Licensor Marks” (as defined in the OTT License) in marketing and advertising materials for Sling Passes, respectfully refers the Court to those materials for a complete and accurate statement of their contents, and otherwise denies the allegations in Paragraph 75.

76. In response to Paragraph 76, DISH denies the allegations.

77. In response to Paragraph 77, DISH denies the allegations.

**“DISH IS IN BREACH OF THE OTT LICENSE, DBS LICENSE, AND RCA LICENSE BECAUSE IT HAS REPEATEDLY FAILED TO TIMELY PAY LICENSE FEES”**

78. In response to Paragraph 78, DISH respectfully refers the Court to the OTT License, the DBS License, and the RCA License for a complete and accurate statement of their terms, and otherwise denies the allegations.

79. In response to Paragraph 79, DISH respectfully refers the Court to the OTT License, the DBS License, and the RCA License for a complete and accurate statement of their terms, and otherwise denies the allegations.

80. In response to Paragraph 80, DISH respectfully refers the Court to the referenced MFN offer and DISH’s response thereto for a complete and accurate statement of the relevant contractual amendment and otherwise denies the allegations.

81. In response to Paragraph 81, DISH denies the allegations.

82. In response to Paragraph 82, DISH denies the allegations.

83. In response to Paragraph 83, DISH denies the allegations

**“DISH’S UNLICENSED DISTRIBUTION OF THE SUBSCRIPTION NETWORKS IS CAUSING NUMEROUS FORMS OF HARM”**

84. In response to Paragraph 84, DISH admits that Sling Passes are a new and innovative consumer-friendly offering and otherwise denies the allegations.

85. In response to the first sentence of Paragraph 85, DISH denies knowledge or information sufficient to form a belief as to the truth of the allegations concerning “OTT Licensor’s business,” and on that basis denies the allegations in that Paragraph. DISH denies the remainder of the allegations in Paragraph 85.

86. In response to Paragraph 86, DISH denies the allegations.

87. In response to Paragraph 87, DISH denies the allegations.

88. In response to Paragraph 88, DISH denies the allegations.

89. In response to Paragraph 89, DISH denies the allegations.

90. In response to Paragraph 90, DISH denies the allegations.

91. In response to Paragraph 91, DISH denies the allegations.

92. In response to Paragraph 92, DISH admits that the launch of ESPN Unlimited played a role in DISH’s decision-making around Sling Passes, and otherwise denies the allegations.

93. In response to Paragraph 93, DISH denies the allegations.

**“COUNT I: BREACH OF CONTRACT”**

**“Brought by Plaintiffs ESPN Enterprises, Inc., ABC Cable Network Group, International Family Entertainment, Inc. and SOAPnet, L.L.C. Against DISH”**

94. DISH incorporates its responses to the allegations in the foregoing Paragraphs as if fully set forth herein.

95. In response to Paragraph 95, DISH admits that the OTT License is a binding contract and that DISH and the OTT Licensor Plaintiffs are parties to the OTT License, and otherwise denies the allegations.

96. In response to Paragraph 96, DISH denies the allegations.

97. In response to Paragraph 97, DISH denies the allegations.

98. In response to Paragraph 98, DISH denies the allegations.

99. In response to Paragraph 99, DISH denies the allegations.

100. In response to Paragraph 100, DISH denies the allegations.

101. In response to Paragraph 101, DISH denies the allegations.

**“COUNT II: BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING”**

**“Brought by Plaintiffs ESPN Enterprises, Inc., ABC Cable Network Group, International Family Entertainment, Inc. and SOAPnet, L.L.C. Against DISH”**

102. DISH incorporates its responses to the allegations in the foregoing Paragraphs as if fully set forth herein.

103. In response to Paragraph 103, DISH admits that the OTT License is a binding contract and that DISH and the OTT Licensor Plaintiffs are parties to the OTT License, and otherwise denies the allegations.

104. In response to Paragraph 104, DISH denies the allegations.

105. In response to Paragraph 105, DISH denies the allegations.

106. In response to Paragraph 106, DISH denies the allegations.

107. In response to Paragraph 107, DISH denies the allegations.

108. In response to the first sentence of Paragraph 108, DISH admits that its retained expert Aaron Yeater stated in a Declaration dated September 30, 2025 that “there are no historical data to understand variation with respect to Sling Passes specifically,” respectfully

refers the Court to Mr. Yeater’s Declaration for a complete and accurate statement of its contents, and otherwise denies the allegations. In response to the second sentence of Paragraph 108, DISH admits that it declined to produce additional Sling Pass data in response to a December 1, 2025 letter request from Plaintiffs’ counsel, respectfully refers the Court to Exhibit O to the Amended Complaint for a complete and accurate statement of its contents, and otherwise denies the allegations. In response to the third sentence of Paragraph 108, DISH denies the allegations.

109. In response to Paragraph 109, DISH denies the allegations.

110. In response to Paragraph 110, DISH denies the allegations.

**“COUNT III: BREACH OF CONTRACT (FAILURE TO PAY)”**

**“Brought By All Plaintiffs Against DISH”**

111. DISH incorporates its responses to the allegations in the foregoing Paragraphs as if fully set forth herein.

112. In response to Paragraph 112, DISH admits the allegations.

113. In response to Paragraph 113, DISH denies the allegations.

114. In response to the first sentence of Paragraph 114, DISH respectfully refers the Court to the OTT License, DBS License, and RCA License, each as amended, for a complete and accurate statement of their terms, and otherwise denies the allegations.

115. In response to Paragraph 115, DISH denies the allegations.

116. In response to Paragraph 116, DISH denies the allegations.

**DEFENSES**

**First Defense**

**FAILURE TO STATE A CLAIM**

The Amended Complaint fails to state a claim as a matter of law.



**Second Defense**

**WAIVER AND ESTOPPEL**

Plaintiffs, through prior conduct, communications and/or course of performance, waived or are estopped from asserting each of the causes of action alleged in the Amended Complaint.

**Third Defense**

**SETOFF**

Any recovery by Plaintiffs must be reduced, in whole or in part, by operation of the doctrine of setoff.

**Fourth Defense**

**FAIR USE**

Defendant's use of Plaintiffs' marks is protected under the doctrine of fair use.

**Fifth Defense**

**UNCLEAN HANDS**

Plaintiffs' claims are barred, in whole or in part, by the doctrine of unclean hands.

**Sixth Defense**

**MATERIAL BREACH**

Plaintiffs' claims are barred, in whole or in part, by Plaintiffs' material breach of contract.

**ADDITIONAL DEFENSES**

By designating the aforementioned defenses, DISH does not in any way waive or limit any defenses which are or may be raised by its denials and averments. These defenses are pleaded in the alternative, and are raised to preserve DISH's rights to assert these defenses, and are without prejudice to DISH's ability to raise other and further defenses. DISH expressly reserves all rights to re-evaluate its defenses and/or assert additional defenses upon discovery

and review of additional documents and information, upon the development of other pertinent facts, and/or during pretrial proceedings in this action.

### **COUNTERCLAIMS**

Defendant/Counterclaim-Plaintiff DISH alleges as follows:

1. Disney is far more powerful than the cute mouse logo suggests: as part of the price for must-have sports content that many DISH customers actually want, Disney requires DISH and its video customers to pay hundreds of millions of dollars every year in excess fees for content that DISH's customers do not watch. To carry ESPN, DISH must cram its packages with less-popular networks such as [REDACTED]. The reason why DISH must capitulate to Disney's demands is simple: without ESPN, DISH stands to lose a substantial portion of its customers. And this is only part of the treasure that Disney has exacted from DISH by misuse of its market power. Disney, both an upstream supplier to DISH and DISH's downstream competitor, also prevents DISH from offering its own version of the skinny sports network packages that Disney is distributing directly to subscribers itself.

2. Disney, meanwhile, continues both having and eating its cake. The defections from DISH to other distribution outlets, including Disney's, do not mean that DISH makes lower payments to Disney for its sports programming: because of Disney's packaging and penetration requirements, DISH must continue to charge its remaining customers for ESPN, whether they watch it or not, even if many sports enthusiasts have left DISH for Disney's distribution arms.

3. Disney more or less says to consumers: "if you like my sports, Football Frank, come to my own distribution platforms, whether the ESPN/FOX One bundle, or Fubo Sports; you will get them cheaper and without the cost of additional non-sports networks, a tailored package that I have prohibited DISH, Sling TV, and other distributors from offering. If you do

not like my sports, Sitcom Sally, stay with DISH or Sling; but, if you do stay, you will still have to pay for my sports programming whether you want it or not.” Heads, Disney wins; tails, Disney wins too; either way, DISH and its customers lose.

4. The past year has seen three attempts by Disney to create a distribution platform at the expense of its own distributors (and their customers) by providing the skinny sports bundles that Disney prohibits these distributors from offering. The first was stopped by this court; the other two are off-the-ground and running.

5. Disney first attempted a joint venture with partners Fox and Warner Bros. Discovery (“WBD”), euphemistically called Venu in public and, with more candor, Raptor internally. This court said “no” to Raptor/Venu in a preliminary injunction issued in the *Fubo* case, partly based on the “bundling requirements” Disney imposed on distributors trying to compete against the joint venture. Then Disney settled the case by buying the plaintiff, Fubo, and supposedly abandoned the disallowed Raptor/Venu joint venture. But this appears to have been a feint: soon Disney proceeded to reconstruct not one, but two platforms that are Raptor/Venu’s close doppelgangers. One is the ESPN/FOX One bundle, an alliance between Disney and fellow sports magnate Fox (without the third erstwhile Raptor/Venu partner, WBD, which has since lost its most valuable sports rights). The other not only mirrors the outlawed Raptor/Venu; adding mockery to injury, it is named Fubo Sports, after the co-opted plaintiff that had obtained the preliminary injunction against Raptor/Venu in the first place. Here, Disney partners with Fox and CBS. Both the ESPN/FOX One bundle and Fubo Sports proudly feature Disney’s sports networks *without* the low-value networks, such as [REDACTED] [REDACTED], that Disney forces all other distributors to sell to their sports customers.

6. Disney’s “deep pockets” can buy settlements and plaintiffs; but they cannot buy facts and they cannot extinguish the anticompetitive “bundling requirements” already castigated by this court, requirements that prevent rival distributors (like DISH) from competing with Disney’s skinny sports bundles.

7. Disney’s conduct gives rise to manifold antitrust violations. First, Disney has engaged in tying its must-have networks to less-popular ones, a *per se* violation of Section 1 of the Sherman Act and the New York Donnelly Act; second, Disney has coordinated with Fox in creating not just one but two skinny sports bundles—the ESPN/FOX One bundle and Fubo Sports—an unreasonable restraint of trade under Section 1 of the Sherman Act; third, Disney’s acquisition of distribution outlet Fubo has substantially lessened competition by allowing Disney to provide the skinny sports bundles that Disney prohibits anyone else from offering, thereby monetizing Disney’s contractual restrictions—a violation of Section 7 of the Clayton Act; and fourth, Disney has attempted to monopolize the downstream skinny sports bundle market by banning other pay television distributors from offering Disney’s content to consumers in the same consumer-friendly way as Disney itself does, in violation of Section 2 of the Sherman Act.

8. DISH is party to contracts with certain Disney entities that authorize DISH to distribute Disney networks to DISH’s customers. There is one contract applicable to DISH’s Sling TV service, referred to herein as the “OTT License.” There is another contract applicable to DISH’s direct broadcast satellite (“DBS”) service, referred to herein as the “DBS License.” There is an additional contract applicable to retransmission of Disney’s owned and operated ABC broadcast stations, referred to herein as the “Retrans License.” Certain terms in the DBS License apply on a cross-platform basis, with applicability to the DBS and Sling platforms collectively. All of the licenses contain certain Most Favored Nation (“MFN”) provisions.

9. In addition to the antitrust violations described above, the Disney entities that are counterparties to the OTT License and the DBS License (hereinafter, the “Licensors”) have flagrantly breached their MFN obligations to DISH.

### **PARTIES**

10. Defendant/Counterclaim-Plaintiff DISH is a Colorado limited liability company with its principal place of business in Colorado. Its sole member is DISH DBS Corporation, which is incorporated in Colorado, with its principal place of business in Colorado.

11. Counterclaim-Defendant The Walt Disney Company (“TWDC”) is incorporated in Delaware with its principal place of business in California. TWDC has numerous affiliates that are parties to the OTT and DBS Licenses.

12. Plaintiff/Counterclaim-Defendant ESPN Enterprises, Inc. is incorporated in Delaware with its principal place of business in Connecticut. ESPN Enterprises, Inc. is a party to the OTT and DBS Licenses.

13. Plaintiff/Counterclaim-Defendant ESPN, Inc. (collectively with ESPN Enterprises, Inc., “ESPN”) is an affiliate of TWDC, incorporated in Delaware with its principal place of business in Connecticut. ESPN, Inc. is a party to the DBS License.

14. Plaintiff/Counterclaim-Defendant ABC Cable Networks Group is incorporated in California with its principal place of business in California. ABC Cable Networks Group is a party to the OTT and DBS Licenses.

15. Plaintiff/Counterclaim-Defendant American Broadcasting Companies, Inc. is incorporated in Delaware with its principal place of business in New York. American Broadcasting Companies, Inc. is a party to the OTT and DBS Licenses.



16. Counterclaim-Defendant Baby Network Limited is a private limited company incorporated in London with its principal place of business in London. Baby Network Limited is a party to the OTT and DBS Licenses.

17. Plaintiff/Counterclaim-Defendant FX Networks, LLC is a Delaware limited liability company with its principal place of business in California. The sole member of FX Networks, LLC is TFCF Cable Networks, LLC, which is a Delaware limited liability company with its principal place of business in California. The sole member of TFCF Cable Networks, LLC is Disney Networks Group, LLC, which is a Delaware limited liability company with its principal place of business in California. The sole member of Disney Networks Group, LLC is TFCF Entertainment Group, LLC, which is a Delaware limited liability company with its principal place of business in California. The sole member of TFCF Entertainment Group Holdings, LLC is TFCF America, Inc. TFCF America, Inc. is a Delaware corporation with its principal place of business in California. FX Networks, LLC is a party to the OTT and DBS Licenses.

18. Plaintiff/Counterclaim-Defendant International Family Entertainment, Inc. is incorporated in Delaware with its principal place of business in California. International Family Entertainment, Inc. is a party to the OTT and DBS Licenses.

19. Plaintiff/Counterclaim-Defendant NGC Network US, LLC is a Delaware limited liability company with its principal place of business in the District of Columbia. The sole member of NGC Network US, LLC is National Geographic Partners, LLC, which is a Delaware limited liability company with its principal place of business in New York. The members of National Geographic Partners, LLC are TFCF International Channels (US) Inc., TFCF-NGC (International) Holdings, Inc., and TFCF-NGC (US) Holdings, Inc., each of which are

incorporated in Delaware with a principal place of business in California, and NGSP, Inc., which is incorporated in Delaware with a principal place of business in the District of Columbia. NGC Network US, LLC is a party to the OTT and DBS Licenses.

20. Plaintiff/Counterclaim-Defendant SOAPnet, L.L.C. is a California limited liability company with its principal place of business in California. The sole member of SOAPNet, L.L.C. is ABC Cable Networks Group, which is incorporated in California with its principal place of business in California. SOAPnet, L.L.C. is a party to the OTT and DBS Licenses.

21. Counterclaim-Defendants fuboTV Inc. and FuboTV Media Inc. (collectively, “Fubo”) are Florida corporations with their principal places of business in New York.

22. Except where context otherwise requires, references in these Counterclaims to “Defendants” or “Disney” are to all Counterclaim-Defendants other than Fubo. References in these Counterclaims to “Licensors” are to the parties to the OTT and/or DBS Licenses: ESPN, Inc.; ESPN Enterprises, Inc., ABC Cable Networks Group, American Broadcasting Companies, Inc., Baby Network Limited, FX Networks, LLC, International Family Entertainment, Inc., NGC Network US, LLC, and SOAPnet, L.L.C., collectively.

### **JURISDICTION AND VENUE**

23. This Court has subject matter jurisdiction over the federal law antitrust counterclaims under 28 U.S.C. §§ 1331 and 1337(a), and 15 U.S.C. §§ 15 and 26.

24. This Court has subject matter jurisdiction over the state law counterclaims, pursuant to 28 U.S.C. § 1332(a)(1), based on complete diversity of citizenship between DISH and the Defendants and the fact that the amount in controversy exceeds \$75,000 exclusive of interests and costs.

25. This Court also has supplemental jurisdiction over the state law counterclaims, pursuant to 28 U.S.C. § 1367(a).

26. The Plaintiffs/Counterclaim Defendants in this action consented to personal jurisdiction by filing suit in this Court. This Court also has personal jurisdiction over all Licensors by consent pursuant to Paragraph 14(a) of the OTT License and Paragraph 14(a) of the DBS License, both of which provide that any dispute related to the agreements [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]<sup>1</sup>

27. This Court has personal jurisdiction over Disney because this action arises out of Disney's activity in the State of New York. Disney's executives with responsibility for negotiating license agreements with DISH and other Pay-TV distributors for carriage of Disney's television networks work in Disney's New York City offices.

28. This Court also has personal jurisdiction over American Broadcasting Companies, Inc. and Fubo because their principal places of business are in the Southern District of New York.

29. Venue is proper in this Court pursuant to Paragraph 14(a) of the OTT License and Paragraph 14(a) of the DBS License, as set forth above, and 28 U.S.C. § 1391(b). A substantial part of the events giving rise to the Counterclaims occurred in this judicial district.

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<sup>1</sup> Material that is Confidential pursuant to the Protective Order (Dkt. 11) has been highlighted in blue.

## FACTS

### I. TIMELINE

30. Here is the relevant timeline of Disney’s three attempts to destroy competition in violation of antitrust law—one thwarted, two continuing:

- February 6, 2024: Disney announces a joint skinny sports bundle, Venu Sports, with Fox and WBD;
- August 16, 2024: At the request of Fubo, this court enjoins Raptor/Venu’s launch as a likely violation of antitrust laws;
- January 6, 2025: Disney settles the *Fubo* litigation by agreeing to buy Fubo. Simultaneously, Disney and Fox enter into new distribution agreements with Fubo;
- January 10, 2025: The three Raptor/Venu partners announce the supposed abandonment of that venture;
- August 11, 2025: Disney announces the ESPN/FOX One bundle in partnership with Fox; it is described by an observer as “basically Venu minus Warner Bros. Discovery”;
- August 28, 2025: Fubo announces the second Raptor/Venu lookalike, Fubo Sports, featuring Disney’s, Fox’s, and CBS’s sports content; Fubo Sports fulfills what Fubo’s president described as “the potential to create skinnier sports . . . bundles according to consumer needs.” In other words, Raptor/Venu redux;
- October 29, 2025: Disney completes its acquisition of Fubo.

31. In the hands of Disney, everything old, and outlawed, becomes new again. Both Fubo Sports and the ESPN/FOX One bundle are transparent attempts to circumvent the rationale underlying the *Fubo* court’s decision and monopolize the skinny sports bundle market for itself and its direct competitor Fox.

### II. DISNEY IS BOTH A MAJOR SUPPLIER OF SPORTS PROGRAMMING TO DISTRIBUTORS AND A DISTRIBUTOR

32. When an American consumer turns on a screen to watch live sports, a web of companies interacts to create, package, and distribute that event to the consumer. Historically,

this Pay-TV ecosystem had three levels: At the top level, sports leagues (such as the NFL and MLB) organize live sporting events and sell the media rights to their events to programmers via long-term license agreements. At the intermediate level, programmers (such as Disney) acquire the media rights to popular sporting events, produce televised broadcasts of those games on networks owned by the programmers (such as ESPN), and license the distribution rights to those networks to distributors. At the bottom level, distributors (such as DISH/Sling TV, DirecTV, Comcast/Xfinity, Charter/Spectrum, Fios TV, and YouTube TV) license linear networks from programmers and distribute subscription packages that include those networks directly to consumers. Distributors that use cable, fiber, or satellite infrastructure are the traditional Multichannel Video Programming Distributors (“MVPDs”), whereas newer distributors that offer television content over the Internet (e.g., Sling TV, YouTube TV, Disney-owned Hulu + Live TV, and Fubo) are sometimes called “Online Video Distributors” (or “OVDs,” and, with MVPDs, “Pay-TV Distributors”).

33. DISH is a distributor that offers packages of linear video programming services to consumers throughout the United States via satellite (a traditional MVPD service) and the Internet via Sling TV (an OVD service). Launched in 2015 and 2016, respectively, Sling’s core services, Sling Orange and Sling Blue, provide distinct lineups. Orange includes ESPN and ESPN2 (and included ESPN3 until discontinued in December 2025, as set forth below at ¶ 89), but is also required by Disney to include [REDACTED]. Blue, for its part, features Fox and NBC, and is required by Disney to include [REDACTED]. Sling Orange is a personal subscription license, and therefore can only be made available to a subscriber as a single stream. In other words, within a household, it can only be watched on one TV or device at a



time. Sling Blue is a multi-stream product, meaning that a subscribed household can watch it on three TVs or devices at a time.

34. Sling also provides Sling Select, a multi-stream offering that includes 11 mostly entertainment-focused networks; Sling is required by Disney to include [REDACTED]

Neither Sling Blue nor Sling Select includes Disney's ESPN, whose must-have popularity is explained below, [REDACTED]

35. By virtue of the ESPN/FOX One and Fubo Sports bundles, as well as its other direct-to-consumer offerings, Disney itself has become a distributor of content directly to consumers. The twin "hats" give Disney the ability and the incentive to favor its own distribution outlets over those of DISH and other Pay-TV Distributor competitors and potential competitors.

36. DISH desires to participate in the market for distributing skinny sports bundles, which is dominated by ESPN/FOX One and Fubo Sports, but has so far been prevented from doing so, in large part because of the unlawful tying requirements exacted by Disney.

### **III. DISNEY EXTRACTS BILLIONS OF DOLLARS IN SUPRACOMPETITIVE PROFITS THROUGH ANTICOMPETITIVE BUNDLING PRACTICES**

37. Disney's anticompetitive tying requirements have lined its pockets with billions in supra-competitive profits at the expense of distributors and consumers. The tying exacted by Disney takes several forms that complement one another:

- **Bundling:** To carry ESPN and other Disney sports content, DISH is also required to carry networks such as the [REDACTED], depending on the platform (satellite or Sling) and package;

- **Penetration/Pay-on:** DISH must ensure that a minimum percentage of its customers receive Disney’s non-sports content, or pay Disney subscriber fees for “phantom subscribers,” meaning customers who do not even receive Disney programming. [REDACTED]

; and

- **Packaging:** DISH must not only carry the panoply of unwanted or little-wanted networks identified above; [REDACTED]

38. Under this anticompetitive regime, a sports fan who cares only about ESPN still must buy a package including, for example, cooking and teen sitcom networks. Effectively, the sports fans pay for culinary content of no interest to them. In addition, while ESPN is extraordinarily powerful because of its content and the number and enthusiasm of sports fans who cannot do without it, and serves as Disney’s principal sword in its tying strategy, not every pay-TV customer is a sports fan. No matter: because of the extraordinary attraction of ESPN to sports fans, cooking fans must pay for it, too, even when they do not watch it. Football Frank pays for [REDACTED]; Sitcom Sally pays for ESPN alongside Football Frank. Everyone loses, except Disney.

39. This combination of provisions means that Disney makes it impossible to create a skinny sports bundle. In fact, almost every package available to DISH customers must be large and/or pricey, because Disney content must be in it, and/or because Disney must be paid on more customers than those who actually receive or watch its content.

40. Other distributors, too, have repeatedly objected to the anticompetitive nature of these bundling requirements: In 2023, Charter lamented that Disney was “forcing customers to take their products, even when they don’t want or can’t afford them.”<sup>2</sup> And satellite provider DirecTV alleged in 2024 that “Disney has insisted on a ‘fat bundle’ of networks, forcing the carrier to offer less popular programming while Disney provides consumers with cheaper, ‘skinnier’ packages.”<sup>3</sup> As one observer noted: “The distributors have been begging for the right to offer cheaper and skinnier bundles, especially bundles that would segregate expensive sports from cheaper non-sports programming, for at least two decades, and they’ve been met with a brick wall.”<sup>4</sup>

#### **IV. THE UNIQUE IMPORTANCE OF LIVE SPORTS TELEVISION CONTENT AND DISNEY’S DOMINANCE OVER IT**

41. This behavior is made possible due to Disney’s commanding lock over the most popular live sports programming. Live sports, more than any other form of entertainment, is “the principal driver of TV viewership.”<sup>5</sup> Twenty-seven of the thirty most-watched broadcasts of all time have been live sporting events. Accordingly, many live sports are “must-have,” commercially critical content for any video distributor seeking to attract and retain such consumers.

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<sup>2</sup> Press Release, Charter Communications, *Charter Communications Provides Update on Negotiations with the Walt Disney Company* (Sept. 1, 2023), <https://corporate.charter.com/newsroom/charter-communications-provides-update-on-negotiations-with-the-walt-disney-company>.

<sup>3</sup> See *DirecTV Files FCC Complaint against Disney for Anti-Competitive Practices*, CNBC (Sept. 8, 2024), <https://www.cnbc.com/2024/09/08/directv-disney-espn-fcc-complaint-filed-for-anticompetitive-practices.html>.

<sup>4</sup> Daniel Frankel, *Pay TV Companies, and the DOJ, Push Back on Big ‘Spulu’ Sports Streaming Joint Venture*, Next TV (Feb. 15, 2024), <https://www.nexttv.com/news/pay-tv-companies-privately-push-back-on-big-spulu-sports-streaming-joint-venture>.

<sup>5</sup> *TV Timeout: Understanding Sports Media Rights*, Hearing Before the Subcomm. On Commc’ns and Tech., 118th Cong. at 15:15 (2024) (statement of Rep. Doris Matsui), available at <https://www.congress.gov/event/118th-congress/house-event/116779>.

42. As of 2025, Disney accounts for roughly 28% of all U.S. spending on sports broadcast rights, the highest share of any company.<sup>6</sup> Disney controls the television rights to a staggering array of the most popular sports leagues and events in the United States. As shown by the non-exhaustive list that follows, the sun hardly ever sets on Disney's sports empire:

43. ***National Football League:*** ESPN controls NFL's Monday Night Football, several playoff games, the Super Bowl (self-produced every four years), and other NFL events. And, under a pending transaction with the NFL, ESPN is also set to acquire the NFL Network (which will air seven regular season NFL games per season), as well as the right to distribute and negotiate on behalf of the NFL RedZone network (which shows highlights from all NFL games happening simultaneously).

44. ***College Football:*** ESPN controls the media rights to the majority of FBS collegiate football conferences, including three of the "Power 4" collegiate football conferences: ACC (including broadcasts on the ACC Network), SEC (including broadcasts on the SEC Network), and Big 12 (split with Fox), and other FBS conferences including AAC, C-USA, Sunbelt, and MAC. It also licenses the College Football Playoffs (including the National Championship), numerous major conference championship games, and other major rivalry and bowl games. Finally, it licenses the rights to the majority of FCS collegiate conferences (*e.g.*, Ivy League, Big Sky, and Southland), with many such games being broadcast on ESPN+.

45. ***National Basketball Association:*** ESPN and Disney-owned ABC control the rights to about 35% of all nationally televised regular-season games, as well as a significant number of games in the Playoffs and Finals, as well as other NBA events.

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<sup>6</sup> Lucas Manfriedi, *Sports Rights Untangled: Here's What Every Media and Tech Giant Owns*, The Wrap, (Sept. 4, 2025), <https://www.thewrap.com/sports-rights-list-who-owns-what-youtube-disney-netflix/>.

46. ***Major League Baseball:*** Through 2025, ESPN licensed the rights to significant regular season MLB games, numerous MLB playoff games, and other MLB events. ESPN and MLB have recently concluded a new deal for the 2026-28 seasons, making ESPN the exclusive rights holder for MLB.TV, which airs thousands of out-of-market games each year.

47. ***National Hockey League:*** ESPN licenses the rights to well over 100 exclusive regular season games, over 1,000 regular season games available exclusively on ESPN+ via NHL Power Play, numerous Stanley Cup Playoffs games, the Stanley Cup Finals (in even-numbered years), and other NHL content.

48. ***College Basketball:*** ESPN is the largest broadcaster of men's and women's college basketball, including major conferences such as the Big 12, SEC, and ACC, as well as mid-major and smaller conferences. As noted above, ESPN owns the ACC Network and the SEC Network. ESPN airs half of the men's basketball conference tournaments during Championship Week in the run-up to the March Madness tournament.

49. ***Golf and Tennis:*** ESPN licenses exclusive rights to broadcast portions of two of the major events on the PGA Tour—all four rounds of the PGA Championship (split with CBS), as well as the first two rounds of The Masters. In tennis, ESPN has broadcast rights to three major championships—Wimbledon, the U.S. Open, and the Australian Open.

50. ***College Championships:*** ESPN licenses the exclusive rights to 40 different NCAA championships across a broad array of sports, including the Women's Basketball NCAA Tournament and the Men's and Women's College World Series.

51. Sports fans generally do not have the choice of switching to subscription video-on-demand streaming ("SVODs") services. The mystery of a game's outcome lasts only while the game is live—particularly in the social media age where results and replays are spread



instantly throughout the world. For this reason, while general entertainment consumers have fled the linear bundle for the Netflixes of the world over the past several years, sports fans remain, at least for now. This means that, today, sports fans make up a historically high percentage of Pay-TV customers; yet Disney still requires them to receive and pay for general entertainment networks.

52. Sports content is the most expensive content sold to distributors (and, by extension, consumers). And the costliest of the costly by far is Disney's ESPN. ESPN charges distributors fees [REDACTED] higher than the most expensive non-sports cable network.

53. Video distributors agree to pay these high license fees, as further compounded by the penetration, packaging and pay-on restrictions that conjure up additional fees based on phantom viewers, only because they have no other option. Video distributors that fail to carry live sports cannot attract or retain the many customers who demand this programming. Sports fans care enough to switch providers if their current video distributor stops carrying their favorite teams' games. DISH would suffer a subscriber exodus threatening its very existence as a Pay-TV Distributor if it stopped offering ESPN.

54. Bob Iger, CEO of Disney, has expressly acknowledged the importance of Disney's marquee ESPN Network: "You cannot launch a new multichannel platform or bundle successfully without ESPN. The numbers would be not even close to what they'd be with ESPN."<sup>7</sup> ESPN often has the most-watched primetime sports content in the nation. As of the

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<sup>7</sup> David Lieberman, *Bob Iger Says He Feels "Great" About ESPN's Long-Term Prospects*, Deadline (May 18, 2016), <https://deadline.com/2016/05/disney-bob-iger-feels-great-about-espn-long-term-prospects-1201758719/>.

spring of 2025, Nielsen-rated ESPN sports networks accounted for 36% of sports viewing nationwide.<sup>8</sup>

## V. DISNEY TRIES TO DOMINATE THE SKINNY SPORTS BUNDLE MARKET

### A. Disney's First Attempt to Corner Televised Live Sports with Fox: Venu Sports

55. In 2024, Disney resolved to do itself what it prohibited all distributors from doing: create, and dominate, the Skinny Sports Bundle Market, initially in coordination with its competitor in the Sports Programming Market, Fox.

56. Although dwarfed by that of Disney, Fox's sports rights portfolio is also substantial. In March 2021, Fox announced an 11-year agreement with the NFL for the rights to National Football Conference games. According to its Executive Chairman, Fox's ability to broadcast numerous NFL games every year is "the foundation of [Fox's] marquee sports portfolio."<sup>9</sup>

57. The Department of Justice has recognized the combined power that Disney and Fox wield over televised live sports, calling Disney and Fox "two of the country's most valuable cable sports properties."<sup>10</sup>

58. In spring 2023, Disney and Fox agreed on a joint venture in which Disney and Fox would combine their substantial sports holdings to offer Disney and Fox sports content in a package exclusive to them that would be totally unbundled with any other, non-sports content.

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<sup>8</sup> Press Release, ESPN, *ESPN Earns Its Best Nielsen Q1 Viewership Since 2017, Further Cementing a Stellar Start to 2025* (Apr. 15, 2025), <https://espnpressroom.com/us/press-releases/2025/04/espn-earns-its-best-nielsen-q1-viewership-since-2017-further-cementing-a-stellar-start-to-2025/>.

<sup>9</sup> Press Release, Fox Corporation, *Fox Corporation Announces New Eleven-Year Media Rights Agreement with the National Football League* (Mar. 18, 2021) <https://www.foxcorporation.com/news/corp-press-releases/2021/fox-corporation-announces-new-eleven-year-media-rights-agreement-with-the-national-football-league/>.

<sup>10</sup> *United States v. The Walt Disney Co.*, No. 18-cv-5800, Doc. 21, Competitive Impact Statement (S.D.N.Y. filed Aug. 7, 2018).

They later added a third large programmer to their proposed joint venture—WBD, which at that time owned exclusive NBA rights. With alarming candor, Disney, Fox, and WBD codenamed their joint venture “Raptor.”

59. In February 2024, Disney, Fox, and WBD publicly announced their joint venture, branded externally and more euphemistically as “Venu Sports.” Raptor/Venu would have assembled a standalone “skinny” sports bundle unlike anything that these programmers had ever permitted any distributor to offer. It was slated to launch in fall 2024 at a price of \$42.99 per month, featuring 14 major sports channels—including ESPN, ESPN2, ESPNU, SEC Network, ACC Network, ESPNEWS, the ABC and Fox local broadcast stations, FS1, FS2, Big Ten Network, TNT, TBS and truTV— alongside ESPN+ streaming content. Disney, Fox, and WBD each took a one-third ownership stake in Raptor/Venu, underscoring the unprecedented cooperation among these rivals to consolidate U.S. sports rights on one platform.

60. Unsurprisingly, the Raptor partners did not relax the contractual restrictions that force DISH to bundle sports with non-sports programming.

### **B. The Court Blocks the Launch of Raptor/Venu**

61. Distributors, consumers, and government antitrust enforcers immediately raised concerns after the joint venture’s announcement. The DOJ announced that it was investigating Raptor/Venu as a potential violation of antitrust laws, and several U.S. lawmakers wrote a letter to the FCC and DOJ warning of Raptor/Venu’s anticompetitive effects: “[t]his massive new sports streaming company would be poised to control more than 80% of nationally broadcast sports and more than half of all national sports content, putting it in a position to exercise monopoly power over televised sports,” while “the market power of its three giant parent

companies would enable it to discriminate against competitors and increase prices for consumers.”<sup>11</sup>

62. One distributor, then-independent Fubo, went further. On February 22, 2024, it filed suit in this District challenging Disney’s joint venture as a violation of the federal antitrust laws, and sought a preliminary injunction to block the launch. *FuboTV Inc. v. Walt Disney Co.*, 1:2024-cv-01363 (S.D.N.Y.) (“*Fubo*”).

63. On August 16, 2024, following expedited discovery and a hearing, the court granted a preliminary injunction against the launch of Raptor/Venu, finding that Fubo was likely to prove the Raptor/Venu joint venture violated antitrust laws. In a 69-page ruling, Judge Garnett concluded that Raptor/Venu would “exercise near-monopolistic control” over sports streaming and substantially lessen competition.” *FuboTV Inc. v. Walt Disney Co.*, 745 F. Supp. 3d 109, 116 (S.D.N.Y. Aug. 16, 2024). Together, Disney, Fox and WBD were found to “collectively own at least 60% of all nationally broadcast U.S. sports rights”—nearly 75% of the rights to the most-watched leagues (NFL, NBA, MLB, NHL, NCAA football)—giving Raptor/Venu enormous market power. The court cited as “crucial context” the defendants’ history of forcing Pay-TV Distributors to buy sports networks bundled with entertainment networks. Raptor/Venu’s structure would allow Disney, Fox and WBD to unbundle their sports for themselves alone, after years of denying any other distributor that same opportunity.

64. The court identified multiple ways in which Raptor/Venu’s formation would likely harm competition. Among other things, each JV member had agreed not to license their sports content directly to consumers outside of Raptor/Venu, a non-compete provision that

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<sup>11</sup> Letter from Sen. Elizabeth Warren *et al.* to Jonathan Kanter, DOJ, and Jessica Rosenoworcel, FCC (Aug. 6, 2024), available at [https://www.warren.senate.gov/imo/media/doc/warren\\_castro\\_letter\\_to\\_doj\\_and\\_fcc\\_re\\_sports\\_streaming\\_jv.pdf](https://www.warren.senate.gov/imo/media/doc/warren_castro_letter_to_doj_and_fcc_re_sports_streaming_jv.pdf).

would foreclose any rival sports-only platform for at least three years. In fact, internal projections showed that Raptor/Venu, after starting from a temptingly low price, was committed to a bait-and-switch strategy, planning to raise consumer prices roughly 10% each year after launch. The court agreed that Raptor/Venu would have the power to *block out* other distributors and quickly dominate the market.

65. The likely result, the court found, would be higher prices and fewer choices for consumers, and severe harm to competitors like Fubo (which warned that Raptor/Venu could siphon “hundreds of thousands” of its subscribers and drive it into insolvency). In granting the injunction, Judge Garnett concluded that “Fubo and American consumers will face irreparable harm in the absence of an injunction” blocking Raptor/Venu’s launch.

### **C. Disney Buys Its Way Out of the Raptor/Venu Injunction by Buying Fubo**

66. Disney ended the preliminary injunction entered in *Fubo*, and the entire *Fubo* litigation, by buying off, and buying, the plaintiff. Among other things, Disney agreed to acquire Fubo, Disney guaranteed Fubo a loan of \$145 million, and the Raptor/Venu partners paid Fubo \$220 million. Concurrently, Disney amended its programming licensing agreement with Fubo, apparently dropping restrictive bundling requirements that it continued to impose on DISH and other distributors. On information and belief, Fox also amended its own licensing agreement with Fubo. Disney planned to offer, and is now offering, Fubo alongside, but separately from, its Hulu + Live TV offering, giving Disney approximately 6 million customers in the distribution market between those two services. The transaction closed on October 29, 2025.

67. In a letter filed in the *Fubo* docket, DISH urged the court to not “allow[] a party with a deep pocket to eliminate precedent it dislikes simply by agreeing to a sufficiently lucrative



settlement to obtain its adversary's cooperation."<sup>12</sup> The court did nothing to disturb its precedent and the holdings of *Fubo* remain valid.

68. Disney and its partners scuttled Raptor/Venu three days later.<sup>13</sup> But Raptor/Venu would not prove Disney's last attempt to monopolize sports distribution. Efforts to recreate Raptor/Venu dressed in different garb followed.

#### **D. Disney's Second Attempt to Corner Televised Live Sports with Fox: the ESPN/FOX One Bundle**

69. Publicly, Disney claimed defeat in the wake of the *Fubo* ruling, announcing that it would abandon the joint venture. Internally, however, Disney was already trying to snatch victory from defeat's jaws, looking for other means to corner televised live sports for itself.

70. On August 21, 2025—a little over one year after the *Fubo* court blocked the launch of Raptor/Venu—Disney and Fox simultaneously launched their own direct-to-consumer sports packages: Disney's ESPN division unveiled a premium streaming product, ESPN Unlimited, that, for the first time, gives subscribers access to *all* of ESPN's linear TV networks—including ESPN, ESPN2, ESPNU, SEC Network, ACC Network, ESPN Deportes, and even the sports broadcasts on ABC—plus the ESPN+ catalog and other digital features. At the same time, Fox debuted "FOX One," a direct-to-consumer streaming app that provides access to all of Fox's sports networks, including the Fox local broadcast stations, FS1, FS2, Fox Deportes, and B1G (the Big Ten Network).

71. More concerningly, soon after launching their standalone services, Disney and Fox announced a partnership to bundle ESPN Unlimited and FOX One, reuniting their sports

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<sup>12</sup> Letter from Pantelis Michalopoulos, Counsel for EchoStar Corporation, to Judge Margaret Garnett, *FuboTV v. Walt Disney Co.*, No. 1:24-cv-01363 (Jan. 7, 2025) (ECF No. 377) (citing *Manufacturers Hanover Tr. Co. v. Yanakas*, 11 F.3d 381, 384 (2d Cir. 1993)).

<sup>13</sup> Kevin Draper, *Sports Streaming Service from Media Giants Ends Before It Starts*, N.Y. Times (Jan. 10, 2025), <https://www.nytimes.com/2025/01/10/business/venu-sports-streaming-service.html>.

content in a single offering to consumers that approximates the anticompetitive Raptor/Venu joint venture. In August 2025, Disney and Fox revealed an agreement to offer the two new services as an integrated package at a discounted price.<sup>14</sup> The new ESPN/FOX One bundle gives viewers the option to subscribe to both ESPN Unlimited and FOX One for a combined \$39.99 per month. This bundled price (roughly \$10 less than buying each service separately) aims to entice sports fans to sign up for “all-you-can-watch” access to both companies’ live sports lineups.

72. The ESPN/FOX One bundle is largely Raptor/Venu redux. As Fox’s bundle announcement boasted, a customer who purchases the ESPN/FOX One bundle can watch an “incredible portfolio of content” spanning “NFL, NBA, WNBA, MLB, NHL, College Football and Basketball, NASCAR, INDYCAR, UFC,” plus events like the FIFA World Cup. The portfolio was, and is, “incredible” because Disney and Fox prevent other distributors from replicating it, by, among other things, requiring their non-sports content to be packaged with their sports content.

73. Indeed, Disney and Fox did not even bother to hide the striking parallels between Raptor/Venu and the ESPN/FOX One bundle: Front Office Sports reported that Fox hired former Raptor/Venu CEO Pete Distad to be the CEO of FOX One and repurposed Raptor/Venu’s technical groundwork for its new service.<sup>15</sup> The ESPN/FOX One bundle is even priced similarly to Raptor/Venu—roughly \$40 per month, only slightly below Raptor/Venu’s \$42.99 price point.

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<sup>14</sup> Press Release, Fox Corporation, *ESPN DTC and FOX One to Launch Combined Bundle Offer* (Aug. 11, 2025), <https://www.foxcorporation.com/news/business/2025/espn-dtc-and-fox-one-to-launch-combined-bundle-offer/>.

<sup>15</sup> Eric Fisher, *New ESPN-Fox Bundle Revives Venu Sports Concept*, Front Office Sports (Aug. 11, 2025), <https://frontofficesports.com/new-espn-fox-bundle-revives-venu-sports-concept/>.

74. In short, even without a formal joint venture entity—a cosmetic differentiation from Raptor/Venu—Disney and Fox each control a lion’s share (and, together, the lion’s pride’s share) of must-have sports programming—and now they are jointly marketing those assets as one package, tightening their grip on sports distribution.

75. Competing TV providers still must negotiate carriage deals for ESPN, and they must contend with the fact that Disney is now collaborating to siphon sports audiences to their own DTC platforms. This raises the same specter of “market foreclosure” that concerned the *Fubo* court: Disney has enhanced incentives to favor its own bundle and “suppress other potential sports-focused bundles from meaningfully competing.”

76. The ESPN/FOX One bundle also creates the same danger of coordinated price increases and consumer harm that the *Fubo* court recognized. The bundle’s current price is marketed as a limited-time deal, and there is nothing preventing the two firms from hiking the bundle’s price or increasing their individual service rates in parallel once subscribers are on board (Raptor/Venu’s internal plans for 10% yearly price hikes illustrate that risk).

**E. Disney’s Third Attempt to Corner Televised Live Sports: Using Fubo as a Trojan Horse to Relaunch Raptor/Venu as “Fubo Sports”**

77. The ESPN/FOX One bundle is just one of two Disney efforts to revive Raptor/Venu after that first attempt was ostensibly abandoned. On September 2, 2025, Fubo launched a skinny sports bundle called “Fubo Sports.” That was seven days after Disney filed its complaint against DISH in this proceeding, and while Disney and Fubo were still supposedly independent entities. At \$55.99 per month, Fubo Sports gives consumers access to the sports content of Disney, Fox, and CBS, including ABC, CBS, FOX, ESPN, ESPN2, ESPN News, ESPNU, ACC Network, Big 10 Network, SEC Network, FS1, FS2, CBS Sports Network, Fubo Sports Network, ION, NFL Network, Tennis Channel, and ESPN+. Crucially, consumers are not

forced to subscribe to and pay for additional unwanted non-sports programming, with the exception of the popular Fox News and Fox Business. DISH cannot offer a similar skinny sports package, let alone offer those networks at the same low price, principally due to Disney's bundling, penetration, and packaging requirements. Disney did not waste time in buttressing the new bundle and preempting would-be competitors. On September 3, 2025, one day after launching Fubo Sports, Disney informed DISH that it would discontinue ESPN3.

78. Fubo Sports and Raptor/Venu are strikingly similar in their network offerings. Raptor/Venu would have included most of the networks that Fubo Sports now offers: ABC, FOX, ACC Network, Big 10 Network, SEC Network, ESPN, ESPN2, ESPN News, ESPNU, FS1, and FS2. There are only three real differences—(1) Fubo Sports includes CBS's valuable sports networks, which Raptor/Venu did not; (2) Fubo Sports lacks WBD networks, which Raptor/Venu would have carried, probably because WBD no longer holds valuable NBA rights as of November 18, 2024; and (3) Fubo Sports includes Fox News and Fox Business, which Raptor/Venu would not have included.

79. Fubo Sports is *only* possible because of Disney's acquisition of a controlling stake in Fubo and the amended programming licensing agreements that Disney and Fox granted Fubo as part of the *Fubo* settlement. As Fubo's president explained upon announcing the settlement, "Fubo will now be able to provide even more sports including ESPN Plus through amended distribution agreements with Disney as well as Fox and crucially Fubo has the potential to create skinnier sports . . . bundles according to consumer needs." "Crucially" indeed. In particular, the immediately effective amended carriage agreement with Disney "enable[s] [Fubo] to deliver flexible innovative and competitive content packages to consumers, particularly around sports."

In the same announcement, Fubo’s chief financial advisor hinted that it might secure more amended programming licensing agreements within the year.

80. That hint quickly turned prescient, as Fubo Sports also secured an amended programming licensing agreement from CBS, allowing it to offer unbundled CBS content as well. CBS did not participate in Raptor/Venu, and its inclusion in the Fubo Sports package is the reason why Fubo Sports commands even more critical sports content than Raptor/Venu did. Disney had never before extended these rights to any other distributor apart from the preliminarily enjoined Raptor/Venu.

81. The near-contemporaneous concessions to Fubo by Disney and Fox after decades of resistance strongly indicate that their conduct was not independent, but rather the product of concerted action intended to replicate and amplify the anticompetitive effects of the enjoined Raptor/Venu.

82. Each programmer’s participation was economically rational only if the others also agreed to supply their critical sports content to Fubo Sports and to withhold comparable unbundled rights from competing distributors. Absent the agreement, the must-have content of each participant would have been crammed with tied non-critical content of the other two, forfeiting the singularity that seems to be the Fubo Sports *raison d’être*. For Raptor/Venu to become possible, it took an agreement of all participants there—Disney, Fox, and WBD, another strong indication that the sports-richer Fubo Sports skinny bundle sprang to life thanks to the coordination among *its* participants.

83. In short, Disney’s acquisition of Fubo is a Trojan horse for reintroducing Raptor/Venu. The only skinny sports bundles today are Disney’s Fubo Sports, Disney’s and Fox’s ESPN/FOX One Bundle, Disney’s ESPN Unlimited, and Fox’s FOX One. Unlike Disney



and Fox, CBS does not offer its own direct-to-consumer sports-only streaming service; unbundled CBS sports content is only available through Fubo Sports. And neither DirecTV's MySports nor Comcast's Xfinity Sports & News TV is a substitute for programmer-led skinny sports bundles. They are both priced substantially higher, at \$70 or more per month, and have far more networks than the Disney- and Fox-owned skinny bundles, probably because Disney and Fox force them to carry a multiplicity of networks.

84. Disney commands the lion's share, certainly more than 50%, of skinny sports bundle viewership.

85. Meanwhile, Fubo posted its best third-quarter result in company history for Q3 2025, gaining an estimated 275,000 subscribers, some of whom are assuredly Fubo Sports customers.<sup>16</sup> This is the first quarter in which customers could subscribe to Fubo Sports.

86. Fubo Sports is not just a Raptor/Venu rerun. It is even more destructive to competition in light of the higher quality of its sports content. Given WBD's loss of NBA content, and CBS's valuable NFL games, CBS has a stronger portfolio of sports content than WBD. It is not surprising that, upon the closing of the Disney acquisition, the Fubo CEO praised the transaction by citing the enormous leverage endowed to Fubo by ESPN: "ESPN's ecosystem of ESPN Radio, ESPN.com, flagship and other spokes that they have within that ESPN flywheel probably averages somewhere in the sort of 100 million monthly active users. This is a funnel that we have never leveraged before. So we think that there's probably significant untapped

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<sup>16</sup> Press Release, Fubo, *Fubo Powers Through Q3 2025 with Strong Growth in Subscriber and Profitability Metrics* (Nov. 3, 2025), <https://ir.fubo.tv/news/news-details/2025/Fubo-Powers-Through-Q3-2025-With-Strong-Growth-in-Subscriber-and-Profitability-Metrics/default.aspx> ("Notably, the subscriber result was Fubo's highest for a third quarter in the Company's history."); Luke Bouma, *Fubo Added Over 275,000 Subscribers in the 3rd Quarter of 2025*, Cord Cutters News (Nov. 3, 2025), <https://cordcuttersnews.com/fubo-added-over-275000-subscribers-in-the-3rd-quarter-of-2025/>.

value for us to grow our sub base again profitably, which means it could have a very positive impact on our sales and marketing line.”<sup>17</sup>

## **VI. DISH AND SLING CANNOT COMPETE EITHER WITH THE ESPN/FOX ONE BUNDLE OR WITH FUBO SPORTS**

87. As a result of the high content costs and straitjacket packaging requirements imposed by Disney’s policies, DISH is forced to charge a price significantly higher than the prices for either the ESPN/FOX One bundle or Fubo Sports streaming services. For example, both Sling Orange (which includes ESPN but not Fox networks) and Sling Blue (which includes Fox but not ESPN networks) are priced at \$45.99 per month, compared to \$39.99 for the ESPN/FOX One bundle, which includes all Disney *and* Fox sports content. In fact, to get even close to the same sports networks that the ESPN/FOX One bundle has, Sling customers would have to subscribe to the even more expensive Sling Orange + Blue offering that combines the two offerings for \$60.99 to \$65.99 per month, depending on whether the market has local ABC, NBC, and FOX broadcast stations included. Even then, customers could only access ESPN on one television set or device at a time. This is in stark contrast to the multi-view capabilities of ESPN Unlimited, which permits the viewing of up to three streams. Fubo Sports, of course, carries Disney’s, Fox’s, *and* CBS’s sports content for \$55.99 per month. Sling Orange + Blue does not have CBS, meaning that Fubo Sports has more sports for less than the price of Sling Orange + Blue. And, as sports fans defect from DISH and Sling to Disney’s skinny sports offerings, the remaining, less avid sports watchers will still have to pay for sports because of the bundling, penetration, and packaging requirements that Disney imposes on DISH.

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<sup>17</sup> *Fubo TV Q3 2025 Earnings Call Transcript*, Fidelity (Nov. 3, 2025), available at: <https://www.fidelity.com/news/article/default/202511031214BENZINGAFULLNGTH48597827>.

88. The Fubo Sports bundle increases Disney's incentive to impose tying restrictions on DISH—restrictions that exclude competition from the Skinny Sports Bundle Market.

89. Disney now smells blood in the water, and is acting as a Raptor in response, working to destroy DISH in other ways, too. First, Disney is withdrawing some of its valuable sports content from DISH. On Tuesday, December 2, 2025, ESPN discontinued ESPN3, a network popular with Sling Orange subscribers, even as the content previously on that network will be available for subscribers to ESPN's direct-to-consumer offerings, including the ESPN/FOX One bundle.

90. What is more, Disney has threatened to make changes that implicate the delivery of the companion products to two premier college sports networks included in the ESPN/FOX One bundle—the ACC Network and SEC Network; this would make it technically impracticable for DISH to continue distributing the full portfolio of content under the ACC Network and SEC Network umbrellas. Those changes would breach the OTT License.

91. Disney also continues to block distributors from introducing their own consumer-friendly innovations. Disney's filing of this lawsuit seeking to enjoin Sling Passes is a case in point. Not willing to tolerate even the slightest threat to its effort to dominate the distribution of live sports programming, Disney filed this retaliatory lawsuit based upon supposed violations of the OTT License.

92. DISH is irreparably injured by Disney's conduct. Both Disney's tying requirements, and its creation of smaller packages free of such requirements, directly and proximately result in the loss of DISH and Sling customers and goodwill, and are making it harder for DISH and Sling to attract and retain customers. These injuries are not adequately compensable with money damages alone.

93. The Court’s intervention is needed to forestall the harm to competition that Defendants’ conduct threatens.

## VII. RELEVANT PRODUCT MARKETS AND MARKET POWER

94. There are multiple relevant product markets in the pay television ecosystem. *First*, there is an upstream market for licensing linear television networks that focus on valuable live sports content to Pay-TV Distributors—the upstream national “Sports Programming Market.” *Second*, there is a downstream market in which Pay-TV Distributors deliver television content to consumers through multichannel packages that include a wide range of content (including sports as well as general entertainment, news, and many other genres)—the “Live Pay-TV” market. *Third*, there is the new market for television packages that focus on live sports—the “Skinny Sports Bundle” market.

### A. Sports Programming Market

95. DISH is a direct purchaser in the upstream Sports Programming Market.

96. As set forth above at ¶¶ 41–54, Disney has substantial market power in the Sports Programming Market. That market power is only slated to grow with Disney acquiring additional NFL rights if antitrust regulators clear Disney’s acquisition of the NFL Network and the rights to distribute and negotiate on behalf of the NFL Redzone network.

97. In terms of viewership, Disney controls 36% of the Sports Programming Market, and more than 57% of that market together with Fox.<sup>18</sup> High barriers to entry protect Disney’s substantial market power in that market. For example, the total value of the NFL’s recent rights deals is more than \$110 billion over eleven years. The new NFL deal lasts for a decade, meaning that its rights will not be available to any new programmers until 2033 (subject to opt-out options

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<sup>18</sup> DISH has calculated these market shares using Nielsen viewership data and based on Disney’s public claims about ESPN’s 36% viewership share, as set forth above at ¶ 54.

the NFL can exercise in 2029 and 2030). And the NBA has recently signed a new 11-year rights deal with Disney worth more than \$76 billion; the MLB has also signed a 3-year deal with Disney averaging \$550 million per year. Barriers of that magnitude preclude all but the largest media giants from entering the market.

## **B. Markets for Distributing Live Sports Content to Customers**

### *1. Live Pay-TV Market*

98. As noted above, downstream from the Sports Programming Market, another relevant market is the Live Pay-TV market for distributing live sports programming to consumers as part of a multichannel package. The Live Pay-TV market includes all Pay-TV Distributors—both traditional MVPDs (such as DISH, Comcast/Xfinity, Charter/Spectrum, and Verizon Fios) and OVDs (such as Sling TV, YouTube TV, and Hulu + Live TV).

99. Both MVPDs and OVDs sell multichannel packages that include live events, allowing users to watch time-sensitive programming (such as sporting and breaking news events) as it occurs. They can offer that programming only as part of a bundle that also includes non-sports programming (because they must under their programming carriage agreements with Disney and others). Disney now seeks to upend that paradigm to its advantage, by dominating a new market that many Pay-TV Distributors have vainly sought to enter and offering the ESPN/FOX One bundle without substantial non-sports programming.

100. Critically, both MVPDs and OVDs rely on live sports as the key factor differentiating them from SVOD streaming services, such as Netflix. For America's many millions of sports fans in particular, Live Pay-TV services are not reasonably interchangeable with SVOD services.

101. For these reasons, a hypothetical monopolist of the Live Pay-TV market could profitably impose a small but significant, non-transitory price increase or quality reduction.



## 2. *Skinny Sports Bundle Market*

102. As mentioned, another relevant market is the Skinny Sports Bundle Market for television packages focused on live sports. Skinny sports bundles are multichannel video programming packages (delivered through cable, satellite, or the Internet) focused almost exclusively on a substantial and distinctive lineup of live sports networks available on a standalone basis. These bundles offer consumers reliable access to major professional and collegiate sporting events and related sports programming and are marketed, priced, and purchased primarily based on that sports content.

103. The Skinny Sports Bundle Market includes Disney's ESPN Unlimited streaming service, Disney's Fubo Sports, Disney's and Fox's ESPN/FOX One bundle, and Fox's FOX One. That is it.

104. But for Disney's and Fox's anticompetitive bundling arrangements, DISH would offer a more sports-heavy package of networks, devoid of the non-critical non-sports Disney networks, that would compete in the Skinny Sports Bundle Market.

105. Traditional television packages offered by Pay-TV Distributors, which typically include dozens or hundreds of non-sports networks, are not substitutes for skinny sports bundles. Because these traditional TV packages include both sports content and substantial amounts of non-sports content, they are generally priced significantly higher than the skinny sports bundles. For example, the base plans for YouTube TV and Hulu + Live TV all start around \$85 per month—significantly higher than the \$20-40 price points of the skinny sports bundles offered by Disney and Fox.

106. Single-sport streaming services offered directly to consumers by sports leagues—such as NFL Sunday Ticket or NBA League Pass—are likewise not close substitutes for skinny sports bundles. These single-sport streaming services offer access to live sports from only a

single sports league, and generally only out-of-market games, not the variety of games, including those of the home NFL, NBA or NHL teams, necessary to satisfy the demand of most sports fans. Local or team-specific streaming services such as Gotham Sports (YES Network plus MSG) are too specialized to be a real substitute either. These niche services are, therefore, at most a complement to, not a substitute for, the breadth and diversity of premier sporting events available through skinny sports bundles.

107. **Industry and public recognition:** Industry participants recognize that bundles of live sports constitute a distinct market.<sup>19</sup> Industry participants separately describe and analyze market shares for live sports networks.<sup>20</sup> Likewise, the public recognizes live sports as distinct from broader packages of programming content offered in the Live Pay TV market. In 2020, for example, analysts at MoffettNathanson described the “separation of sports and entertainment” in television markets.<sup>21</sup>

108. **Distinct customers:** Live sports customers tend to be significantly younger, on average, than traditional cable and satellite customers.<sup>22</sup> Live sports customers also tend to

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<sup>19</sup> *In re Nat’l Football League’s Sunday Ticket Antitrust Litig.*, 933 F.3d 1136, 1155 (9th Cir. 2019) (recognizing a “market for live video presentations of regular season NFL games”); *United States v. The Walt Disney Co.*, No. 18-cv-5800, (S.D.N.Y. 2018), Doc. 21, Competitive Impact Statement (S.D.N.Y. filed Aug. 7, 2018) at 5 (noting that “MVPDs could not attract or retain those consumers as subscribers without including cable sports programming in the packages of cable programming networks they offer their subscribers.”).

<sup>20</sup> See *United States v. The Walt Disney Co.*, No. 18-cv-5800, Doc. 21, Competitive Impact Statement (S.D.N.Y. filed Aug. 7, 2018) at 6-7 (finding “Disney’s networks would account for at least 60 percent of cable sports programming in 19 of the DMA Markets and over 45 percent in the remaining six DMA Markets.”); *Sports Streaming Platforms Market Report 2025 | Revenues to Reach USD 75.17 Billion by 2030*, Yahoo! Finance, (Aug. 15, 2025) <https://finance.yahoo.com/news/sports-streaming-platforms-market-report-082500684.html>.

<sup>21</sup> Ashley Rodriguez, *A New Wave of Cord-Cutters Is Leaving Cable and Satellite TV for Good and Experts Say It’s Sending the Pay-TV Bundle into a ‘Death Spiral’*, Business Insider (May 9, 2020) <https://www.businessinsider.com/pay-tv-subscriber-losses-rise-sending-the-bundle-death-spiral-2020-5>.

<sup>22</sup> *Disney, Fox, Warner Bros Discovery Sports-Streaming Venture Named Venu Sports*, Reuters, (May 16, 2024) <https://www.reuters.com/sports/disney-fox-warner-bros-discovery-sports-streaming-venture-named-venu-sports-2024-05-16/> (“Announced in February, [Venu] will try to woo younger viewers who are not tuned in to cable TV.”).

consume live television from phones, tablets, gaming consoles, and computers, not just from stationary television sets.<sup>23</sup> Distinctively, live sports customers are sports fans, who are unwilling to give up access to live sports.

109. ***Distinct prices:*** The four existing skinny sports bundles are priced considerably lower than MVPD and OVD services.

### **C. Relevant Geographic Markets**

110. The relevant geographic market is the United States.

111. Sports leagues such as the NFL, NBA, MLB, NHL, and PGA Tour sell media rights to their events for the United States separately from international media rights.

112. In turn, programmers such as Disney license the United States distribution rights to their sports programming to pay TV distributors such as DISH.

113. The Pay-TV Distributors similarly compete, by and large, throughout the United States. Specifically, satellite MVPDs such as DISH and DirecTV and OVDs tend to operate nationally. While cable and telephone MVPDs operate regionally, national distributors typically face competition from a cable company and/or telephone company in most areas.

114. Likewise, the ESPN/FOX One bundle is offered in the United States (not internationally) and tailored to United States customers. The same is true of Fubo Sports.

### **D. Tying and Tied Products**

#### *1. Tying Product: Commercially Critical Sports Networks*

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<sup>23</sup> Press Release, Capgemini, 69% of Fans Prefer to Watch Sports Outside the Venue, Especially Younger generations, (June 6, 2023), <https://www.capgemini.com/news/press-releases/69-of-fans-prefer-to-watch-sports-outside-the-venue-especially-younger-generations/>.

115. The tying product consists of commercially critical sports networks in the United States—programming that an MVPD or OVD *must* license to offer a commercially viable offering.

116. Live sports are critically important to MVPDs and OVDs. Although consumers have time-shifted their entertainment viewing habits—so that they increasingly watch scripted shows and movies through video-on-demand services—they continue to watch sports live. According to a recent S&P Global report, 81% of traditional pay TV subscribers, and 74% of virtual multichannel TV service households, watch live sports.<sup>24</sup> Accordingly, high-quality sports content is more critical than ever to the survival of Pay-TV Distributors.

117. The commercially critical nature of Disney’s sports programming is also evidenced by its cost. [REDACTED]

[REDACTED] To comprehend the magnitude of this wholesale fee, it is close to the retail fee Netflix charges a household. [REDACTED]

[REDACTED] On top of these prices, of course, Disney can, and does, force DISH to carry non-critical, non-sports networks like [REDACTED]

[REDACTED], at rates disproportionately high relative to their viewership, and to carry them on a

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<sup>24</sup> Keith Nissen, *Sports Play a Vital Role in All Video Services, Especially Traditional Pay TV*, S&P Global (Dec. 17, 2025).

high-penetration package, because Disney makes their carriage a condition of access to Disney's must-have sports.

118. High barriers to entry protect Disney's and Fox's market power in the tying market. Developing a commercially critical sports network requires obtaining the locked-up-for-years media rights to major sports leagues and events, a dauntingly difficult project.

## 2. *Tied Product: Non-Critical Television Networks*

119. The tied product is the licensing of non-critical television networks in the United States—programming that an MVPD or OVD *might* choose to license for distribution in a given package of networks, but that it does not *need* to license to support a commercially viable package of networks.

120. Non-critical television networks compete in markets defined by various non-sports programming genres. They are reasonably interchangeable within a genre because distributors (absent tying and bundling policies) could choose between non-critical television networks of the same genre when offering a multichannel package to consumers. For example, absent contractual restrictions, DISH and other Pay-TV Distributors could [REDACTED]

[REDACTED]. However, non-critical television networks are *not* reasonably interchangeable with commercially critical sports networks.

121. Disney forces DISH to accept many non-critical television networks as a condition to receiving the commercially critical sports programming. For example, as stated, depending on the platform and package, Disney forces DISH to license [REDACTED]

[REDACTED]. Each of the Sling Orange, Sling Blue, and Sling Select offerings include



some of these non-critical television networks even though they receive relatively little viewership.

122. Disney's tying policies have restricted DISH's ability to offer consumers affordable packages consisting of the networks they most desire and has prevented other programmers' networks in various genres from competing against Disney's networks. Both Football Frank and Sitcom Sally have to overpay because Disney has crammed DISH's offerings with channels they do not want. Both may leave DISH or Sling for that reason, and many like them do. And, making the anticompetitive behavior sweeter for Disney, Football Frank is likely to end up with the ESPN/FOX One bundle or Fubo Sports, to Disney's further profit.

#### **VIII. DISH HAS SUFFERED AND WILL SUFFER ANTITRUST INJURY**

123. The very characteristics of Disney's anticompetitive conduct that cause harm to competition have harmed DISH as well. Disney's and Fox's ESPN/FOX One bundle will enable them to exercise their combined market power to exclude existing and potential competitors from competing in the Skinny Sports Bundle Market, including DISH. And Disney's acquisition of Fubo allows Disney to dominate the Skinny Sports Bundle Market and exclude DISH from that market.

124. As described above and in the following paragraphs, Disney's unlawful conduct has caused competitive injury to DISH by coercing DISH to license non-critical content on cumbersome terms in order to access Disney's commercially critical sports content.

125. Disney ties its commercially critical sports content to the licensing of non-critical content. Absent this tie, DISH would license only commercially critical content or would license far less non-critical content (by, for instance, placing critical sports content in its own packages, or by placing non-critical content in separate packages available to consumers who desire that content). Instead, DISH is forced to pay for undesirable content and cannot customize packages

to meet the needs of consumers. Disney's unlawful tying arrangements thus degrade DISH's product quality, and cause DISH to lose customers, including to Disney's cheaper skinny sports bundles, which are not encumbered by these tying arrangements.

126. The anticompetitive harm from Disney's conduct has only intensified. On December 10, 2025, YouTube TV announced that it will introduce a new standalone offering called "Sports Plan," a package centered almost entirely on live sports content that will provide subscribers access to major sports networks such as FS1, NBC Sports Network, the ESPN networks, and ESPN Unlimited, reportedly without any requirement that the distributor also carry non-critical, non-sports networks. YouTube TV's Sports Plan appears to be yet another skinny sports bundle that will compete directly in the Skinny Sports Bundle Market. YouTube TV, backed by its parent company Google, possesses sufficient countervailing bargaining power to avoid the contractual restraints that Disney imposes on smaller distributors like DISH and offer a sports-focused product that may secure entry into the very market Disney has prevented DISH from entering. The launch of Sports Plan further validates that the skinny sports bundle market is a commercially distinct one with robust consumer demand, which powerful distributors recognize and are using their leverage to try to enter. It also demonstrates that competitive harm from Disney's conduct is not theoretical: the market is expanding with new potential entrants even as DISH is still barred from participating in it because of Disney's anticompetitive restrictions. Nor does Google's future entry in the market dilute Disney's commanding market power in it. Rather, Disney's conduct further exacerbates DISH's competitive disadvantage and entrenches the anticompetitive conditions that foreclose DISH from the Skinny Sports Bundle Market.

127. In short, Disney forces DISH to distribute non-critical content to significant numbers of DISH subscribers. Absent these tying restraints, DISH would structure its offerings

to provide affordable packages that include only the content its consumers actually want to watch. Instead, DISH (and its customers) pay inflated prices for packages with unnecessary content, not watched by the phantom subscribers on which DISH must still pay. Ultimately, of course, the customers foot the bill of the overpayments or leave DISH altogether.

#### **IX. THE MOST FAVORED NATION TERMS IN THE DBS AND OTT LICENSES**

128. DISH executed the OTT License and the DBS License on November 23, 2022 for distribution of Disney television networks, each of which is effective as of October 3, 2022. The OTT and DBS Licenses are collectively referenced herein as the “Licenses.”<sup>25</sup>

129. The Licenses provide DISH with certain MFN protections. *See* Licenses § 9. Under these MFN provisions, Licensors must provide DISH with any “Material Terms” (as defined in the Licenses) provided to third-party Other Distributors that are more favorable than those offered to DISH. *See id.*

130. Specifically, pursuant to the Licenses:




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<sup>25</sup> Many of the terms in the Licenses are identical. When such identical terms are cited, the citation will be to “Licenses § \_\_.”

[REDACTED]

131. The “Term” is the time period between [REDACTED]

[REDACTED]

132. “Material Term” is specifically defined under the Licenses. It encompasses

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

133. Section [REDACTED] and the definition of “Material Term” in the Licenses require [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

134. When DISH becomes entitled to an MFN Offer, Licensors are required to [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

135. The MFN offers [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

136. DISH [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

137. The Licenses also contemplate [REDACTED]

[REDACTED]

[REDACTED]

138. The Licenses [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



139. Consistent with Section [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

140. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

#### **X. LICENSORS' 2024 BREACH OF THE MFN PROVISIONS**

141. The MFN provisions of the Licenses were triggered in 2024 by terms Licensors agreed upon with an Other Distributor.

142. Upon information and belief, [REDACTED] is that Other Distributor.

143. James Zasowski, Senior Vice President, Platform Distribution Strategy at Disney, sent Andrew LeCuyer, Senior Vice President, Programming at DISH, a letter dated March 8, 2024 enclosing certain MFN Offers as Annexes I and II. DISH received the letter on March 11, 2024.

144. On information and belief, Licensors [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

145. In breach of the MFN provisions, Licensors did not [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

146. In addition to being late, Offers 1 and 2 contained in Annex II were non-compliant with the MFN provisions in the DBS License.

147. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

148. Offer 1 on its own would save DISH millions of dollars.

149. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

150. Licensors attached four identical conditions to both Offers 1 and 2.

151. Condition 1, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

152. [REDACTED]

[REDACTED]

153. Condition 2, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

154. [REDACTED]

[REDACTED]

155. Condition 3, [REDACTED]

[REDACTED]

[REDACTED]

156. [REDACTED]

[REDACTED]

157. Condition 4, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

158. [REDACTED]

[REDACTED]

159. DISH responded by letter dated May 21, 2024. Dkt. 55-2. DISH advised Licensors that Offers 1 and 2, and the associated Conditions 1 through 4, do not comply with the DBS License MFN provisions.

160. Offers 1 and 2 in and of themselves violate the DBS License. The DBS License provides for MFN protection [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

161. DISH further advised Licensors that Conditions 1 through 4 violate the DBS License by [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

162. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

163. In accordance with Section [REDACTED]

[REDACTED]

[REDACTED]

164. In addition to pointing out the flaws in Offers 1 and 2, DISH apprised Licensors of additional MFN Offers required pursuant to the DBS and OTT Licenses that Licensors had not extended. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

165. [REDACTED]

166. [REDACTED]

[REDACTED]

[REDACTED]

167. Licensors ignored DISH's May 21, 2024 letter. Licensors were required to respond [REDACTED]

[REDACTED]

168. Licensors belatedly sent DISH a response on October 9, 2025, more than one year later, and only after DISH advised this Court that Licensors are in violation of their MFN obligations. In their belated response, Licensors claimed, without any basis whatsoever, that they had no obligation to respond to DISH's May 21, 2024 letter. Licensors also asserted that they had offered DISH [REDACTED] which also is patently inaccurate.

169. With respect to [REDACTED]  
[REDACTED], Licensors disingenuously claimed, in violation of the  
Licenses, that [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

170. At the time the Licenses were executed, [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

171. It is not unusual for Licensors to remove their networks from a distribution  
platform at the end of a contract term as a negotiating tactic, in order to exert leverage. In fact,  
Licensors have done so at least *five times in the last four years*, removing their networks from  
YouTube TV in December 2021, DISH in October 2022, Charter in August-September 2023,  
DirecTV in September 2024, and YouTube TV in October-November 2025. [REDACTED]  
[REDACTED]  
[REDACTED]

172. Each of these takedowns was within Licensors' control.

173. For example, at the time that Licensors removed their networks from DISH, the  
parties were actively engaged in renewal negotiations. DISH reasonably expected Licensors to  
agree to an extension. Licensors abruptly refused an extension, yanked the networks during a  
popular sports weekend, and aggressively encouraged DISH subscribers to leave.



174. Licensors may not exploit their hardball negotiation tactics [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

#### **XI. LICENSORS' 2025 BREACHES OF THE MFN PROVISIONS**

175. The MFN provisions of the Licenses were triggered again in 2025 by contract terms Licensors agreed to with Other Distributors.

176. James Zasowski, Executive Vice President, Platform Distribution Strategy at Disney, sent Andrew LeCuyer, Senior Vice President, Programming at DISH, a letter dated June 18, 2025 enclosing MFN Offers as Annex I.

177. On information and belief, [REDACTED]

[REDACTED]

178. On information and belief, Licensors [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

179. In breach of the MFN provisions, Licensors did not [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

180. The June 18, 2025 letter contained [REDACTED] MFN Offers. Offers 1, 2, 3, 4 and 9 breach the MFN provisions of the Licenses.

181. Offer 1, [REDACTED]

[REDACTED]

[REDACTED]

182. Offer 1, standing alone, would save DISH millions of dollars.

183. Offer 2, [REDACTED]

[REDACTED]

[REDACTED]

184. Offer 2, standing alone, would save DISH millions of dollars.

185. Offer 3, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

186. Offer 3, standing alone, would save DISH millions of dollars.

187. Offer 4, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

188. [REDACTED]

[REDACTED]

189. Licensors attached three identical conditions to each of Offers 1 through 4.

190. Condition 1, [REDACTED]

[REDACTED]

[REDACTED]

191. [REDACTED]

[REDACTED]

[REDACTED]

192. Condition 2, [REDACTED]

[REDACTED]

193. Condition 3, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

194. [REDACTED]

[REDACTED]

195. Offer 9, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

196. Licensors attached multiple Conditions to Offer 9. Among other things, the Conditions would require [REDACTED]

[REDACTED]

[REDACTED]

197. DISH responded to the 2025 MFN Offer Notice on September 15, 2025. Dkt. 55-3.

198. With respect to Offers 1 and 2, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

199. With respect to Offers 3 and 4, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

200. With respect to Offers 3 and 4, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

201. With respect to Condition 3, DISH notified Licensors that [REDACTED]

[REDACTED]

[REDACTED]

202. With respect to Offer 9, DISH notified Licensors that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

203. [REDACTED]

[REDACTED]

204. [REDACTED]

[REDACTED]

[REDACTED]

205. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

206. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

207. In addition to pointing out the flaws in Offers 1, 2, 3, 4 and 9, DISH apprised Licensors of additional MFN Offers required pursuant to the DBS and OTT Licenses that had not been extended. [REDACTED]

[REDACTED]

[REDACTED]

208. Licensors responded by letter dated October 9, 2025. Dkt. 64-1. Licensors refused to [REDACTED], in willful breach of their MFN obligations.

209. Licensors also refused to provide DISH with revised MFN offers that [REDACTED]

[REDACTED]

[REDACTED]

210. Licensors furthermore refused to provide DISH with MFN offers [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

211. [REDACTED]

[REDACTED]

[REDACTED]

212. James Zasowski, Executive Vice President, Platform Distribution Strategy at Disney, sent Andrew LeCuyer, Senior Vice President, Programming at DISH, a letter dated December 17, 2025 enclosing MFN Offers as Annexes I and II. These MFN Offers are non-compliant with the OTT License and the DBS License, in breach of those agreements.

213. Annex I contains a single Offer 1, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



214. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

215. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

216. In violation of the OTT License, Offer 1 [REDACTED]  
[REDACTED]

217. Licensors included two Conditions with Offer 1, [REDACTED]  
[REDACTED]

218. Condition 1 relates to [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

219. [REDACTED]

[REDACTED]

220. Condition 2, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

221. Condition 2, [REDACTED]

[REDACTED]

[REDACTED]

222. Annex II contains 3 DBS MFN Offers.

223. Offer 1, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

224. Offer 1, standing alone, would save DISH millions of dollars.

225. Offer 2, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

226. Offer 3, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

227. Offers 1, 2 and 3 are all subject to the same three Conditions.

228. Condition 1 [REDACTED]

[REDACTED]

[REDACTED]

229. In violation of the DBS License, [REDACTED]

[REDACTED]

230. Condition 2 [REDACTED]

[REDACTED]

231. [REDACTED]

[REDACTED]

[REDACTED]

232. Condition 3 requires DISH to [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

233. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

234. DISH [REDACTED]. DISH's response to Mr. Zasowski's December 17, 2025 letter is not yet due. DISH intends to provide a written response on or before the due date.

## **XII. LICENSORS' OTHER MFN PROVISION BREACHES**

235. Licensors violated the MFN provisions in the Licenses by failing to make MFN Offers to DISH in connection with [REDACTED]

[REDACTED]  
[REDACTED]

236. Upon information and belief, [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

237. Upon information and belief, Licensors have taken other improper actions in violation of DISH's MFN rights. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

238. Licensors' other MFN breaches have caused DISH millions of dollars in damages.

**COUNT I**  
**Unlawful Tying in Violation of the Sherman Act, 15 U.S.C. § 1**  
**(against Disney)**

239. DISH repeats and realleges the allegations set forth above as if fully set forth herein.

240. In its carriage agreements with DISH, Disney has conditioned the licensing of its commercially critical sports content—the linear ESPN networks—on DISH’s agreement to license its non-critical content as well. Disney also requires DISH to distribute this non-critical content to an unreasonable number of DISH’s subscribers—an obligation Disney itself does not share or impose on its own affiliated ESPN/FOX One bundle.

241. Disney’s commercially critical sports networks and its non-critical television networks are distinct products that exist in separate markets. As the exclusive owner of must-have sports content, Disney has market power in the market for licensing commercially critical sports networks. Disney milks that market power to force DISH to purchase networks it does not want, or would only be willing to pay less for, and offer to fewer customers, but for the tie.

242. Disney’s ties affect a substantial amount of interstate commerce in the markets for the tied products, resulting in hundreds of millions of dollars per year in excess fees on DISH customers.

243. Disney’s tying arrangement is unlawful *per se*. In the alternative, Disney’s tying arrangement unreasonably restrains trade.

244. Because of its bundling requirements, Disney charges higher prices for its non-critical content than it otherwise could. Absent Disney’s bundling requirements, DISH would license and broadcast superior non-critical content from other programmers. DISH also has lost sales that it would otherwise have been able to make if Disney’s unlawful bundling did not prevent it from offering skinnier packages to consumers and from providing superior content

from vendors unaffiliated with Disney. Disney's tying has displaced other programmers' content to their and DISH's mutual detriment.

245. As a result of Disney's bundling practices, DISH has suffered injury and damages that flow from Disney's antitrust violations.

**COUNT II**  
**Unreasonable Restraint of Trade in Violation of the Sherman Act, 15 U.S.C. § 1**  
**(against Disney)**

246. DISH repeats and realleges the allegations set forth above as if fully set forth herein.

247. Disney is a corporation engaged in interstate trade and commerce throughout the United States.

248. On or about October 2, 2025, Disney and Fox launched a joint streaming deal, through which they will consolidate their sports content rights and offer that combined content to consumers through a jointly priced streaming service.

249. The ESPN/FOX One bundle substantially affects interstate commerce as it is likely to draw tens of thousands of subscribers to Disney and generate millions, if not billions, of dollars nationally in annual revenue.

250. Defendants, together with Fox, control a majority of U.S. sports broadcasting rights (measured by viewership) and therefore have substantial market power in the Sports Programming Market. Disney and Fox currently own the media rights to a broad cross-section of commercially critical sports programming, including the NFL, NBA, MLB, NHL, FIFA World Cup, and many others.

251. The Sports Programming Market is concentrated and barriers to entry and expansion are high.



252. Among other things, the ESPN/FOX One bundle will substantially increase Disney's incentives to raise prices or entirely foreclose commercially critical sports networks in licensing negotiations with third-party distributors including DISH—causing them to pay supra-competitive carriage rates or driving them out of business altogether and harming the millions of American consumers who use those services. It will also raise Disney's incentive to tighten further the penetration and packaging conditions upon which Disney provides its critical sports networks to others, all in order to make entry into the Skinny Sports Bundle Market even harder.

253. Disney cannot show that any pro-competitive benefits resulting from its agreement with Fox will outweigh these anticompetitive effects.

254. As a result of the ESPN/FOX One bundle, DISH has suffered and will suffer injury and damages that flow from Disney's antitrust violations.

**COUNT III**  
**Unreasonable Restraint of Trade in Violation of the Sherman Act, 15 U.S.C. § 1**  
**(against Disney)**

255. DISH repeats and realleges the allegations set forth above as if fully set forth herein.

256. Disney, through Fubo Sports, has coordinated conduct with horizontal competitors Fox and CBS to unreasonably restrain trade in the Skinny Sports Bundle Market.

257. On information and belief, Disney and Fox each amended their carriage agreements with Fubo as part of the Raptor/Venu settlement, to permit the unbundled, sports-only distribution of their marquee sports networks—rights no programmer had ever before extended to any distributor that represented a departure from more than forty years of uniform bundling practices. On information and belief, CBS also entered into a materially similar amendment to its carriage agreement with Fubo at some time after Disney's announcement to acquire Fubo.

258. Moreover, each programmer's decision to distribute its marquee sports networks to Fubo Sports on an unbundled, discounted basis was only economically rational if in conjunction with the other programmers' nearly simultaneous concessions.

259. For years, Disney adamantly refused to unbundle its sports networks. Yet, shortly after the *Fubo* litigation settled, both agreed to unbundle them for Fubo's benefit. This made no economic sense but for Fubo Sports' ability to create a near-unique product possible only through coordination.

260. On information and belief, Disney commands 36% of sports viewership nationwide. Disney and Fox together boast more than 57% of sports network viewership nationwide. Disney has thus secured substantial market power in the upstream Sports Programming Market, which is concentrated and ring-fenced by high barriers to entry. These companies currently own rights to a broad portfolio of commercially critical sports programming, including the NFL, NBA, MLB, NHL, FIFA World Cup, and many others. The CBS sports portfolio on the CBS broadcast and cable networks adds even more to this commanding position.

261. Among other things, Fubo Sports has substantially increased, and will substantially increase, Disney's incentives to raise programming prices or withhold critical sports networks in licensing negotiations with third-party distributors including DISH—causing DISH to pay supra-competitive carriage rates, keeping DISH out of the Skinny Sports Bundle Market, and harming the millions of American consumers who use those services.

262. Thus, Disney's conduct has had and will continue to have substantial anticompetitive effects, including inducing less-rivalrous behavior on the part of leading sports programmers; foreclosing rival distributors from obtaining essential sports content on reasonable

terms and raising their costs; and reducing output, innovation, and consumer choice in the distribution of live-sports programming and in the provision of skinny sports bundles.

263. Disney cannot show that any pro-competitive benefits resulting from Fubo Sports will outweigh these anticompetitive effects.

264. As a result of Fubo Sports, DISH has suffered and will suffer injury and damages that flow from Disney's antitrust violations.

**COUNT IV**  
**Violation of Section 7 of the Clayton Act, 15 U.S.C. § 18**  
**(against Disney and Fubo)**

265. DISH repeats and realleges the allegations set forth above as if fully set forth herein.

266. Like Disney, Fubo is a corporation engaged in interstate trade and commerce throughout the United States.

267. Disney acquired a controlling share of Fubo on October 29, 2025. As a result, Disney acquired, directly or indirectly, shares of a business engaged in interstate trade and commerce throughout the United States.

268. The transaction also combined Disney, the largest supplier of must-have sports programming in the United States, with Fubo, a major downstream distributor that competes directly against Disney's own distribution services. By acquiring Fubo, Disney has vertically integrated across two essential levels of the content and distribution ecosystem—sports programming content and skinny sports bundles—and thereby eliminated Fubo as an independent competitive constraint on Disney in the distribution markets.

269. Prior to the acquisition, Disney's ESPN Unlimited and Fubo's differentiated, sports-centric streaming service (although hobbled by restrictions on providing sports skinny bundles) competed directly for subscribers seeking live-sports-only packages. By combining

two of the few nationwide distributors in this highly concentrated market, the transaction eliminated head-to-head rivalry, increased post-merger concentration to well above 30%, and reduced consumer choice, price competition, and service quality.

270. Through its control of Fubo Sports, Disney has aligned the incentives of three of the largest sports programmers to restrict unbundled sports offerings from other competing distributors in the Skinny Sports Bundle Market. Because the success of a skinny sports bundle depends on access to must-have sports networks, Disney's control of Fubo gives Disney an even greater incentive to impose bundling, penetration/pay-on, and packaging restrictions on distributors and a much greater ability to profit directly from these restrictions. Essentially, by acquiring Fubo, Disney has set up shop to sell itself all the wares that it denies other shopkeepers. These vertical effects foreclose rival distributors, raise competing distributors' costs, and entrench Disney's market power throughout the live-sports ecosystem.

271. Both the upstream Sports Programming Market and downstream Skinny Sports Bundle Market are concentrated, and barriers to entry and expansion are high. Rights to major sports leagues are locked into multi-year, multi-billion-dollar contracts held by few major programmers including Disney, Fox, and CBS. No plausible new entrant can replicate those inputs in the foreseeable future. The acquisition of Fubo further consolidates downstream distribution among those same incumbents.

272. Disney and Fubo cannot show that any cognizable efficiency resulting from the acquisition is of a character and magnitude such that the acquisition is not likely to be anticompetitive.

273. As a result of the acquisition, DISH has suffered injury and damages that flow from Disney and Fubo's antitrust violations.

**COUNT V**  
**Violation of Section 1 of the Sherman Act, 15 U.S.C. § 1**  
**(against Disney and Fubo)**

274. DISH repeats and realleges the allegations set forth above as if fully set forth herein.

275. Disney and Fubo are corporations engaged in interstate trade and commerce throughout the United States. Pursuant to an agreement, Disney acquired a controlling share of Fubo on October 29, 2025.

276. The acquisition eliminated Fubo as an independent competitive constraint on Disney in the distribution markets, eliminated head-to-head rivalry between Disney and Fubo, and reduced consumer choice, price competition, and service quality.

277. The acquisition constitutes an unreasonable restraint of trade in the relevant markets for Sports Programming, Live Pay-TV, and Skinny Sports Bundles in the United States.

278. Disney and Fubo cannot show that any cognizable efficiency resulting from the acquisition is of a character and magnitude such that the acquisition is not likely to be anticompetitive.

279. As a result of the acquisition, DISH has suffered injury and damages that flow from Disney and Fubo's antitrust violations.

**COUNT VI**  
**Attempted Monopolization in Violation of the Sherman Act, 15 U.S.C. § 2**  
**(Against Disney)**

280. DISH repeats and realleges the allegations set forth above as if fully set forth herein.

281. As the exclusive owner of must-have sports programming, Disney possesses substantial market power in the Sports Programming Market.

282. Disney has engaged in a pattern of exclusionary and anticompetitive conduct that leverages its power in the Sports Programming Market to entrench and expand its dominance in the Skinny Sports Bundle Market. In its carriage agreements with DISH, Disney prohibits the offering of its critical sports content in a skinny sports bundle, creating an insurmountable barrier to entry in that market, in which the ESPN/FOX One bundle and Fubo Sports are now the commanding participants.

283. Disney has reinforced its exclusionary strategy through a series of additional anticompetitive acts, including (a) entering into a horizontal agreement with Fox to launch the ESPN/FOX One bundle; (b) acquiring Fubo; and (c) seeking to acquire the NFL Network, further expanding its control over commercially critical sports content.

284. As a result, Disney has achieved a dangerous probability of monopolizing the Skinny Sports Bundle Market, in which Disney and Fox are virtually the only participants. In fact, Disney's effort is succeeding already. On information and belief, Disney's market share in the Skinny Sports Bundle Market exceeds 50 percent, and competition is further weakened by Disney's coordination with Fox and CBS.

285. Entry into the Skinny Sports Bundle Market is effectively foreclosed by high structural and contractual barriers. In addition to the walls erected by the contractual restrictions on sports skinny bundles by Disney and its partners, the costs of acquiring sports rights—typically through multi-year, multi-billion-dollar contracts—further deter entry and entrench Disney's dominance.

286. Disney has acted with specific intent to monopolize. Despite this court's prior findings in *Fubo* that similar conduct would substantially reduce competition for Skinny Sports Bundles, Disney has pursued the same strategy again—replicating and expanding the very



structure the court previously enjoined. Disney continues to weaponize its bundling practices and strategic acquisitions to dominate the market and exclude rival distributors such as DISH.

287. DISH and Sling have suffered, and will continue to suffer, antitrust injury as a direct result of Disney's attempted monopolization. Disney's anticompetitive conduct raises DISH's costs of obtaining essential sports programming, restricts DISH's ability to offer competitive packages, and forecloses DISH from effectively participating in the Skinny Sports Bundle Market.

**COUNT VII**  
**Unlawful Tying in Violation of the Donnelly Act, N.Y. Gen. Bus. Law § 340**  
**(against Disney)**

288. DISH repeats and realleges the allegations set forth above as if fully set forth herein.

289. Disney's unlawful tying arrangements, set forth in Count I of the Counterclaims, violate New York's Donnelly Act for the same reasons they violate federal antitrust law.

**COUNT VIII**  
**Breach of Contract—MFN Improper Bundling**  
**(against Licensors)**

290. DISH repeats and realleges the allegations set forth above as if fully set forth herein.

291. DISH and Licensors are parties to the OTT License Agreement and the DBS License Agreement, which are valid, binding, and enforceable contracts.

292. DISH substantially performed its obligations under the Licenses.

293. Licensors breached the Licenses by improperly bundling Subscription Networks in their MFN Offers.

a) Offer 1:

- b) Offer 2: [REDACTED]  
[REDACTED];
- c) Offer 1: [REDACTED]  
[REDACTED];
- d) Offer 2: [REDACTED]  
[REDACTED];
- e) Offer 3: [REDACTED]  
[REDACTED];
- f) Offer 4: [REDACTED]  
[REDACTED];
- g) Sling MFN Offer: [REDACTED]  
[REDACTED];
- h) Offer 1: [REDACTED]  
[REDACTED];
- i) Offer 2: [REDACTED]  
[REDACTED];
- j) Offer 3: [REDACTED]  
[REDACTED].

294. Licensors' improper bundling breaches have caused DISH millions of dollars in damages.

295. Licensors' improperly bundling breaches have caused DISH competitive injury, by preventing DISH from offering consumers programming packages on terms as favorable as those DISH's competitors are authorized to offer.

296. Licensors' improper bundling breaches were willful, deliberate, and in bad faith, undertaken with full knowledge of their contractual obligations.

**COUNT IX**  
**Breach of Contract—MFN Improper Tying of Unrelated Conditions**  
**(against Licensors)**

297. DISH repeats and realleges the allegations set forth above as if fully set forth herein.

298. DISH and Licensors are parties to the OTT License Agreement and the DBS License Agreement, which are valid, binding, and enforceable contracts.

299. DISH substantially performed its obligations under the Licenses.

300. Licensors breached the Licenses by improperly tying unrelated conditions to their MFN Offers.

a) For Offer 1:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

b) For Offer 2:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

c) For Offer 1:

[REDACTED]

[REDACTED]

[REDACTED]  
[REDACTED]

d) For Offer 2: [REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

e) For Offer 3: [REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

f) For Offer 4: [REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

g) For Offer 9: [REDACTED]  
[REDACTED]

h) For Offer 1: [REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

i) For Offer 1: [REDACTED]  
[REDACTED]

[REDACTED]

j) For Offer 2: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

k) For Offer 3: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

301. Licensors' breaches by improperly tying unrelated conditions to their MFN offers have caused DISH millions of dollars in damages.

302. Licensors' breaches by improperly tying unrelated conditions to their MFN offers have caused DISH competitive injury, by preventing DISH from offering consumers programming packages on terms as favorable as those DISH's competitors are authorized to offer.

303. Licensors' breaches by improperly tying unrelated conditions to their MFN offers were willful, deliberate, and in bad faith, undertaken with full knowledge of their contractual obligations.

**COUNT X**  
**Breach of Contract—MFN Offers With Insufficient Detail**  
**(against Licensors)**

304. DISH repeats and realleges the allegations set forth above as if fully set forth herein.

305. DISH and Licensors are parties to the OTT License Agreement and the DBS License Agreement, which are valid, binding, and enforceable contracts.

306. DISH substantially performed its obligations under the Licenses.

307. Licensors breached the Licenses by refusing to provide sufficient detail in the MFN Offers. For example, [REDACTED]

[REDACTED]

308. Licensors' breach in its refusal to provide DISH with sufficient detail for the MFN Offers has caused DISH millions of dollars in damages.

309. Licensors' breach in its refusal to provide DISH with sufficient detail for the MFN Offers has caused DISH competitive injury, by preventing DISH from offering consumers programming packages on terms as favorable as those DISH's competitors are authorized to offer.

310. Licensors' breach in its refusal to provide DISH with sufficient detail for the MFN Offers was willful, deliberate, and in bad faith, undertaken with full knowledge of their contractual obligations.

**COUNT XI**  
**Breach of Contract—**[REDACTED]  
**(against Licensors)**

311. DISH repeats and realleges the allegations set forth above as if fully set forth herein.



312. DISH and Licensors are parties to the OTT License Agreement and the DBS License Agreement, which are valid, binding, and enforceable contracts.

313. DISH substantially performed its obligations under the Licenses.

314. Licensors breached the Licenses by [REDACTED]  
[REDACTED]

a)

b)

c)

d)

e)

f)

g)

315. Licensors' breaches [REDACTED]  
[REDACTED]

have caused DISH millions of dollars in damages.

316. Licensors' breaches [REDACTED]

[REDACTED] have caused DISH competitive injury, by preventing DISH from offering consumers programming packages on terms as favorable as those DISH's competitors are authorized to offer.

317. Licensors' breaches [REDACTED]

[REDACTED] were willful, deliberate, and in bad faith, undertaken with full knowledge of their contractual obligations.

**COUNT XII**  
**Breach of Contract – Failure to Extend MFN Offers**  
**(against Licensors)**

318. DISH repeats and realleges the allegations set forth above as if fully set forth herein.

319. DISH and Licensors are parties to the OTT License Agreement and the DBS License Agreement, which are valid, binding, and enforceable contracts.

320. DISH substantially performed its obligations under the Licenses.

321. Licensors breached the Licenses by failing to provide DISH with MFN Offers that they were obligated to extend pursuant to the MFN provisions.

a)

[REDACTED]

b)

[REDACTED]

c)

[REDACTED]

d)

[REDACTED]

322. Licensors' breaches in their failure to extend required MFN Offers have caused DISH millions of dollars in damages.

323. Licensors' breaches in their failure to extend required MFN Offers have caused DISH competitive injury, by preventing DISH from offering consumers programming packages on terms as favorable as those DISH's competitors are authorized to offer.

324. Licensors' breaches in their failure to extend required MFN Offers were willful, deliberate, and in bad faith, undertaken with full knowledge of their contractual obligations.

### **JURY DEMAND**

DISH hereby demands a jury trial on all issues so triable.

### **PRAYER FOR RELIEF**

WHEREFORE, DISH respectfully prays as follows:

- a) That judgment be entered in favor of DISH and against Counterclaim-Defendants;
- b) That the Counterclaim-Defendants' conduct specified in these Counterclaims be declared by the Court to violate Sections 1 and 2 of the Sherman Act, 15 U.S.C. § 1; Section 7 of the Clayton Act, 15 U.S.C. § 18; and the Donnelly Act, N.Y. Gen. Bus. Law § 340;
- c) That an injunction be entered against the Counterclaim-Defendants, unwinding Disney's acquisition of Fubo, unwinding the ESPN/FOX One bundle, and prohibiting Defendants' tying and other anticompetitive actions;
- d) That judgment be entered for DISH against the Counterclaim-Defendants for three times the amount of money damages sustained by DISH with respect to Counts I–VII as allowed by law, together with the costs of this action, including reasonable attorneys' fees pursuant to Section 4 of the Clayton Act, 15 U.S.C. § 15, and the Donnelly Act, N.Y. Gen. Bus. Law § 340;
- e) That money damages be awarded to DISH against Licensors according to proof with respect to Counts VIII–XII;
- f) That DISH be awarded pre-judgment and post-judgment interest at the highest legal rate from and after the date of service of these Counterclaims to the extent provided by law; and

- g) That DISH receive such other, further, or different relief as the case may require and the Court deems just and proper under the circumstances.

Dated: January 2, 2026  
New York, NY

**STEPTOE LLP**

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*Attorneys for Defendant/Counterclaim-  
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**CERTIFICATE OF SERVICE**

I hereby certify that on January 2, 2026, the foregoing was filed with the Clerk of Court for the United States District Court of the Southern District of New York using the CM/ECF system.

I further certify that I caused to be served on the following participants in the case via email an electronic copy of the sealed versions of the foregoing:

- Allen W. Burton, aburton@omm.com
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/s/ Elyse D. Echtman  
Elyse D. Echtman

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

ESPN ENTERPRISES, INC., et al.,

*Plaintiffs,*

-against-

DISH NETWORK L.L.C.,

*Defendant.*

Civil Action No. 1:25-cv-07169-AS-BCM

**REDACTED**

**MEMORANDUM OF LAW IN SUPPORT OF  
DEFENDANT'S PARTIAL MOTION TO DISMISS THE AMENDED COMPLAINT**

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*Attorneys for Defendant DISH Network L.L.C.*

Date: January 2, 2026



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Defendant DISH Network L.L.C. (“Defendant” or “DISH”) respectfully submits this Memorandum of Law in support of its Partial Motion to Dismiss the Amended Complaint filed by Plaintiffs ESPN Enterprises Inc., ESPN, Inc., ABC Cable Networks Group, FX Networks, LLC, International Family Entertainment, Inc., NGC Network US, LLC and SOAPnet, L.L.C., WABC Television (NEW YORK), LLC, WPVI Television (PHILADELPHIA), LLC, KABC Television, LLC, KFSN Television, LLC, KGO Television, Inc., KTRK Television, Inc., WLS Television, Inc., and WTVD Television LLC (collectively, “Plaintiffs” or “Disney”) (“Am. Compl.,” Dkt. 90). DISH moves to dismiss Counts I and II of the Amended Complaint.

## **I. PRELIMINARY STATEMENT**

Disney filed this lawsuit as a vehicle to block DISH’s innovative, consumer-friendly Sling Passes, which provide short-term access to the Sling Orange streaming service. Disney alleges that Sling Passes breach the parties’ OTT License and/or violate the implied duty of good faith and fair dealing. Disney also alleges that DISH is contractually prohibited from using Disney’s marks in any Sling TV promotions that include Sling Passes. All of Disney’s claims related to Sling Passes, pleaded as Counts I and II, fail to state a claim upon which relief may be granted.<sup>1</sup> This Court already ruled, in the context of Disney’s preliminary injunction motion (Dkt. 26), that the OTT License unambiguously authorizes Sling Passes. Opinion and Order Denying Preliminary Injunction, Dkt. 85 (“PI Opinion”).

*First*, Disney asserts that the OTT License requires that Sling Orange be a “paid subscription” service and that Sling Passes are not “subscriptions.” *See, e.g.*, Am. Compl. ¶¶ 34, 56. Disney ignores that the OTT License broadly defines a “Subscriber” as any “person” DISH

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<sup>1</sup> In the Amended Complaint, Disney added a breach of contract claim that seeks to collect interest on late payments, which is Count III. *See* Am. Compl., ¶¶ 12, 78–83, 112–16. This motion does not address that claim.

“authorize[s] . . . to receive any level of video programming service or package of programming networks via the Sling Platform.” OTT License at 33-34. Pursuant to this contractual definition, Sling Pass customers are “Subscribers” and Sling Passes unambiguously qualify as subscriptions. Disney also asserts that the OTT License requires DISH to sell *monthly* subscriptions for access to its television networks. *See, e.g.*, Am. Compl. ¶¶ 28, 62. However, the OTT License nowhere restricts DISH to monthly subscriptions. The Grant of Rights broadly authorizes DISH to distribute Disney’s networks to Sling TV Subscribers, without any minimum subscription length. OTT License at 37-39 (§ 2).

*Second*, Disney asserts that it may prohibit DISH from using the names and logos of Disney’s networks (contractually defined as “Licensor Marks”) [REDACTED]  
[REDACTED]  
[REDACTED]. *See, e.g.*, Am. Compl. ¶¶ 73-77. Disney’s attempt to bar DISH from using Licensor Marks contravenes the contract’s plain terms. The OTT License expressly grants DISH [REDACTED]

[REDACTED] Moreover, DISH’s use of the Licensor Marks is a “fair use.”

*Third*, Disney asserts that Sling Passes violate the duty of good faith and fair dealing. However, the Amended Complaint pleads no facts that would support such a claim.

Disney moved for a preliminary injunction on September 11, 2025. In the context of ruling on that motion, this Court endorsed DISH’s contract interpretation and rejected the basis for Disney’s current claims for breach of contract and breach of the duty of good faith and fair dealing. This Court held that the OTT License “isn’t ambiguous” and “plainly includes Sling Passes.” PI Opinion at 4, 6. For those same reasons, the Sling Pass claims in Disney’s Amended Complaint should be dismissed with prejudice.

## **II. STATEMENT OF FACTS<sup>2</sup>**

### ***A. DISH Launches Sling Passes***

DISH launched Sling Passes on August 12, 2025. Am. Compl. Ex. D. For a one-time fee, Sling Passes provide access to the Sling Orange service for defined time periods on a non-renewing basis. *Id.*, Exs. F and G.<sup>3</sup> Certain Disney networks, including ESPN, are carried on Sling Orange. *Id.*, Ex. G.

### ***B. The OTT License***

DISH’s distribution of Disney content on the Sling platform is governed by the OTT License (Dkt. 3-1; Dkt. 90-1).<sup>4</sup> Am. Compl. ¶ 2. Pursuant to the OTT License, Sling Orange is a “PSS Service.” *See* Am. Compl. ¶ 56; *see also* OTT License at 27 (§ 1). A “PSS Service” is defined as “a video programming service . . . as part of which subscribers then-currently entitled

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<sup>2</sup> Solely for purposes of this Motion to Dismiss, DISH treats the well-pleaded allegations of the Amended Complaint as true. *DiFolco v. MSNBC Cable L.L.C.*, 622 F.3d 104, 110-11 (2d Cir. 2010).

<sup>3</sup> DISH originally offered a Day Pass (24 hours), Weekend Pass (Friday through Sunday) and Week Pass (7 days). Am. Compl. Ex. D. DISH discontinued the Weekend Pass. The Sling Passes are now 1 day, 3 days, or 7 days. *See* Ex. 1.

<sup>4</sup> The OTT License is attached to the Amended Complaint as Exhibit A, and incorporated by reference. *See DiFolco*, 622 F.3d at 111.



to receive applicable linear programming networks . . . may access . . . only one stream of content at any time on a paid subscription basis.” OTT License at 27 (§ 1). The Disney television networks carried on Sling Orange are “PSS Networks.” *Id.* at 27 (§ 1).

### **1. DISH’s Distribution Rights**

The scope of DISH’s distribution rights for Disney networks is defined in the OTT License’s “Grant of Rights.” OTT License at 37 (§ 2). The Grant of Rights broadly authorizes DISH to distribute the PSS Networks “for reception, viewing, exhibition and display by” the “Network Subscribers to the PSS Network.” *Id.* at 37-38 (§ 2(a)(i)). Those Network Subscribers are any and all individuals DISH authorizes to receive any level of video programming service or package of programming networks on the Sling Platform.

The OTT License specifically defines the terms “Subscriber” and “Network Subscriber.” OTT License at 21, 33 (§ 1); PI Opinion at 2-3. A “Subscriber” is “a person intentionally authorized by DISH to receive *any level of video programming service or package of programming networks via the Sling Platform.*” OTT License at 33-34 (§ 1) (emphasis added).<sup>5</sup> A “Network Subscriber,” in turn, is defined as a “Subscriber intentionally authorized to receive the Subscription Network via the Sling Platform.” *Id.* at 21 (§ 1). The Subscription Networks are the full suite of linear cable television networks covered by the OTT License. *Id.* at 34 (§ 1).

### **2. DISH’s Right to Determine its Retail Pricing**

The OTT License expressly reserves to DISH the right to determine the retail pricing for its Sling TV services. It states: “DISH *shall determine* the retail pricing of each package of programming networks made available via the Sling Platform.” OTT License at 73 (§8(g))

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<sup>5</sup> The users of DISH’s free services on the Sling Platform are included as Subscribers: “For purposes of this Agreement, a person who accesses programming content via the DISH Free Service will be deemed to be a Subscriber.” *Id.*

(emphasis added). The OTT License furthermore authorizes DISH to provide temporary access to its paid subscription services at no charge. The PSS Service definition states: “neither offering video content as part of a limited free trial or free preview . . . will disqualify a video programming service from being a PSS Service.” OTT License at 27 (§ 1). Indeed, so long as DISH pays License Fees to Disney in accordance with the OTT License, its provision of temporary *free* access to a streaming service is not considered a “Free Preview.” OTT License at 13 (§ 1).

**3. DISH’s Right to Use “Licensor Marks”**

In the OTT License, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The OTT License expressly contemplates that DISH will [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The OTT License further provides that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**C. *Disney's Counts I and II***

In Count I of the Amended Complaint, Disney alleges two breach of contract claims. First, Disney alleges that, in breach of the OTT License, Sling Passes are not “subscriptions.” Second, Disney alleges that, in breach of the OTT License, [REDACTED]

[REDACTED]

In Count II of the Amended Complaint, Disney alleges that Sling Passes violate the implied covenant of good faith and fair dealing.

**1. Disney's “Subscription” Breach Claim**

Disney asserts that Sling Passes are not subscriptions and that the OTT License requires that DISH sell monthly subscriptions. Am. Compl. ¶¶ 53–58. These breach allegations may not be credited, because they are belied by the plain terms of the OTT License. As set forth above, the OTT License defines “Subscriber” and “Network Subscriber” in very expansive terms. *See also* PI Opinion at 6.

Disney capitalizes on the phrase “paid subscription basis” in the PSS Service definition to assert that monthly subscriptions are required. Am. Compl. ¶ 56. That phrase merely requires that Subscribers generally pay for access to Sling Orange.<sup>6</sup> Disney concedes in the Amended Complaint that Sling Pass customers pay for the service. *Id.*, ¶¶ 32, 39, 41, 52. The OTT License does not impose any minimum subscription length nor does it require that subscriptions

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<sup>6</sup> As set forth above, the PSS Service definition allows DISH to provide free trials and previews without disqualifying the service from being a PSS Service. OTT License at 27 (§ 1).

auto-renew. The Subscriber definition provides that any person receiving *any level of video programming service or package of programming networks via the Sling Platform* qualifies as a subscriber. OTT License at 33-34 (§ 1) (emphasis added).

Disney primarily relies on the license fee terms to assert that the parties contemplated monthly subscriptions. The monthly license fees that DISH pays to Disney are based on the number of “Network Subscribers” to Sling Orange. Those Network Subscribers are counted on the 21<sup>st</sup> day of each month. OTT License at 70-71 (§ 8(b)(i)). The reference to “Network Subscribers” in the License Fees section “makes clear . . . that this defined term governs who has access to Disney’s networks.” PI Opinion at 4. While DISH pays license fees to Disney on a monthly basis, the license fee provisions nowhere restrict DISH to monthly subscriptions. “[N]othing in the License Fees provision purports to say that subscribers *must* contract for services for at least a month.” *Id.*

The License Fee formula requires DISH to pay a full-month license fee for active Sling Pass customers on the 21<sup>st</sup> day of a month, even though these customers are not accessing the Sling Orange service for a full month’s time. OTT License at 70-71 (§ 8(b)(i)); PI Opinion at 5. This “fees mechanism doesn’t lead to absurd results that would counsel departing from the plain language of the agreement.” PI Opinion at 5 n.8.

## 2. Disney’s “Licensor Marks” Breach Claim

Disney alleges [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

A series of horizontal black bars of varying lengths, representing redacted text. The bars are arranged in a list-like fashion, with some bars being longer than others, suggesting different levels of redaction or different types of information being withheld. The bars are solid black and have no text or other markings on them.

#### D. *Disney's Allegations on Good Faith and Fair Dealing*

Disney misguidedly asserts that DISH’s actions with respect to Sling Passes, which comply with the OTT License, breach the implied covenant of good faith and fair dealing. Disney takes issue with DISH’s Sling Pass pricing, which it claims is “contrary to market standards and . . . arbitrary and irrational.” Am. Compl. ¶ 105. Disney also asserts that Sling Passes are improperly designed to avoid paying License Fees. *Id.* And, Disney argues that Sling Passes are aimed to interfere with unspecified business relationships. *Id.*

Disney pleads no facts that would support a claim for breach of the implied covenant of good faith and fair dealing arising out of DISH's contractually authorized Sling Passes. Disney

has not plausibly pleaded that DISH jerry-rigged Sling Passes to evade License Fee payments. *See* PI Opinion at 6 (“[i]f DISH has structured its Passes to purposefully evade the License’s payment requirements, then that could constitute . . . breach of the implied covenant of good faith and fair dealing.”) Instead, the pleadings show that Disney is paid for Sling Passes at *more* than a *pro rata* rate. *See, e.g.* Am. Compl. ¶ 1, 6, 9, 107 (Disney is paid a full month’s License Fee for 5% of Day Passes).

### III. LEGAL STANDARD

To survive a motion to dismiss, a complaint must include “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). For the purposes of a motion to dismiss, the court accepts all factual allegations as true and draws all reasonable inferences in favor of the plaintiff. *DiFolco*, 622 F.3d at 110-11. “In assessing the sufficiency of a pleading, a court must disregard legal conclusions,” such as a party’s interpretation of an unambiguous contract term, “which are not entitled to the presumption of truth.” *Callahan v. Glob. Eagle Ent. Inc.*, No. 18-CV-8343 (PKC), 2019 WL 2325903, at \*2 (S.D.N.Y. May 30, 2019).

A claim turning on contract interpretation may be resolved on a motion to dismiss when “there is no ambiguity to a contract and the intent of the parties can be determined from the face of the agreement.” *Id.* at \*3 (quoting *Rounds v. Beacon Assocs. Mgmt. Corp.*, No. 09-CV-6910 (LBS), 2009 WL 4857622, at \*3 (S.D.N.Y. Dec. 14, 2009)). When the contract terms material to the dispute are unambiguous, and favor the defendant, a district court may dismiss a breach of contract claim. *Callahan*, 2019 WL 2325903, at \*2 (citing *Orchard Hill Master Fund Ltd. v. SBA Commc’ns Corp.*, 830 F.3d 152, 156 (2d Cir. 2016)).



“[T]he question of whether a written contract is ambiguous is a question of law for the court,” which can determine ambiguity “by looking within the four corners of the document, not to outside sources.” *JA Apparel Corp. v. Abboud*, 568 F.3d 390, 396 (2d Cir. 2009) (citations omitted). “Language whose meaning is otherwise plain does not become ambiguous merely because the parties urge different interpretations in the litigation.” *Id.* (citing *Hunt Ltd. v. Lifschultz Fast Freight, Inc.*, 889 F.2d 1274, 1277 (2d Cir. 1989)); *see* PI Opinion at 6-7.

#### IV. ARGUMENT

##### ***A. Disney’s Sling Pass Breach of Contract Claim Fails Because the OTT License Unambiguously Authorizes Sling Passes***

Disney’s Sling Pass breach of contract claim fails, because Sling Passes fit within the OTT License Grant of Rights. Disney cannot show a contractual breach.

The essential elements of a breach of contract claim are “(1) the existence of a contract; (2) a breach of that contract; and (3) damages resulting from the breach.” *Vista Food Exch., Inc. v. Comercial De Alimentos Sanchez S De R L De C.V.*, 147 F.4th 73, 88 (2d Cir. 2025); PI Opinion at 1. In this case, there is no breach.

Sling Pass users qualify as “Subscribers” and “Network Subscribers” under the OTT License. The “Subscriber” definition includes any person authorized to receive “any level of video programming service or package of programming networks” and it contains no minimum subscription length or other restrictions. The Grant of Rights explicitly authorizes DISH to distribute the television networks to Network Subscribers. While “paid subscription basis” is not defined in the OTT License, the parties defined “Network Subscriber” in a way that plainly includes Sling Pass customers. Anyone encompassed in the Network Subscriber definition is a subscriber, and has a subscription, pursuant to the OTT License. *See* PI Opinion at 6 (“As the Court has explained, the definition of ‘Network Subscriber’ includes anyone authorized to

receive ‘any level of video programming service or package of programming networks,’ so it plainly includes Pass users.”).

Disney did not insert language into the parties’ agreement to require that subscriptions must last for one month or more. *See* PI Opinion at 6. Under these circumstances, DISH is authorized to sell short-term subscriptions to Sling Orange.

When a license “is more reasonably read to convey one meaning, the party benefitted by that reading should be able to rely on it; the party seeking exception or deviation from the meaning reasonably conveyed by the words of the contract should bear the burden of negotiating for language that would express the limitation or deviation.” *Boosey & Hawkes Music Publishers, Ltd. v. Walt Disney Co.*, 145 F.3d 481, 487 (2d Cir. 1998); *Great Minds v. FedEx Off. & Print Servs., Inc.*, 886 F.3d 91, 96 (2d Cir. 2018) (same).

While Disney may believe that it is not fairly paid for Sling Pass customers (*see, e.g.*, Am. Compl. ¶¶ 46, 51, 63, 89), that is not a basis for a court to rewrite the parties’ contract. *Greenfield v. Philles Recs., Inc.*, 98 N.Y.2d 562, 570 (2002) (“[A] court is not free to alter the contract to reflect its personal notions of fairness and equity.”); *Roberts v. Weight Watchers Int’l, Inc.*, 712 F. App’x 57, 60 (2d Cir. 2017) (same).

The OTT License unambiguously authorizes Sling Passes, which defeats Disney’s authorization breach of contract claim.

***B. Disney’s “Licensor Marks” Breach of Contract Claim Fails, Because*** [REDACTED]

Disney claims that DISH breached the OTT License by using “Licensor Marks” [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] This breach of contract claim should be dismissed because it fails to state a cause of action. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] In any event, DISH's references to Disney networks are nominative fair use.

In the OTT License, Disney [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] New York law does not allow Disney to render illusory DISH's contractual rights [REDACTED]

[REDACTED]

In addition, DISH may [REDACTED]  
under the nominative fair use doctrine. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Disney specifically cites Exhibits D, E, F and H to the Amended Complaint as examples of DISH's purported [REDACTED] Am. Compl. ¶ 75. These materials do nothing more than inform consumers that Disney's networks are available on Sling Orange and accessible with Sling Passes. Exhibit F is a Sling TV webpage that contains a "Plan comparison" for "Sling TV Plans" including Orange, Blue, Orange & Blue and Select. Dkt. 90-6. That Sling TV webpage states, "We have your favorite channels," listing ESPN, Disney Channel and others. It does not link those channels to Sling Passes. *Id.* at 4, 10.

Exhibit D is a press release dated August 12, 2025 that announces the launch of Sling Passes. On the bottom half of the page, it includes the names of Disney's networks carried on Sling Orange, stating: "Day Pass, Weekend Pass and Week Pass include live and on-demand access to popular networks on Sling Orange like ESPN, ESPN2, ESPN3, TNT, A&E, TBS, Disney Channel, Comedy Central, History Channel and more." Dkt. 90-4 at 3. Exhibit E is a Sling TV webpage that states: "Day Pass grants you instant, 24-hour access to 34 popular channels, including ESPN, TNT, CNN, AMC, and more." Dkt. 90-5 at 3, 8. Exhibit H is a Sling TV blog post that states: "The Day Pass by Sling gives subscribers instant 24-hour access to the 34 channels included with the Sling Orange Service. These channels include ESPN, ESPN2, and

ESPN3 (which simulcasts sports on ABC), live news on CNN, sports and entertainment on TNT and TBS, and Disney Channel for your kids.” Dkt. 90-8 at 3.

All of the above materials are routine, in that they merely inform consumers of the content carried on Sling Orange. Indeed, DISH’s use of Disney network names comports with fair use. DISH did not need Disney’s approval in order to inform consumers that it carries Disney’s networks. And, Disney may not vitiate DISH’s rights by [REDACTED]

***C. Disney’s Implied Covenant Claims Also Fail***

Disney attempts to plead an alternative claim for breach of the implied covenant of good faith and fair dealing. Disney’s implied covenant allegations all arise out of its dislike of Sling Passes. Disney asserts that Sling Pass pricing is “contrary to market standards and . . . arbitrary and irrational”; Sling Passes are improperly designed to avoid paying License Fees; and Sling Passes are targeted to interfere with Disney’s business relationships. Am. Compl. ¶ 105. Disney’s allegations fail to state a claim for breach of the implied covenant of good faith and fair dealing.

The implied covenant mandates that “neither party shall do anything [that] will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract.” *Sec. Plans, Inc. v. CUNA Mut. Ins. Soc.*, 769 F.3d 807, 817 (2d Cir. 2014). Notably, the implied covenant does not “undermine a party’s ‘general right to act on its own interests in a way that may incidentally lessen’ the other party’s expected benefit. *Id.* And, “a court is not free to alter the contract to reflect its personal notions of fairness and equity.” *Greenfield*, 98 N.Y.2d at 570.

As set forth above, Sling Passes are contractually authorized. Disney may not invoke the implied covenant as an end-run around the fact that the OTT License allows Sling Passes.



Furthermore, an implied covenant claim may not rest on the same facts as a breach of contract claim. *See Int’l Techs. Mktg., Inc. v. Verint Sys., Ltd.*, 157 F. Supp. 3d 352, 369 (S.D.N.Y. 2016), *aff’d*, 850 F. App’x 38 (2d Cir. 2021). Here, the implied covenant claim relies on the very same allegations as Disney’s breach of contract claim. *See, e.g.*, Am. Compl. ¶¶ 84, 87 (alleging that DISH’s purported “unauthorized distribution of the Subscription Networks” is conduct that “is harming OTT Licensor’s goodwill and relationships in the marketplace with other distributors.”); *see also* Am. Compl. ¶¶ 46, 51, 63, 89 (alleging that Sling Passes breach the OTT License because Disney believes it is not fairly compensated for them).

Moreover, the implied covenant cannot be used to impose terms that a party has not bargained for. *Alta Partners, LLC v. Getty Images Holdings, Inc.*, 700 F. Supp. 3d 32, 47 (S.D.N.Y. 2023). Disney may not invoke the implied covenant of good faith and fair dealing as a basis to (i) dictate DISH’s pricing; or (ii) prohibit Sling Passes.

*Sling Pass Pricing.* DISH’s Sling Pass pricing cannot serve as a basis for an implied covenant claim. It is within DISH’s express contractual rights to set its pricing. The OTT License provides that “DISH *shall determine the retail pricing* of each package of programming networks made available via the Sling Platform.” OTT License at 73 (§8(e)) (emphasis added).

Disney alleges that Sling Pass prices violate the implied covenant because they purportedly are “arbitrary and irrational.” Am. Compl. ¶ 105. That contention is demonstrably false. Sling Pass prices are objectively reasonable in relation to the monthly rates for Sling TV. The Sling Orange monthly service retails for \$45.99 per month (Am. Compl. Ex. F), which translates to approximately \$1.50 per day, \$4.50 per three-day weekend and \$10.50 per week. The Day Pass is \$4.99; the Weekend Pass was \$9.99; and the Week Pass is \$14.99. *See id.*

DISH currently offers a \$29.99 promotional price for one month of *both* Sling Orange and Sling Blue. *See* Am. Compl. Ex. L. The daily price for *two* streaming services pursuant to that promotion is approximately \$1. DISH's limited-time offer of \$1 Day Passes (Am. Compl. Ex. H), which was in effect from November 19 through November 30, is consistent with DISH's promotional pricing for both Sling Orange and Blue. That \$1 Day Pass price also is consistent with the \$29.99 monthly price for the ESPN Unlimited streaming service bundled with Disney+ and Hulu. *See* Dkt. 47-2 at 1 ("Special Bundle Offer at Launch: Disney+, Hulu, ESPN Unlimited for \$29.99/month for first 12 months").

In any event, DISH's Sling Pass pricing does not injure Disney's right to enjoy the benefits of the OTT License. [REDACTED]

*Sling Pass License Fees.* In the PI Opinion, this Court stated that, "[i]f DISH has structured its Passes to purposefully evade the License's payment requirements, then that could constitute . . . breach of the implied covenant of good faith and fair dealing." PI Opinion at 6. Disney alleges no facts that might show that Sling Passes were structured to purposefully avoid paying License Fees. Sling Passes are in effect for 24 hours, 72 hours or 7 days. They are standardized so that they begin at the moment that the customer pays for the Pass and expire 24 hours, 72 hours or 7 days later. *See, e.g.,* Dkt. 49 ¶ 7 (the Day Pass has a duration of 24 hours commencing at the time of payment; the Week Pass has a duration of 7 days commencing at the time of payment) (incorporated in the Amended Complaint by reference at ¶ 30).<sup>7</sup>

Disney asserts that it is not paid for 95% of Sling Passes. Am. Compl. ¶¶ 1, 6, 9, 107. The necessary corollary to that assertion is that DISH is paying a full month's License Fee for

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<sup>7</sup> The pleadings "include any document attached to it as an exhibit or any document incorporated in it by reference." *Goldman v. Belden*, 754 F.2d 1059, 1065-66 (2d Cir. 1985).

5% of Sling Passes customers, even though Sling Passes provide less than a full month of access to Sling Orange. Disney initially alleged that it would only be paid for 1 in 30 Day Pass customers (Dkt. 32 at 21), at a rate of 3.3%, which effectively is *pro rata* payment. Now, Disney alleges that it's paid at the more favorable rate of 5%. Am. Compl. ¶¶ 1, 6, 9, 107. Those allegations do not show that DISH has done anything to manipulate Sling Passes to avoid paying License Fees.

Disney also claims that the three-day Weekend Pass initially was designed to count subscribers on only two of the three applicable days. The Weekend Pass originally began at 4 a.m. Mountain time on Friday and expired at 1 a.m. Mountain time on Monday.<sup>8</sup> Am. Compl. ¶ 65. On October 23, 2025, DISH changed the timing for the Weekend Pass to the 72-hour period spanning from 1 a.m. Mountain time on Friday through 1 a.m. Mountain time on Monday. Dkt. 79; *see also* PI Opinion at 6 n. 8 (DISH addressed the potential “reporting gap” associated with the Weekend Pass); Am. Compl. ¶ 65. DISH subsequently discontinued the Weekend Pass entirely, replacing it with a 3-day pass. *See* Ex. 1.

Under the OTT License, the original Weekend Pass timing, which was in place for only three reporting period snapshots, had no impact on Disney's License Fees, and did not deprive Disney of any contractual benefits as a matter of law. Network Subscribers are counted for License Fee purposes at 3 a.m. on the 21<sup>st</sup> day of the month. Am. Compl. ¶ 70. In August 2025, the 21<sup>st</sup> day of the month was a Thursday, which did not implicate the Weekend Pass. In September 2025, the 21<sup>st</sup> day of the month was a Sunday. On that Sunday, all active Weekend Pass customers would have been counted for License Fee purposes. In October 2025, the 21<sup>st</sup>

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<sup>8</sup> The original Weekend Pass window equated to 6 a.m. Eastern time Friday until midnight Pacific time on Sunday, such that it covered at least the time period from 6 a.m. Friday to midnight Sunday in each continental US time zone.

day of the month was a Tuesday, which did not implicate the Weekend Pass. Thus, based on the plain terms of the OTT License, the hypothetical Weekend Pass reporting gap could not have materialized.

*Disney's Business Relationships.* Disney makes a conclusory allegation that DISH somehow violated the duty of good faith and fair dealing by “intentionally interfering with and undermining [Disney’s] businesses and relationships with other network providers.” Am. Compl. ¶ 105. Disney pleads no facts related to that portion of its implied covenant claim. In connection with Disney’s breach of contract claim, Disney alleges that DISH’s purported “unauthorized distribution” is causing it irreparable harm. *See, e.g.*, Am. Compl. ¶ 84. Because Sling Passes are contractually authorized, any incidental impact on Disney’s relationships with third parties does not breach the implied covenant. *Sec. Plans*, 769 F.3d at 817.

In sum, Disney has not pleaded an implied covenant claim.

## **V. CONCLUSION**

For all of the reasons set forth above, Disney’s Amended Complaint should be dismissed with prejudice.

Dated: January 2, 2026  
New York, NY

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### **WORD COUNT CERTIFICATION**

Pursuant to Local Rule 7.1(c), I hereby certify that the total number of words in this memorandum, excluding the caption, table of contents, table of authorities, signature block, word count certification, and certificate of service is 6,030.

/s/ Elyse D. Echtman

Elyse D. Echtman



### **CERTIFICATE OF SERVICE**

I hereby certify that on January 2, 2026, the foregoing was filed with the Clerk of Court for the United States District Court of the Southern District of New York using the CM/ECF system.

I further certify that the following participants in the case were served via email with an electronic copy of the sealed versions of the foregoing:

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- Brian Quinn, bquinn@omm.com
- Heather Welles, hwelles@omm.com

/s/ Elyse D. Echtman  
Elyse D. Echtman

# **EXHIBIT 1**

|                          |                                                                                                                            |
|--------------------------|----------------------------------------------------------------------------------------------------------------------------|
| Document title:          | Sling Orange - Service Details, Channels, & Information   Sling TV                                                         |
| Capture URL:             | <a href="https://www.sling.com/service/sling-orange">https://www.sling.com/service/sling-orange</a>                        |
| Page loaded at (UTC):    | Tue, 30 Dec 2025 20:36:29 GMT                                                                                              |
| Capture timestamp (UTC): | Tue, 30 Dec 2025 20:37:23 GMT                                                                                              |
| Capture tool:            | 10.55.0                                                                                                                    |
| Collection server IP:    | 65.31.7.192                                                                                                                |
| Browser engine:          | Mozilla/5.0 (Macintosh; Intel Mac OS X 10_15_7) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/126.0.6478.234 Safari/537.36 |
| Operating system:        | Darwin (Node 20.17.0)                                                                                                      |
| PDF length:              | 5                                                                                                                          |
| Capture ID:              | 6ne7z53Ra57C8jhp2i9dJM                                                                                                     |
| Display Name:            | elyse                                                                                                                      |

# Sling Orange

From \$4.99: Grab a 1 day, 3 day, 7 day, monthly, or prepaid subscription to get NCAA, WNBA, ESPN, TNT, Disney, and more. Add Sports Extra for SEC, ACC, ESPNU, and more.

Buy Orange

View channels

1 DAY3 DAYS7 DAYSMONTHLYPREPAY

ESPN

CNN

TNT

tbs

HGTV

food

HISTORY

30+ CHANNELS

STARTING AT \$4.99/day

## Subscription options

Monthly\$45.99/mo

1 Day Pass\$4.99

3 Day Pass\$9.99

7 Day Pass\$14.99

3 Month Prepay\$115 then \$45.99/mo

## Channels included in Sling Orange

ESPN

CNN

TNT

tbs

HGTV

ID

food

HISTORY

amc

COMEDY CENTRAL

ESPN2

A&E

BE IT

HC

ESPN4K

Lifetime

BBC AMERICA

Freeform

nickjr.

TruTV

MGM+ DRIVE-IN

CHARGE!

COMET

Bloomberg TELEVISION

MOTORTREND

Disney CHANNEL

VICE

axsTV

fuse

QVC

local 10W

MeTV

sling scapes

sling scapes 2

## Features

- **Access 30+ live channels:** Including ESPN, Disney Channel, and CNN.
  - **1 stream included:** Enjoy your favorite shows and sports events uninterrupted on a single
- **Free on demand library:** Watch thousands of movies and shows at no extra cost.
  - **Customizable experience:** Expand your lineup with add-ons like HBO Max®, Paramount+
- **Nationwide availability:** Watch Sling TV anywhere in the U.S. with a reliable internet connection.
  - **No contracts or long-term**

sling

44333

Case 1:25-cv-07169-AS

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- **Access 30+ live channels:** Including ESPN, Disney Channel, and CNN.
- **1 stream included:** Enjoy your favorite shows and sports events uninterrupted on a single device.

- **Free on demand library:** Watch thousands of movies and shows at no extra cost.
- **Customizable experience:** Expand your lineup with add-ons like HBO Max®, Paramount+ with SHOWTIME®, STARZ®, and more.

- **Nationwide availability:** Watch Sling TV anywhere in the U.S. with a reliable internet connection.
- **No contracts or long-term commitments:** Flexibility to cancel or switch packages anytime.

**Watch on the Go**

With Sling, you can watch on your favorite device so you'll never miss a moment of the action.

**Sports Scores**

Sports Scores allows you to track other live football games and easily switch between channels so you never miss a big play!

**Watch & Win**

With Sling Rewards, you could win up to \$10,000 in cash and prizes. With giveaways every single month, there's always a chance to win!

**DVR**

You get 50 hours of free cloud DVR, and if you upgrade to our Unlimited DVR, you can get added benefits like unlimited storage and Replays.

Get Orange

Other plans to consider

Bundle

Orange + Sports Extra >

Includes SEC, ACC, ESPNU channels & more.

45+ channels

\$56.99/mo

Bundle

Orange + Entertainment Extra >

Includes MTV, Cartoon Network, Paramount Network & more.

45+ channels

\$51.99/mo

Bundle

Orange + Kids Extra >

Includes Disney Jr, Nicktoons, TeenNick & more.

40+ channels

\$51.99/mo

Bundle

Orange + Total TV Deal >

Our most comprehensive Sling Orange plan.

100+ channels

\$66.99/mo

Compare plans

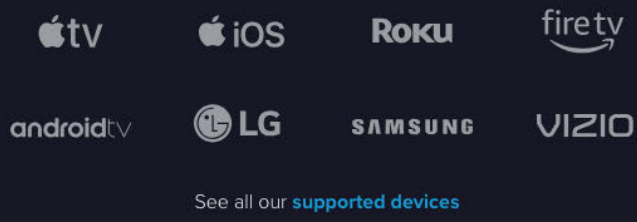
Watch on 20+ top devices

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## Frequently Asked Questions

We're here to help! Visit our [Help Center](#) if you have more questions.

- About
- What's on Sling?
- Flexible passes
- Save on Sling

- ▼ What is Sling TV?
- ▼ Can I record programs on Sling?
- ▼ Can I watch Sling on multiple devices at the same time?
- ▼ Are shows available on demand?
- ▼ What if I want to cancel?
- ▼ How do I get started?
- ▼ What do I need to get started with Sling?
- ▼ Does Sling offer a free trial?

| Shop               | Watch        | Sports                | About             | Work with us        |     |
|--------------------|--------------|-----------------------|-------------------|---------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Services           | Free live TV | General sports        | What is Sling?    | Advertise with us   | Boost Mobile                                                                                                                                                                                                                                                                                                                                            |
| Sling Orange       | Channels     | Sports schedules      | Value             | Become an affiliate | Dish Network                                                                                                                                                                                                                                                                                                                                            |
| Sling Blue         | Sling blog   | ESPN                  | Supported devices | Job opportunities   | OnTech                                                                                                                                                                                                                                                                                                                                                  |
| 1 Day Pass         | Programming  | NBA                   | Help center       |                     |                                                                                                                                                                                                                                                                                                                                                         |
| Sling Select       | Live news    | NFL Football          | Newsroom          |                     |                                                                                                                                                                                                                                                                                                                                                         |
| Add-ons            |              | NCAA College Football | Sling Arcade      |                     |                                                                                                                                                                                                                                                                                                                                                         |
| Streaming services |              | NHL                   | Sling Rewards     |                     |                                                                                                                                                                                                                                                                                                                                                         |

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| Sling Select       | Live news    | NFL Football            | Newsroom            |                     |                                                                                                                                                                                                                                                                                                                                                         |
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| Streaming services |              | NHL                     | Sling Rewards       |                     |                                                                                                                                                                                                                                                                                                                                                         |
| Offers             |              | Tennis                  | Features & benefits |                     |                                                                                                                                                                                                                                                                                                                                                         |
| Gift cards         |              | NFL Redzone             |                     |                     |                                                                                                                                                                                                                                                                                                                                                         |
|                    |              | Soccer                  |                     |                     |                                                                                                                                                                                                                                                                                                                                                         |
|                    |              | NCAA College Basketball |                     |                     |                                                                                                                                                                                                                                                                                                                                                         |
|                    |              | MLB                     |                     |                     |                                                                                                                                                                                                                                                                                                                                                         |
|                    |              | Cricket                 |                     |                     |                                                                                                                                                                                                                                                                                                                                                         |



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

ESPN ENTERPRISES, INC., et al.,

*Plaintiffs,*

-against-

DISH NETWORK L.L.C.,

*Defendant.*

Civil Action No. 1:25-cv-07169-AS-BCM

**NOTICE OF DEFENDANT DISH NETWORK L.L.C.'S PARTIAL  
MOTION TO DISMISS THE AMENDED COMPLAINT**

PLEASE TAKE NOTICE that, upon the accompanying memorandum of law and supporting materials, Defendant DISH Network L.L.C. will move this Court, before the Honorable Arun Subramanian, at the United States District Court for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, Courtroom 15A, New York, New York 10007, at a date and time to be determined by the Court, for an Order: (1) dismissing Counts I and II of the Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6); and (2) granting such other and future relief as the Court deems proper.

Dated: January 2, 2026  
New York, NY

**STEPTOE LLP**

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

ESPN ENTERPRISES, INC., a Delaware corporation; ESPN, INC., a Delaware corporation; ABC CABLE NETWORKS GROUP, a California corporation; AMERICAN BROADCASTING COMPANIES, INC., a Delaware corporation; FX NETWORKS, LLC, a Delaware limited liability company; INTERNATIONAL FAMILY ENTERTAINMENT, INC., a Delaware corporation; NGC NETWORK US, LLC, a Delaware limited liability company; SOAPnet, L.L.C., a Delaware limited liability company; WABC TELEVISION (NEW YORK), LLC, a Delaware limited liability company; WPVI TELEVISION (PHILADELPHIA), LLC, a Delaware limited liability company; KABC TELEVISION, LLC, a Delaware limited liability company; KFSN TELEVISION, LLC, a Delaware limited liability company; KGO TELEVISION, INC., a Delaware corporation; KTRK TELEVISION, INC., a Michigan corporation; WLS TELEVISION, INC., a Delaware corporation; WTVD TELEVISION LLC, a Delaware limited liability company,

Plaintiffs,

v.

DISH Network L.L.C., a Colorado limited liability company,

Defendant.

Case No. 1:25-cv-07169

**ORAL ARGUMENT REQUESTED**

**PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S  
PARTIAL MOTION TO DISMISS THE AMENDED COMPLAINT**

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## I. INTRODUCTION

DISH's attempt to "redefine television" by selling short-term access to Licensor's valuable television networks without paying Licensor the requisite monthly license fees cannot stand. Am. Compl. ¶ 8. When the parties entered into a license agreement granting DISH the right to distribute Licensor's networks (the "OTT License"), DISH did not negotiate for the market advantage it now claims. Rather, DISH signed an agreement to distribute those networks in the same manner as other distributors in the market—through industry-standard paid monthly subscriptions. *Id.* ¶¶ 8, 28-29, 31. As DISH repeatedly recognized in its Day Pass advertisements, [REDACTED], as DISH is doing with Day Pass. *Id.* ¶¶ 3, 31.

Accepting DISH's theory that the OTT License authorized Day Pass requires accepting the corresponding premise that Licensor granted DISH the right to upend a longstanding industry norm. But that premise is counterfactual—DISH admits [REDACTED], *id.* ¶ 30, and Licensor would never have agreed to a distribution structure under which Licensor would go unpaid for 95% of Day Passes DISH sells, much less one that threatens the basic economics of Licensor's business model, *id.* ¶¶ 9-10, 22-27. DISH's partial motion to dismiss Licensor's claims is based on an acontextual misinterpretation of isolated terms that ignores the contract's structure, economic foundation, and fundamental bargain. Licensor's claims should proceed and DISH's motion should be denied.<sup>1</sup>

---

<sup>1</sup> DISH moves to dismiss Plaintiffs' breach of contract and implied covenant claims (Counts I and II) but not Plaintiffs' claim that DISH has failed to timely pay fees and outstanding interest (Count III). *See* Am. Compl. ¶¶ 111-16. "Licensor" refers to Plaintiffs bringing Counts I and II. Other capitalized terms are used as defined in the Amended Complaint and/or OTT License.

*Breach of Contract: Day Pass.* Count I first alleges that DISH breached the OTT License’s terms by offering Day Pass. DISH offers barely any analysis of the relevant contractual terms, instead relying almost solely on this Court’s preliminary injunction opinion and a mischaracterization of the defined term “Network Subscriber.” But as the Court recognized, the OTT License requires a two-step analysis to determine whether DISH’s distribution is authorized. *See* Dkt. 85 at 2. Step one is deciding whether DISH is distributing the Subscription Networks as part of a contractually authorized service. If—and only if—so, step two is deciding whether a particular consumer is entitled to receive each relevant network signal because he or she qualifies as a “Network Subscriber.”

Day Pass fails at step one. The OTT License authorizes DISH only to distribute Licensor’s networks via specified services, Am. Compl. Ex. A (“OTT License”) ¶ 2(a)(i)(A), including a “PSS Service,” which is defined as a service distributed on a “paid subscription basis,” *id.* ¶ 1. Day Pass fails to satisfy that requirement because it is a one-off purchase, not a “subscription,” which in ordinary English refers to a continuing and periodic obligation. DISH itself acknowledged that ordinary meaning when it publicly promoted Day Pass as requiring “no subscription”—key admissions it tried to cover up when Licensor pointed out the controlling contractual language. Am. Compl. ¶¶ 34, 39, 41, 62.

DISH’s contrary argument skips over step one. According to DISH, the step two question of who qualifies as a “Network Subscriber” resolves the step one question of whether a service is authorized in the first place. But DISH ignores that the questions are distinct and prioritized: only once it is first determined that a given service qualifies as a PSS Service, does the next question—whether a consumer is qualified to receive specified network signals as a Network Subscriber—become relevant. In other words, if a service does not qualify as a PSS

Service on its own terms, the Network Subscriber definition never comes into play. If it were otherwise, DISH could authorize its customers to receive the Subscription Networks via services DISH itself has no right to deliver. And because no ordinary person would ever describe a one-time charge as a “subscription,” Day Pass does not qualify as distribution via an authorized PSS Service and accordingly breaches the OTT License.

*Breach of Contract: Licensor Marks.* DISH also violated the OTT License’s express terms by using the [REDACTED]

to promote Day Pass. DISH has only a limited license to use the [REDACTED]

[REDACTED]<sup>2</sup> Materials marketing Day Pass—a “first of its kind” and “industry first product,” *id.* Ex. D at 3—are far from [REDACTED]. DISH does not dispute, however, that it failed to [REDACTED].

DISH further breached the OTT License when it did not [REDACTED]

[REDACTED]. *Id.* ¶ 77. DISH suggests that [REDACTED]

Ignoring these unambiguous contractual restrictions, DISH asks the Court to accept *its* version of the facts (that its use was [REDACTED] [REDACTED]). Mot. 8. Such factual arguments have no place in a pleadings challenge. And

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<sup>2</sup> Unless otherwise noted, all emphasis is added and all quotation marks, alterations, citations, and footnotes omitted.



DISH's reliance on the nominative fair use doctrine has no basis, given DISH's agreement to contractual restrictions.

*Implied Covenant.* DISH's conduct in offering Day Pass also violates the implied covenant of good faith and fair dealing, which protects Licensor's benefit of the bargain. DISH structured Day Pass to profit from selling access to Licensor's networks without compensating Licensor. Am. Compl. ¶¶ 1, 9, 64, 105, 107-09. The OTT License's purpose is to grant distribution rights in exchange for license fees. *Id.* ¶¶ 59, 64. Yet, based on limited data, DISH pays Licensor *nothing* for at least 95% of Day Pass sales—and has acted opportunistically to limit even those payments. *Id.* ¶¶ 6, 45-52, 65, 107-08. DISH also denied Licensor the benefit of the OTT License's [REDACTED]. *Id.* ¶¶ 71-72, 108. DISH's counterarguments fail to acknowledge caselaw authorizing alternative pleading of implied covenant claims, which are fact-intensive and generally not resolvable on a motion to dismiss.

DISH also breached the implied covenant by offering Day Pass at artificially low prices that devalue Licensor's content, a practice sustainable only because DISH pays no license fees for most Day Pass customers. *Id.* ¶¶ 7, 10, 86, 105-06. Although the OTT License grants DISH discretion over such prices, that discretion must be exercised reasonably. DISH's scheme to launch Day Pass—[REDACTED]—without advance warning and over Licensor's objections also harms Licensor's relationships with other distributors, further violating the covenant. *Id.* ¶¶ 10, 87, 105.

## II. STATEMENT OF FACTS

### A. DISH's Industry-First Day Pass

Licensor owns some of the country's most valuable television programming, including the ESPN Network and Disney Channel. Am. Compl. ¶¶ 1, 22. The pay-television industry's

foundational business model is monthly subscriptions. *Id.* ¶¶ 4, 10. Licensor invests heavily in content licenses, including sports rights from leagues like the NFL, NBA, MLB, NHL, WNBA, and U.S. Open Tennis Championships. *Id.* ¶¶ 23-24, 27. That investment requires steady revenue from monthly license fees and advertising, which is why [REDACTED]. *Id.* ¶¶ 5, 24-27, 31.

To obtain license fees, Licensor licenses these networks to distributors, including MVPDs like DISH’s Sling TV, YouTube TV, and others. *See id.* ¶¶ 2 & n.1, 22. Distributors then sell consumers access to licensed services, such as DISH’s Sling Orange and Blue services. *Id.* ¶ 22. Within such a service, the distributor may allow consumers to subscribe to various packages of programming, such as a basic or premium tier. *See* OTT License ¶ 5(a)(i)(A)-(G). This entire structure is based on monthly subscriptions. *Id.* ¶¶ 4, 10, 28, 31.

The OTT License grants DISH a limited license to transmit the Subscription Networks via DISH’s Sling TV streaming service to paid subscribers in exchange for certain consideration, principally monthly per-subscriber license fees. *Id.* ¶¶ 2, 13. Under the OTT License, and consistent with past dealings and industry practice, Licensor licenses its programming only on a monthly subscription basis. *Id.* ¶¶ 2, 28. The OTT License thus requires DISH to count the applicable subscribers to the Subscription Networks on a monthly basis, pay Licensor monthly fees, and provide monthly subscriber reports. *Id.* ¶¶ 2, 59-63, 68-69.

On August 12, 2025, DISH, without consulting Licensor, began offering Licensor’s networks on a short-term, non-renewing basis. DISH had previously only offered a “minimum subscription period of one month’s time.” *Id.* ¶¶ 3, 28. Heralding Day Pass as an “industry-first” product, DISH advertised access to the ESPN Network “with no subscription” for as little



as one day. *Id.* ¶ 3. DISH acted unilaterally, timing the launch to capitalize on the opening of the college football and NFL seasons and marquee games on the ESPN Network and ESPN2. *Id.*

Instead of a subscription, Day Pass is a “[o]ne-time charge” for access to programming like live sporting events for a single day, weekend, or week, with no renewal or commitment. *Id.* ¶ 4. As reflected in the OTT License [REDACTED], Licensor’s business model—its ability to finance, acquire, develop, produce, and program content—is based on monthly subscriptions to its 24/7 network programming, making it incompatible with Day Pass. *Id.* ¶¶ 4, 24-25.

#### **B. The OTT License’s Limited Grant of Distribution Rights**

The OTT License limits DISH to a circumscribed set of non-exclusive distribution rights, reserving to Licensor “all of Licensor’s rights not expressly granted to DISH.” *Id.* ¶ 54 (quoting OTT License ¶ 14(i)(i)). The Grant of Rights licenses DISH only to distribute the Subscription Networks “via the Sling Platform on a Streamed basis, as part of” specific listed services.” *Id.* ¶¶ 55-56 (quoting OTT License ¶ 2(a)(i)). Those include the “DISH PSS English Service,” historically marketed as “Sling Orange”—a monthly subscription OTT service including the Subscription Networks. *Id.* ¶¶ 32, 56. Other authorized services include the DISH Free Service, through which DISH distributes the ABC News Live Network and free on-demand content that “users may access . . . on a free-to-user basis without subscribing to a paid video programming service.” OTT License ¶¶ 1 (“Free Service”), 2(a)(i)(A)-(F).

To fall within the Grant of Rights, a PSS Service must be “a video programming service comprised of linear programming networks . . . a part of which subscribers then-currently entitled to receive applicable programming networks . . . may access . . . content at any time *on a paid subscription basis.*” *Id.* ¶ 56 (quoting OTT License ¶ 2(a)).

DISH may distribute the signals of the Subscription Networks included “as part of” the PSS Service to “Network Subscribers” of each individual network. *Id.* ¶ 57. “Network Subscribers” are “Subscriber[s] intentionally authorized by DISH to receive the Subscription Network via the Sling Platform.” *Id.* (quoting OTT License ¶ 1 (defining “Network Subscriber”)). “Subscriber” is defined as “a person intentionally authorized by DISH to receive any level of video programming service or package of programming networks via the Sling Platform.” *Id.* (defining “Subscriber”). The Subscriber definition encompasses users of DISH’s Free Service, which is a separate, non-PSS Service that does not require a subscription. *Id.* (“For purposes of this Agreement, a person who accesses programming content via the DISH Free Service will be deemed to be a Subscriber, regardless of whether such person subscribes to a programming service, is charged a fee or has a subscription account.”).

For each Network Subscriber in a Reporting Period, the OTT License requires DISH to pay Licensor a “monthly” License Fee. *Id.* ¶ 59. The Reporting Period runs from the 22nd of one month to the 21st of the following month. *Id.* Each License Fee is calculated by multiplying the number of Network Subscribers by the monthly contractual rates for each applicable network. *Id.* To determine the License Fee amount, DISH must take “the sum of the number of Network Subscribers [for each network] as of the last day of the (A) Reporting Period in question and (B) immediately preceding Reporting Period, and then divid[e] that sum by two[.]” *Id.* Each network’s License Fee is specified in Exhibit A, which provides solely for “monthly” fees. *See* OTT License, Ex. A-1 to A-23. The OTT License includes no mechanism to consistently pay License Fees for Day Pass users who are not active on the 21st of any given month. *Am. Compl.* ¶ 63.



**C. Restrictions on DISH's** [REDACTED]

In addition to providing DISH with a limited license to distribute the Subscription Networks, the OTT License grants DISH certain rights [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

DISH's ability to [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

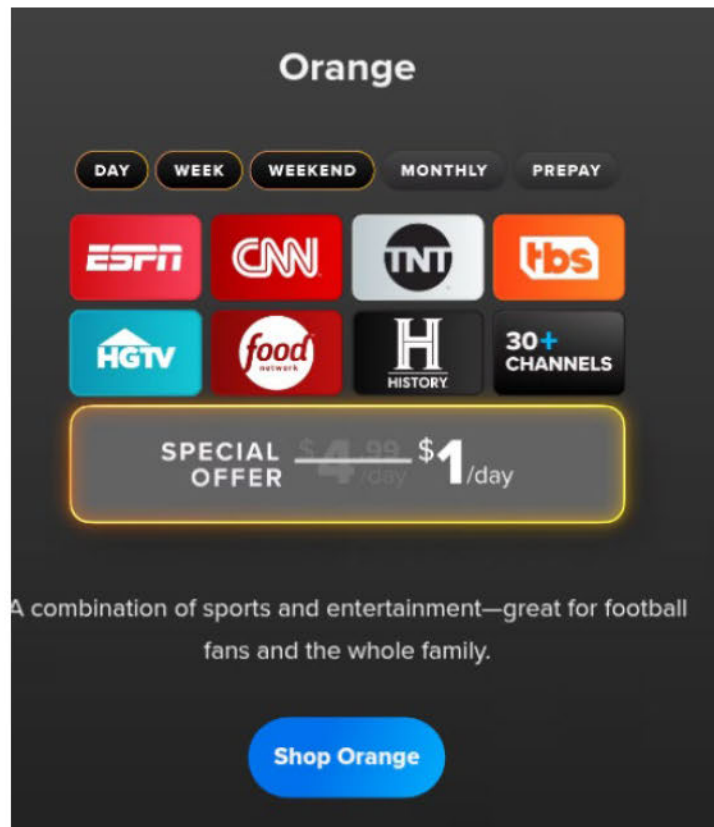
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

DISH prominently [REDACTED] to promote Day Pass, including by advertising “24 hours of access to ESPN” and [REDACTED] in its press releases and website postings advertising the offering. *Id.* ¶¶ 32-34, 40, 52:



DISH failed to [REDACTED] Day Pass, despite calling it a “first of its kind” and “industry-first product.” *Id.* ¶¶ 76-77. DISH also failed to [REDACTED] [REDACTED]. *Id.* ¶ 77.

**D. DISH Fails to Pay License Fees for Day Pass Users**

In October 2025, DISH's preliminary injunction filing revealed limited Day Pass sales data, which showed that DISH booked License Fees for only the miniscule fraction of Day Pass users active at 3 a.m. on the 21st of each month. *Id.* ¶¶ 70-71. DISH did not pay Licensor *anything* for 95% of those users. *Id.* ¶¶ 6, 107. DISH [REDACTED] [REDACTED]. *Id.* Ex. N.

[REDACTED] [REDACTED]. *Id.* ¶ 71 & Ex. N. [REDACTED] [REDACTED] [REDACTED] [REDACTED]. *Id.* ¶ 70.

That existing data captured Saturday, September 21, 2025—a college football and relatively high sign-up day—within its limited window. *Id.* ¶ 107 & n.40. Other months, when the 21st falls on a low sign-up day, will capture a far reduced percentage. *See id.* DISH also leveraged Day Pass in an attempt to poach YouTube TV subscribers during a window when DISH paid Licensor nothing. *Id.* ¶¶ 45-50, 52.

DISH has already manipulated its Weekend Pass product to avoid paying license fees. *Id.* ¶ 65. Although DISH counts Network Subscribers for License Fee payment at 3 a.m. MT on the 21st of the month, DISH chose to initiate its Weekend Passes at 4 a.m. MT Friday and terminate them at 1 a.m. MT Monday, avoiding any reporting date falling on either a Friday or

Monday. *Id.* It was not until the Court suggested it address the issue, *see* Dkt. 79, that DISH altered the time parameters for Weekend Pass, Am. Compl. ¶ 65.

### **III. THE COURT SHOULD DENY DISH’S PARTIAL MOTION TO DISMISS.**

The Court should deny DISH’s partial Motion to Dismiss (the “Motion”), Dkt. 100, because Licensor alleges three viable claims: (1) Day Pass breaches DISH’s limited license to distribute the Subscription Networks on a monthly subscription basis; (2) DISH’s use of Licensor Marks violates contractual restrictions; and (3) Day Pass violates the implied covenant of good faith and fair dealing.

#### **A. DISH’s Motion Fails to Comply With This Court’s Requirements.**

DISH failed to comply with this Court’s rules, which required DISH to “clearly indicate the specific claim elements that [it] believes have not been plausibly pleaded,” attaching “a non-argumentative chart as an exhibit to its moving papers identifying the elements not plausibly alleged.” Individual Practices in Civil Cases, Subramanian, J., ¶ 8(G). DISH did not so specify and did not attach any such chart. *Cf. Xiao Dong Fu v. Red Rose Nail Salon, Inc.*, 2017 WL 985893, at \*1, 8 (S.D.N.Y. Mar. 13, 2017) (denying motion for summary judgment that failed to comply with local and individual rules). On January 28, 2026, DISH sent Licensor a chart by email. Licensor has attached that chart, with its responses, as **Exhibit A** to this opposition, as the Court’s rules anticipate.

#### **B. Licensor Adequately Alleges That Day Pass Breaches the OTT License.**

DISH moves to dismiss Licensor’s first cause of action for breach of contract based solely on its contention that Licensor did not adequately allege that Day Pass breaches the OTT License. Mot. 10.

But Licensor pleaded a viable breach claim because the OTT License does not authorize Day Pass. At minimum, the contract is ambiguous, making breach “a question of fact” and



permitting discovery of extrinsic evidence. *Random House, Inc. v. Rosetta Books LLC*, 150 F. Supp. 2d 613, 618 (S.D.N.Y. 2001). “Contract language is ambiguous if it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages and terminology as generally understood in the particular trade or business.” *Sayers v. Rochester Tel. Corp. Supp. Mgmt. Pension Plan*, 7 F.3d 1091, 1095 (2d Cir. 1993). This analysis must be performed “in the context of the entire agreement” to “safeguard against adopting an interpretation that would render any individual provision superfluous.” *Id.*

**1. The Grant of Rights Authorizes Distribution Only on a “Paid Subscription Basis.”**

Section 2 details the distribution rights Licensor granted DISH. All other rights are expressly reserved to Licensor. Am. Compl. ¶ 54. That grant of rights establishes a two-step process, through two separate subsections, to determine whether DISH’s distribution of the Subscription Networks is authorized.

**a. Step one.** In the first step, “Licensor grants DISH a non-exclusive license” to “distribute within the Territory via the Sling Platform on a Streamed basis” a list of specified services. *Id.* ¶ 56; OTT License ¶ 2(a)(i). The first listed service—and the one relevant here—is the “DISH PSS English Service.” OTT License ¶ 2(a)(i)(A). To qualify as a PSS Service, DISH must distribute the networks on a “paid subscription basis.” *Id.* ¶ 1 (“PSS Service”). The only exception to the paid subscription requirement is that a PSS Service may “offer[] video content as part of a limited free trial or free preview,” neither of which encompasses Day Pass. *Id.* This

first step appears in the OTT License as follows:

2. **GRANT OF RIGHTS.**

(a) **General.** Licensor grants DISH a non-exclusive license throughout the Term to:

(i) distribute within the Territory via the Sling Platform on a Streamed basis, as part of each:

(A) DISH PSS English Service, the:

**b. Step two.** If and only if the distribution qualifies as a PSS Service—that is, once the paid subscription requirement is satisfied—does the next subsection authorize DISH to distribute the Subscription Network signals “for reception, viewing, exhibition and display by Network Subscribers” to each applicable network. *Id.* ¶ 2(a)(i)(A)(I)-(III).<sup>3</sup> The below clip adds the first subsection of the second step:

2. **GRANT OF RIGHTS.**

(a) **General.** Licensor grants DISH a non-exclusive license throughout the Term to:

(i) distribute within the Territory via the Sling Platform on a Streamed basis, as part of each:

(A) DISH PSS English Service, the:

(I) Broadband Backhaul Signal(s) of each PSS Network for reception, viewing, exhibition and display by the following Network Subscribers, in each case, using Permitted Devices:

(1) with respect to each PSS Network (other than the ESPN Digital Networks), Network Subscribers to the PSS Network;

A Network Subscriber is “a Subscriber intentionally authorized by DISH to receive the Subscription Network via the Sling Platform,” and a “Subscriber” is “a person intentionally

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<sup>3</sup> The OTT License defines “PSS Network” as a list of certain Subscription Networks.



authorized by DISH to receive any level of video programming service or package of programming networks via the Sling Platform.” *Id.* ¶ 1 (“Network Subscriber,” “Subscriber”).

These definitions must be broader than the definition of “PSS Service” because customers of Sling’s Free Service—not at issue in this case—are also treated as Network Subscribers. The “Subscriber” definition thus clarifies that “[f]or purposes of this Agreement, a person who accesses programming content via the DISH Free Service”—which includes no subscription requirement, paid or otherwise—“will be deemed to be a Subscriber, regardless of whether such person subscribes to a programming service, is charged a fee or has a subscription account.” *Id.* ¶ 1 (“Subscriber”); *see also id.* ¶ 1 (“Free Service” can be accessed “without subscribing to a paid video programming service”). The fact that the parties used definitions of Network Subscriber and Subscriber that could also apply to DISH’s Free Service (and thus did not repeat the paid subscription requirement in those definitions) does not negate the subscription requirement necessary to qualify as a PSS Service.

Licensors further alleges, consistent with the OTT License’s plain language, that the parties intended the definitions of “Network Subscriber” and “Subscriber” to accomplish two things in the context of a PSS Service once the paid subscription requirement is satisfied. First, the phrase “intentionally authorized by DISH” ensures that the license covers only non-pirated signals; DISH is thus not required to pay license fees for pirated signals. Am. Compl. ¶ 58. Second, the reference to “any level of video programming service or package of programming networks” ensures that the definition reaches all (i) services and (ii) packages or tiers DISH might offer, such as distribution through Sling Orange versus Sling Blue or on a tier of premier channels. *Id.* That is, a customer could have a paid subscription to Sling Orange, but be

considered a “Network Subscriber” to only a subset of networks within that service, such as a basic tier of networks.

**c. DISH improperly conflates the two steps.** Relying on the Court’s preliminary injunction order,<sup>4</sup> DISH argues “[a]nyone encompassed in the Network Subscriber definition is a subscriber, and has a subscription, pursuant to the OTT License.” Mot. 10. Not so.

The Court’s order recognized that “the first question is whether Sling Orange is a ‘PSS Service,’” Dkt. 85 at 2, but did not answer that question independently. Instead, the Court suggested the “Network Subscriber” definition informed the meaning of the undefined phrase “paid subscription” in the PSS Service definition, declining to “make any findings about whether the Passes would be subscriptions absent that [Network Subscriber] definition.” *Id.* at 2, 4.

Contrary to DISH’s misreading, the definition of “Network Subscriber” does not state that a qualifying customer has a “subscription” or is a “subscriber” where the parties declined to use a defined term, and it nowhere purports to inform the undefined phrase “paid subscription.” If anything, the “Subscriber” definition confirms the plain meaning of the word “subscription” by providing that Free Service users—and only those users—who have *no* subscription will nevertheless “be deemed to be a Subscriber.” The PSS Service definition similarly contains no cross-reference to the Network Subscriber definition, as the parties could have done if they intended to use that defined meaning. Instead, they used the undefined phrase “paid subscription.”

Numerous courts have rejected similar attempts to conflate defined and undefined terms. For instance, the court in *Sunbelt Rentals, Inc. v. Charter Oak Fire Ins. Co.*, 839 F. Supp. 2d 680,

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<sup>4</sup> The Court’s denial of Licensor’s motion for a preliminary injunction “do[es] not preclude reexamination of the merits at a subsequent trial.” *Irish Lesbian & Gay Org. v. Giuliani*, 143 F.3d 638, 644 (2d Cir. 1998).



688-89 (S.D.N.Y. 2012), rejected a very similar argument melding defined and undefined uses of “equipment,” reasoning that where undefined “equipment” was used, “it would be illogical to conclude” that the parties intended the defined term to apply. Other cases are in accord, *e.g.*:

- *VR Optics, LLC v. Peloton Interactive, Inc.*, 2023 WL 2031213, at \*9 (Fed. Cir. Feb. 16, 2023) (applying New York law) (“The agreement’s use of defined terms by using capitalization demonstrates that the parties were perfectly capable of using such terms when they wished to do so. Their decision not to capitalize the terms ‘representations’ and ‘warranties’ should not be ignored and the term should therefore be accorded its ordinary meaning.”);
- *Sonterra Cap. Master Fund, Ltd. v. Barclays Bank PLC*, 403 F. Supp. 3d 257, 265-66 (S.D.N.Y. 2019) (rejecting argument that undefined phrase “securities class action lawsuit” should be interpreted expansively as a result of the contractual definition of “Securities” and instead giving the phrase “its ordinary meaning”);
- *Metro Funding Corp. v. WestLB AG*, 2010 WL 1050315, at \*27 (S.D.N.Y. Mar. 19, 2010) (undefined phrase “advances by the Servicer” was not equivalent to defined term “Servicer Advances”; different language “suggests that the ‘advances’ by the Servicer to which this Section refers are different from Servicer Advances”);
- *Am. Food & Vending Corp. v. Amazon.com, Inc.*, 186 N.Y.S.3d 401, 405 (3d Dep’t 2023) (rejecting argument that undefined word “term” had equivalent meaning to defined word “Term” and instead “using its ‘common meaning’”).

Similarly, the plain meaning of “paid subscription” should control here. *See infra* Section III(B)(2) (discussing the ordinary meaning of “subscription”).

Nor does the Network Subscriber definition provide independent authorization for Day Pass on its own terms. Day Pass is not itself a “video programming service” like Sling Orange, Sling Blue (an MSS Service), or DISH’s Free Service. *See* OTT License ¶ 1 (defining “Free Service,” “MSS Service,” and “PSS Service” as “video programming service[s]”). And it is not a “package of programming networks” like a basic or premium tier. *See id.* ¶ 5(a)(i) (providing distribution requirements for “package[s] of programming networks,” including Required and Incremental packages). Rather, it is a mechanism to purchase one-time access to an *existing* video programming service—Sling Orange—that, under the OTT License, must be distributed on a “paid subscription basis.”

DISH’s interpretation must also be rejected because it creates surplusage. If DISH were entitled to distribute the Subscription Networks to anyone “intentionally authorized” to receive “any level of video programming service or package of programming networks” (that is, any “Network Subscriber”), the list of authorized services and the PSS Service’s “paid subscription basis” requirement would be superfluous. The contract would produce the same outcome—DISH can sell the Subscription Networks to anyone it “intentionally authorizes”—regardless of the separate language further defining the applicable services. Such a result makes Licensor’s interpretation at minimum reasonable. *See JA Apparel Corp. v. Abboud*, 568 F.3d 390, 396-99 (2d Cir. 2009) (interpretation causing surplusage supports finding ambiguity); *Random House*, 150 F. Supp. 2d at 620 (license to distribute novel “in book form” did not include ebooks; such interpretation would render grant of rights to distribute various forms of books surplusage).

## **2. Licensor Adequately Alleges That Day Pass Breaches the Monthly Subscription Requirement.**

As applied to Day Pass users, Sling Orange is not a PSS Service because Day Passes are not “subscriptions,” a term DISH’s Motion never addresses. *See* Mot. 10-11. The ordinary



meaning of subscription is “an arrangement for providing, receiving, or making use of something of a continuing or periodic nature.” *Subscription*, Merriam-Webster;<sup>5</sup> *see also Subscription*, Cambridge Dictionary (“an amount of money that you pay regularly to receive a product or service”);<sup>6</sup> *Subscription*, Oxford English Dictionary (“[r]egular payment for access to a commercially provided service”);<sup>7</sup> *Subscribe*, American Heritage Dictionary (“[t]o contract to receive and pay for a certain number of issues of a publication, for access to a website that is protected by a paywall, for tickets to a series of events or performances, or for a utility service for example”; “[t]o agree to an ongoing arrangement by which one receives online content, as from a specific website or a specific user on a website”).<sup>8</sup> Day Pass does not satisfy these definitions because it is a one-time purchase, like a single entrance ticket. Am. Compl. ¶¶ 32-35.

DISH effectively confirmed this ordinary meaning and usage of “subscription” by launching Day Pass with ads telling consumers that it required “no subscription”—admissions it later removed after Licensor pointed out the key contractual language. *Id.* ¶¶ 3-4, 34-35, 38-44.

At the time the parties executed the OTT License, a reference to a “paid subscription” referred to the industry-standard monthly subscription. *Id.* ¶¶ 2, 4-6, 28, 31, 44, 87; *see Random*

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<sup>5</sup> <https://www.merriam-webster.com/dictionary/subscription> (last visited Jan. 20, 2026). Although it does not do so here, DISH previously relied on an example from Merriam-Webster to argue that Day Pass fits this definition: “*such as a purchase by prepayment . . . for a certain period of access to or use of something (such as an online service).*” But that does not help DISH because the structure of the definition applies the “continuing and periodic” requirement to that example, which merely recognizes that the governing definition could apply to an online service—entirely consistent with Licensor’s reading.

<sup>6</sup> <https://dictionary.cambridge.org/dictionary/english/subscription> (last visited Jan. 20, 2026). S.D.N.Y. courts have also “consistently held that the plain meaning of ‘subscriber’ requires an ‘ongoing commitment or relationship’ when interpreting the Video Privacy Protection Act. *Nino v. CNBC LLC*, 2024 WL 3988827, at \*3 (S.D.N.Y. Aug. 29, 2024).

<sup>7</sup> [https://www.oed.com/dictionary/subscription\\_n?tab=meaning\\_and\\_use#20093941](https://www.oed.com/dictionary/subscription_n?tab=meaning_and_use#20093941) (last visited Jan. 20, 2026).

<sup>8</sup> <https://ahdictionary.com/word/search.html?q=%20SUBSCRIBE> (last visited Jan. 20, 2026).

*House*, 150 F. Supp. 2d at 621 (relying on industry understanding of the term “in book form”); *General Mills, Inc. v. Filmtel Int’l Corp.*, 599 N.Y.S.2d 820, 821-22 (1st Dep’t 1993) (license to exhibit program on “television” was ambiguous as applied to cable television in light of historical and industry practices). DISH acknowledges that “the standard monthly streaming subscriptions that are familiar to consumers” require “pre-payment on a monthly basis and auto-renew[] from month-to-month.” Am. Compl. ¶ 44. And upon Day Pass’s launch, DISH’s Terms of Use likewise specified that any “Subscription Services” DISH offered would “automatically renew on a month-to-month basis . . . unless and until they are cancelled.” *Id.* ¶ 43.

This understanding of “paid subscription” is further confirmed by the OTT License’s payment structure—important terms in a commercial contract. DISH pays license fees on a monthly basis, with a single-day capture on the 21st of the month standing in for an entire month of subscriptions. OTT License ¶ 8(a)-(b). Exhibit A then specifies the “monthly License Fee” owed for each applicable subscriber. *E.g.*, *id.* Ex. A-2 ¶ 8, Ex. A-3 ¶ 8, Ex. A-5 ¶ 9. The only excluded subscribers are specifically delineated: Gratis Subscribers (a limited number of DISH employees and the like) and those receiving a network through a Free Preview. *Id.* ¶ 8(c).

This structure makes sense only if the Subscription Networks are offered through the standard monthly subscription. *See* Am. Compl. ¶¶ 59-63; *cf. Nasdaq, Inc. v. Exch. Traded Managers Grp., LLC*, 431 F. Supp. 3d 176, 193, 215-17, 225-26, 235-36 (S.D.N.Y. 2019) (holding that the defendant breached contract by retaining profits, despite lack of express term prohibiting such conduct, in light of the parties’ “business model” and “detailed recitation of . . . fees” to which defendant would be entitled that did not include profits); *Muze, Inc. v. Dig. On-Demand, Inc.*, 123 F. Supp. 2d 118, 129 (S.D.N.Y. 2000) (“absence of any specific provision for the payment of . . . licensing fees” “suggest[ed] that [defendant’s] breach is a material one”).



Yet DISH pays Licensor for Day Pass users only if they happen to be active at 3 a.m. MT on the 21st of the month—a tiny fraction of total sales. *See id.* ¶¶ 6, 65. The absence of a payment mechanism for these other transactions demonstrates they were not anticipated or permitted by the OTT License. *See id.* ¶¶ 59-63.

DISH faults Licensor for not including an express statement that subscriptions must be at least one month long, citing *Boosey & Hawkes Music Publishers, Ltd. v. Walt Disney Co.*, 145 F.3d 481 (2d Cir. 1998). Mot. 11. Left unexplained is why Licensor—having expressly reserved all rights not specifically granted—should have anticipated including such language when the admitted uniform practice across the industry for years had been at minimum monthly subscriptions. *See* Am. Compl. ¶¶ 2, 4-6, 28-31, 44, 87. DISH itself had not [REDACTED]. *Id.* ¶ 30.

*Boosey* does not control and in fact supports denying DISH’s Motion, as the court reversed a grant of summary judgment on a license’s scope and “remand[ed] for a trial.” *Id.* at 491; *see also Bourne v. Walt Disney Co.*, 68 F.3d 621, 630 (2d Cir. 1995) (similar dispute over videocassette distribution “properly submitted to the jury”). Further, *Boosey* involved a broad license to use music in a “motion picture” and a new distribution technology for that motion picture that arose decades later. *Boosey*, 145 F.3d at 484, 486. The OTT License is quite different, as it specifically governs network distribution—not a license to use Licensor’s material in a new, DISH-authored work—via existing technology. *See Random House*, 150 F. Supp. 2d at 623 (distinguishing *Boosey* on this basis).

**C. DISH’s [REDACTED] Violates Contractual Restrictions.**

The Amended Complaint also states a viable claim for breach of the OTT License’s [REDACTED]

[REDACTED], and the nominative fair use doctrine is inapposite because DISH's use is contractually limited.

**1. The OTT License** [REDACTED]

The Amended Complaint adequately pleads that DISH's use of Licensors Marks breached the OTT License by [REDACTED].

*First*, Licensors adequately alleged that DISH breached [REDACTED]

[REDACTED]. DISH does not dispute either

[REDACTED] DISH argues only that it [REDACTED]

[REDACTED]. Am. Compl. ¶ 76; *see Orient Plus Int'l Ltd. v. Baosheng Media Grp.*

*Holdings Ltd.*, 799 F. Supp. 3d 310, 334 (S.D.N.Y. 2025) (court accepts all factual allegations as true on a motion to dismiss).

DISH's reliance on other, [REDACTED]

is misplaced. *See* Mot. 12-13. DISH cites [REDACTED]

*Second*, DISH breached the OTT License by [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] DISH has not done so. *Id.*

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] is a fact question. *See*,

*e.g.*, *360 N. Rodeo Drive, LP v. Wells Fargo Bank, Nat'l Ass'n*, 2024 WL 3159843, at \*3

(S.D.N.Y. June 25, 2024) (denying motion to dismiss that would require resolution of “factual

questions about whether [defendant] exercis[ed] its discretion” in an “arbitrary or irrational”

manner).<sup>9</sup> DISH’s cited cases are not to the contrary; they simply stand for the general

proposition that discretion may in some factual circumstances be constrained by the implied

covenant of good faith and fair dealing.

## **2. DISH’s “Fair Use” Argument Is Irrelevant.**

Against this contractual backdrop, DISH’s fair use arguments change nothing. Its cited cases stand for the unremarkable (but irrelevant) proposition that, in a trademark or copyright infringement case, a defendant may assert nominative fair use as an affirmative defense. *See*

---

<sup>9</sup> To the extent DISH argues [REDACTED]

[REDACTED] If Licensor had an obligation [REDACTED] whether it did so would be inappropriate for resolution at the pleading stage. *See, e.g.*, *360 N. Rodeo*, 2024 WL 3159843, at \*3.



*Int'l Info. Sys. Sec. Cert. Consortium, Inc. v. Sec. Univ., LLC*, 823 F.3d 153, 168 (2d Cir. 2016) (a defendant may lawfully use a plaintiff's trademark to describe product or service); *Chanel, Inc. v. The RealReal, Inc.*, 449 F. Supp. 3d 422, 439-40 (S.D.N.Y. 2020) (company's advertisement of genuine Chanel goods available on its site was a nominative fair use). Those cases do not apply here, where Licensors are not asserting either a copyright or trademark infringement claim. DISH cites no cases, nor is Licensors aware of any, holding that the fair use doctrine excuses violation of binding contractual limitations governing DISH's use of the Licensors Marks.

**D. Licensors Allege a Viable Claim That Day Pass Violates the Implied Covenant of Good Faith and Fair Dealing.**

The implied covenant applies here to protect Licensors' contractual benefits. The Amended Complaint sufficiently alleges that DISH violated the covenant by: (i) structuring Day Pass to deny Licensors license fees for the vast majority of Day Pass customers; (ii) pricing Day Pass, in bad faith, below market standards; and (iii) interfering with Licensors' businesses and distributor relationships.

"Under New York law, implicit in every contract is a covenant of good faith and fair dealing," which "encompasses any promises that a reasonable promisee would understand to be included." *Spinelli v. Nat'l Football League*, 903 F.3d 185, 205 (2d Cir. 2018). "[N]either party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract" or "violate the party's presumed intentions or reasonable expectations." *511 W. 232nd Owners Corp. v. Jennifer Realty Co.*, 98 N.Y.2d 144, 153 (2002) (plaintiffs adequately alleged breach of implied covenant where defendant retained majority of shares in building cooperative, rendering co-op uneconomical); *Spinelli*, 903 F.3d at 205.

"Where the contract contemplates the exercise of discretion, this pledge includes a promise not

to act arbitrarily or irrationally in exercising that discretion.” *Dalton v. Educ. Testing Serv.*, 87 N.Y.2d 384, 389-90 (1995) (contractual term authorizing submission of information implied duty to consider that submission in good faith).

“[W]hether particular conduct violates or is consistent with the duty of good faith and fair dealing necessarily depends upon the facts of the particular case, and is ordinarily a question of fact to be determined by the jury or other finder of fact.” *360 N. Rodeo Drive, LP*, 2024 WL 3159843, at \*3. In *360 N. Rodeo Drive*, this Court denied a motion for summary judgment on an implied covenant claim because “[t]here are factual questions about whether [the defendant’s] exercising its discretion [to send account statements] was arbitrary or irrational, whether Plaintiff was reasonably justified in expecting the account statements to reflect any defaults, and whether the statements deprived Plaintiff of any contractual rights.” *Id.*; *see also, e.g., Dorset Indus., Inc. v. Unified Grocers, Inc.*, 893 F. Supp. 2d 395, 410 (E.D.N.Y. 2012) (scope of the parties’ obligations under the covenant were “issues of fact inappropriate for resolution at [motion to dismiss] stage in the proceedings”); *Janel World Trade, Ltd. v. World Logistics Servs., Inc.*, 2009 WL 735072, at \*13 (S.D.N.Y. 2009) (denying motion to dismiss because viability of implied covenant claim presented question of fact).

**1. Day Pass Denies Licensor the Benefit of the License Fees Bargained for in Exchange for Rights to Distribute the Subscription Networks.**

Day Pass violates the implied covenant by denying Licensor the benefit of its bargain, under which DISH sells access to the Subscription Networks and pays Licensor license fees in exchange. *See* Am. Compl. ¶¶ 1, 6, 9, 64, 105, 107. With Day Pass, though, DISH sells that access on a day-at-a-time basis—while paying Licensor *nothing at all* for at least 95% of sales, according to the limited data DISH has disclosed. *Id.* ¶¶ 4, 107-08.

Indeed, Licensor’s position is likely even worse than the available data indicates. The



OTT License captures only Network Subscribers who are active on the 21st of the month. But (i) the existing data included Saturday, September 21, 2025, capturing an unusually high proportion of Day Pass users, and (ii) DISH used its market advantage strategically to seize business for itself during the YouTube TV blackout, which ran from October 30 to November 14. *See id.* ¶¶ 45-52, 107 & n.40. DISH did not pay license fees for any Day Pass customers it attracted during the blackout. *Id.* ¶ 51. Licensor also plausibly alleged that DISH has already specifically and intentionally manipulated its Weekend Pass product (which it now claims to have pulled from the market entirely) to avoid paying required fees. *Id.* ¶ 65.

Through this conduct, DISH has deprived Licensor of “the fruits of” the contract and frustrated the basic expectations underlying the agreement. Licensor reasonably expected to be compensated in a predictable and regular way by receiving license fees for each DISH subscriber, consistent with its underlying business model and uniform conduct throughout the industry. *See id.* ¶¶ 3, 8, 23-31, 107. Licensor bargained for a payment mechanism that determines monthly license fees owed based on the number of active subscribers on the 21st of each month. *Id.* ¶¶ 59-64. The intent of this arrangement was that Licensor would receive payment, on a monthly basis, for each customer to whom DISH sold access to the Subscription Networks. *Id.* ¶¶ 6, 59-64, 107.

DISH structured Day Pass to subvert this payment mechanism and avoid paying Licensor *anything* for the vast majority of Day Pass customers. *Id.* ¶¶ 6, 45-50, 52, 107. For the first time, DISH now claims a right to be paid by individual consumers without *any* corresponding payment obligation to Licensor. And whatever compensation Licensor does ultimately receive for Day Pass depends on whether the 21st of the month happens by chance to fall on a day where there is relatively high or low demand. *Id.* DISH’s actions “so directly impair the contract’s



value” for Licensor that it can only be “assumed that they are inconsistent with the intent of the parties” and thereby violate the implied covenant. *Trireme Energy Holdings, Inc. v. Innogy Renewables US LLC*, 2021 WL 3668092, at \*7 (S.D.N.Y. Aug. 17, 2021).

What’s more, DISH’s position is that, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

DISH’s primary argument is that Day Pass cannot violate the implied covenant because “Sling Passes are contractually authorized.” Mot. 15. As explained *supra*, Licensor disagrees. Regardless, the implied covenant is “breached when a party acts in a manner that, *although not expressly forbidden by any contractual provision*, would deprive the other party of the right to receive the benefits under their agreement.” *Stanley v. Direct Energy Servs., LLC*, 466 F. Supp. 3d 415, 428 (S.D.N.Y. 2020). “Technically complying with the terms of a contract while depriving the plaintiff of the benefit of the bargain” can thus “constitute a breach of the covenant.” *Ahmed Elkoulily, M.D., P.C. v. N.Y. State Cath. Healthplan, Inc.*, 61 N.Y.S.3d 83, 86-87 (2d Dep’t 2017).

Licensor’s claim is analogous to the one upheld by *Spinelli*. There, the Second Circuit held that photographers could pursue an implied covenant against the Associated Press (AP) for licensing their photos to the NFL for free, thereby denying the photographers an expected revenue stream. 903 F.3d at 205-06. Although the contract did not expressly prohibit complimentary licenses, the photographers’ allegations “adequately assert[ed] that the agreements, if not expressly, at least implicitly prohibit AP from licensing or selling Plaintiffs’

photographs in a way that benefits AP, but yields little to no value for Plaintiffs.” *Id.* at 205.

Similarly, here, even if one accepts DISH’s argument that the OTT License does not prohibit DISH from offering short-term, one-time access to the Subscription Networks, the implied covenant still prohibits it from reaping the benefits of the parties’ bargain while evading its obligation to compensate Licensor. *See also Trireme Energy Holdings*, 2021 WL 3668092, at \*10 (allegations of conduct “undermin[ing] the mutual understanding . . . that the contract made economic sense” only if defendant was incentivized to act on a certain timeline was sufficient to plead breach of implied covenant).

The *Spinelli* court also rejected an argument very similar to DISH’s assertion that the implied covenant “cannot be used to impose terms that a party has not bargained for.” Mot. 16. As the *Spinelli* court put it: “It cannot be that anytime a contract is silent on a specific right, implying a term limiting that hypothetical right is inconsistent with the express terms of the contract.” 903 F.3d at 206. “If that were the case, the very concept of implied terms would collapse. Instead, we must ask whether a proposed implied term defeats a right that a party actually bargained for—in other words, whether the implied term that might preserve the fruits of the contract for one party spoils the fruits for another.” *Id.* The court then looked to the purpose of the parties’ agreement—“for AP to license Plaintiffs’ photographs and earn royalties for both AP and Plaintiffs in return”—to conclude that it was entirely consistent with that agreement to “limit[] AP’s ability to structure its sublicenses so as to receive the benefits itself, but evade the payment obligations” that such sublicenses would have otherwise triggered. *Id.*

Here, too, limiting DISH’s ability to profit from distributing the Subscription Networks without paying Licensor its expected share enforces the core of the parties’ bargain. And DISH retains its bargained-for right to sell the Subscription Networks to its subscribers in exchange for



paying Licensor monthly fees. *See* Am. Compl. ¶ 64.

Although DISH pays Licensor nothing for at least 95% of Day Pass users, it claims the Court should dismiss this claim because it pays license fees for a small fraction of users. Mot. 17-18. But whether that conduct in fact violates the implied covenant, as Licensor alleges, cannot be determined on a motion to dismiss. *See 360 N. Rodeo Drive, LP*, 2024 WL 3159843, at \*3 (“whether particular conduct violates or is consistent with the duty of good faith . . . is ordinarily a question of fact to be determined by the jury”).

DISH incorrectly argues that Licensor’s implied covenant claim must be dismissed because Licensor also pleaded an express breach claim. Mot. 16. A party may plead both claims in the alternative “where, as here, there is a dispute over the meaning of the contract’s express terms.” *Spinelli*, 903 F.3d at 206; *see also Celebrity Fund Mgmt., LLC v. Hums., Inc.*, 2025 WL 2773288, at \*10 (S.D.N.Y. Sept. 29, 2025) (allowing such alternative pleading); *Trireme Energy Holdings*, 2021 WL 3668092, at \*4 (recognizing rule); *Stanley*, 466 F. Supp. 3d at 430 (same).

## **2. DISH Has Also Violated the Implied Covenant by Unreasonably Exercising Its Discretion Over Retail Pricing.**

DISH further violated the implied covenant by pricing Day Pass at rates “not commensurate with historical or market-based pricing and that were designed to extract value for DISH at Plaintiffs’ expense.” Am. Compl. ¶¶ 105, 106; *see also id.* ¶ 7 (DISH selling Day Pass for \$1).

DISH seeks to dismiss this claim because the OTT License grants it discretion to set retail pricing. Mot. 16-17. But “[e]ven when a contract gives a party discretion, that contract still ‘include[s] an implied promise that neither party will act arbitrarily or irrationally in exercising that discretion.’” *Congregation Yetev Lev D’Satmar, Inc. v. Engie Power & Gas, LLC*, 683 F. Supp. 3d 238, 247 (E.D.N.Y. 2023) (declining to dismiss implied covenant claim

that energy company used its rate-setting discretion to set unreasonable rates); *19 Recordings Ltd. v. Sony Music Ent.*, 97 F. Supp. 3d 433, 443 (S.D.N.Y. 2015) (finding that a party may not exercise its discretion arbitrarily and “would not create independent obligations beyond the contract . . . . It would only honor what anyone entering into the License Agreement would anticipate”—that the defendant would not exercise that discretion in an “arbitrary or capricious” fashion).

DISH’s *a la carte* pricing is inconsistent with *all* existing retail pricing in this context, and is sustainable only because DISH avoids license fees for most Day Pass sales. Furthermore, DISH retaliated against Licensor for enforcing its rights by lowering the price to \$1 to “celebrate[]” this Court’s preliminary injunction ruling. Am. Compl. ¶ 52, n.30. That statement is one example of DISH’s consistent advertising of Day Pass as a cheap way to watch premier sporting events—advertising that has already affected public sentiment about the value of access to the Subscription Networks. *Id.* ¶¶ 7, 10, 32, 48-50, 52, 86, 106. DISH is thereby profiting from the Subscription Networks while avoiding costs that naturally set pricing floors and undermining the content’s value. *Id.* ¶¶ 10, 86, 109; *see Zest Anchors, LLC v. Biomet 3i, LLC*, 2025 WL 1591707, at \*6-7 (S.D.N.Y. June 5, 2025) (denying motion to dismiss implied covenant counterclaim because defendant plausibly alleged that plaintiff exercised discretion not to repurchase inventory to “gain the upper hand in ongoing contract negotiations and . . . cause harm to [defendant] in the marketplace”). Whether DISH’s pricing is in fact arbitrary or irrational, Mot. 16, cannot be resolved on a motion to dismiss.

### **3. DISH Has Further Violated the Implied Covenant by Undermining Licensor’s Goodwill and Relationships With Other Distributors.**

Finally, DISH violated the implied covenant by claiming for itself [REDACTED]

[REDACTED], thereby harming Licensor’s relationships with them.

Am. Compl. ¶¶ 5, 10, 87. DISH falsely claims that Licensor pleaded “no facts” on this claim, Mot. 19, but Licensor specifically alleged that [REDACTED]. See Am. Compl. ¶¶ 10, 87, 105. That harm represents a separate way in which DISH undercut the contract’s value to Licensor.

#### **IV. CONCLUSION**

The Court should deny DISH’s Motion because all Licensor’s claims are more than adequately pleaded.



Dated: January 30, 2026

Respectfully Submitted,

**O'MELVENY & MYERS LLP**

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**CERTIFICATE OF WORD COUNT (L.R. 7.1(C))**

Pursuant to Local Rule 7.1(c), I hereby certify that, excluding the caption, table of contents, table of authorities, signature block, and this certificate, the foregoing Memorandum of Law contains 8,722 words, counted using the Microsoft Word program used to prepare it. It therefore complies with the word-count limitation of Local Rule 7.1(c).

Dated: January 30, 2026

/s/ Daniel M. Petrocelli

Daniel M. Petrocelli

**CERTIFICATE OF SERVICE**

I, Daniel M. Petrocelli, a partner of the law firm O'Melveny & Myers LLP, admitted to this Court *pro hac vice*, hereby declare under penalty of perjury:

1. On January 30, 2026, I caused to be served upon Elyse D. Echtman, counsel for DISH Network L.L.C., via email an electronic copy of the sealed version of the Memorandum of Law in Support of Plaintiffs' Opposition to DISH's Partial Motion to Dismiss the Amended Complaint.

Dated: January 30, 2026

Respectfully Submitted,

**O'MELVENY & MYERS LLP**

By: /s/ Daniel M. Petrocelli

Daniel M. Petrocelli

**EXHIBIT A****CHART PURSUANT TO SECTION 8(G)(I) OF THE COURT'S INDIVIDUAL PRACTICES IN CIVIL CASES**

| <b>Claim</b>                                                            | <b>Element(s) Not Plausibly Alleged</b>                                                                                                                                               | <b>Plaintiffs' Response<sup>10</sup></b>                                                                                                                                                                                       |
|-------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Count I: Breach of Contract                                             | The Amended Complaint fails to allege a breach of the OTT License related to Sling Passes and/or DISH's use of Licensor Marks.                                                        | The following paragraphs plausibly allege breach of the OTT License: 2, 3-6, 28-35, 37-44, 53-63, 65-70, 73-77, 87, 97, 99-100.                                                                                                |
| Count II: Breach of the Implied Covenant of Good Faith and Fair Dealing | The Amended Complaint alleges a claim for breach of the implied covenant of good faith and fair dealing that is impermissibly duplicative of the Sling Pass breach of contract claim. | The following paragraphs plausibly allege a claim for breach of the implied covenant of good faith and fair dealing: 1, 3-10, 23-32, 45-52, 59-65, 71-72, 85-87, 105-09.                                                       |
|                                                                         | The Amended Complaint fails to plausibly allege that Sling Pass pricing is arbitrary or irrational.                                                                                   | The following paragraphs plausibly allege that DISH has violated the implied covenant by pricing Day Passes in an arbitrary and irrational fashion: 7, 52 & n.30, 105-06.                                                      |
|                                                                         | The Amended Complaint fails to plausibly allege that DISH purposefully structured Sling Passes to avoid paying License Fees.                                                          | The following paragraphs plausibly allege that DISH purposefully structured its Day Pass products in a way that avoids paying License Fees: 1, 4, 6, 45-50, 52 & n.30, 65, 107-08.                                             |
|                                                                         | The Amended Complaint fails to allege cognizable damages caused by Sling Pass pricing or a purported purposeful structuring of Sling Passes to avoid paying License Fees.             | The following paragraphs plausibly allege damages caused by DISH's pricing of Day Pass and its purposeful structuring of Day Pass in a way that avoids paying License Fees: 4, 7, 10, 32, 48-51, 52 & n.30, 86, 89-92, 105-09. |

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<sup>10</sup> Licensor does not necessarily agree with DISH's identification or characterization of purportedly necessary elements, but responds solely in a nonargumentative fashion in accordance with the Court's Individual Practices.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ESPN ENTERPRISES, INC.; ESPN, INC.; ABC  
CABLE NETWORKS GROUP; AMERICAN  
BROADCASTING COMPANIES, INC.; FX  
NETWORKS, LLC; INTERNATIONAL  
FAMILY ENTERTAINMENT, INC.; NGC  
NETWORK US, LLC; SOAPnet, L.L.C.;  
WABC TELEVISION (NEW YORK), LLC;  
WPVI TELEVISION (PHILADELPHIA), LLC;  
KABC TELEVISION, LLC; KFSN  
TELEVISION, LLC; KGO TELEVISION,  
INC.; KTRK TELEVISION, INC.; WLS  
TELEVISION, INC.; and WTVD TELEVISION  
LLC,

*Plaintiffs,*

v.

DISH NETWORK L.L.C.,

*Defendant.*

DISH NETWORK L.L.C.,

*Defendant/Counterclaim Plaintiff,*

v.

ESPN ENTERPRISES, INC.; ESPN, INC.; ABC  
CABLE NETWORKS GROUP; AMERICAN  
BROADCASTING COMPANIES, INC.; FX  
NETWORKS, LLC; INTERNATIONAL  
FAMILY ENTERTAINMENT, INC.; NGC  
NETWORK US, LLC; and SOAPnet, L.L.C.,

*Plaintiffs/Counterclaim  
Defendants,*

and

THE WALT DISNEY COMPANY; BABY  
NETWORK LIMITED; FUBOTV INC.; and  
FUBOTV MEDIA INC.,

*Counterclaim Defendants.*

Case No. 1:25-cv-07169-AS

**NOTICE OF COUNTERCLAIM  
DEFENDANTS' PARTIAL  
MOTION TO DISMISS  
COUNTERCLAIM PLAINTIFF'S  
COUNTERCLAIMS, OR IN THE  
ALTERNATIVE, TO STRIKE OR  
FOR A MORE DEFINITIVE  
STATEMENT**

**ORAL ARGUMENT REQUESTED**

**NOTICE OF COUNTERCLAIM DEFENDANTS' PARTIAL MOTION TO DISMISS COUNTERCLAIM PLAINTIFF'S COUNTERCLAIMS, OR IN THE ALTERNATIVE, TO STRIKE OR FOR A MORE DEFINITIVE STATEMENT**

PLEASE TAKE NOTICE that, upon the accompanying memorandum of law, Counterclaim Defendants ESPN Enterprises, Inc.; ESPN, Inc.; ABC Cable Networks Group; American Broadcasting Companies, Inc.; FX Networks, LLC; International Family Entertainment, Inc.; NGC Network US, LLC; SOAPnet, L.L.C; The Walt Disney Company; Baby Network Limited; FuboTV Inc.; and FuboTV Media Inc. will move this Court, before the Honorable Arun Subramanian, at the United States District Court for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, Courtroom 15A, New York, New York 10007, at a date and time to be determined by the Court, for an Order: (1) dismissing Counts I, II, III, IV, V, VI, VII, of DISH Network L.L.C.'s Counterclaims pursuant to Federal Rule of Civil Procedure 12(b)(6); (2) dismissing Count XII of DISH Network L.L.C's Counterclaims pursuant to Federal Rule of Civil Procedure 12(b)(6), or in the alternative, striking Count XII or in the alternative requiring a more definitive statement; and (3) any such other and future relief as the Court deems proper.

Dated: February 20, 2026

Respectfully Submitted,

**LATHAM & WATKINS LLP**

**O'MELVENY & MYERS LLP**

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International Family Entertainment, Inc.;  
NGC Network US, LLC; SOAPnet, L.L.C.; The  
Walt Disney Company; Baby Network Limited*



# **EXHIBIT 1**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

ESPN ENTERPRISES, INC.; ESPN, INC.; ABC CABLE NETWORKS GROUP; AMERICAN BROADCASTING COMPANIES, INC.; FX NETWORKS, LLC; INTERNATIONAL FAMILY ENTERTAINMENT, INC.; NGC NETWORK US, LLC; SOAPnet, L.L.C.; WABC TELEVISION (NEW YORK), LLC; WPVI TELEVISION (PHILADELPHIA), LLC; KABC TELEVISION, LLC; KFSN TELEVISION, LLC; KGO TELEVISION, INC.; KTRK TELEVISION, INC.; WLS TELEVISION, INC.; and WTVD TELEVISION LLC,

*Plaintiffs,*

v.

DISH NETWORK L.L.C.,

*Defendant.*

DISH NETWORK L.L.C.,

*Defendant/Counterclaim Plaintiff,*

v.

ESPN ENTERPRISES, INC.; ESPN, INC.; ABC CABLE NETWORKS GROUP; AMERICAN BROADCASTING COMPANIES, INC.; FX NETWORKS, LLC; INTERNATIONAL FAMILY ENTERTAINMENT, INC.; NGC NETWORK US, LLC; and SOAPnet, L.L.C.,

*Plaintiffs/Counterclaim  
Defendants,*

and

THE WALT DISNEY COMPANY; BABY NETWORK LIMITED; FUBOTV INC.; and FUBOTV MEDIA INC.,

*Counterclaim Defendants.*

Case No. 1:25-cv-07169-AS

**CHART OF ELEMENTS NOT  
PLAUSIBLY ALLEGED IN  
COUNTERCLAIM PLAINTIFF'S  
COUNTERCLAIMS**

**CHART OF ELEMENTS NOT PLAUSIBLY ALLEGED IN COUNTERCLAIM  
PLAINTIFF'S COUNTERCLAIMS**

| <b>Claim</b>                                                                                                                                  | <b>Elements(s) Not Plausibly Alleged</b>                                                                                                                                                                                                                                                                                                                                                      | <b>Counterclaim-Plaintiff's Response</b> |
|-----------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|
| Counts I and VII:<br>Unlawful Tying in Violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and New York's Donnelly Act (against Disney) | DISH fails to plausibly allege: <ol style="list-style-type: none"> <li>1. The existence of a tying product market;</li> <li>2. That Disney has sufficient economic power in the tying product market to coerce purchaser acceptance of the tied product;</li> <li>3. The existence of a tied product market; and</li> <li>4. An anticompetitive effect in the tied product market.</li> </ol> |                                          |
| Count II: Unreasonable Restraint of Trade in Violation of Section 1 of the Sherman Act, 15 U.S.C. § 1 (against Disney)                        | DISH fails to plausibly allege: <ol style="list-style-type: none"> <li>1. The existence of a relevant product market; and</li> <li>2. That the ESPN Unlimited / FOX One bundle restrains trade in a relevant market.</li> </ol>                                                                                                                                                               |                                          |
| Count III:<br>Unreasonable Restraint of Trade in Violation of Section 1 of the Sherman Act, 15 U.S.C. § 1 (against Disney)                    | DISH fails to plausibly allege: <ol style="list-style-type: none"> <li>1. That Disney, Fox, and CBS entered into a conspiracy;</li> <li>2. The existence of a relevant product market; and</li> <li>3. That the creation of Fubo Sports restrains trade in a relevant market.</li> </ol>                                                                                                      |                                          |
| Count IV: Violation of Section 7 of the Clayton Act, 15 U.S.C. § 18 (against Disney and Fubo)                                                 | DISH fails to plausibly allege: <ol style="list-style-type: none"> <li>1. That it can seek divestiture, given it sat on its claims;</li> <li>2. That it has Article III standing to challenge the acquisition;</li> </ol>                                                                                                                                                                     |                                          |

|                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |
|-----------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
|                                                                                                                 | <ol style="list-style-type: none"> <li>3. That it has antitrust standing to challenge the acquisition;</li> <li>4. With its horizontal theory, the existence of a relevant product market;</li> <li>5. With its horizontal theory, that the acquisition substantially lessens competition in a relevant market;</li> <li>6. With its vertical theory, the existence of a relevant product market; and</li> <li>7. With its vertical theory, that the acquisition substantially lessens competition in a relevant market.</li> </ol> |  |
| Count V: Violation of Section 1 of the Sherman Act, 15 U.S.C. § 1 (against Disney and Fubo)                     | <p>DISH fails to plausibly allege:</p> <ol style="list-style-type: none"> <li>1. That it can seek divestiture, given it sat on its claims;</li> <li>2. That it has Article III standing to challenge the acquisition;</li> <li>3. That it has antitrust standing to challenge the acquisition; and</li> <li>4. That the acquisition created an anticompetitive effect in a relevant market.</li> </ol>                                                                                                                              |  |
| Count VI: Attempted Monopolization in Violation of Section 2 of the Sherman Act, 15 U.S.C. § 2 (against Disney) | <p>DISH fails to plausibly allege:</p> <ol style="list-style-type: none"> <li>1. The existence of a relevant product market;</li> <li>2. That Disney acted with a specific intent to monopolize; and</li> <li>3. That Disney engaged in exclusionary conduct.</li> </ol>                                                                                                                                                                                                                                                            |  |

|                                                   |                                                                                                                     |  |
|---------------------------------------------------|---------------------------------------------------------------------------------------------------------------------|--|
| Count XII: Breach of Contract (against Licensors) | DISH fails to plausibly allege:<br><br>1. Sufficient factual matter to state a claim that is plausible on its face. |  |
|---------------------------------------------------|---------------------------------------------------------------------------------------------------------------------|--|



**User Name:** Lori Maarbjerg

**Date and Time:** Tuesday, April 14, 2026 2:25 PM EDT

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## Document (1)

1. [ESPN Enters. v. DISH Network L.L.C.](#)

**Client/Matter:** -None-

**Search Terms:**

**Search Type:** Natural Language

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**Content Type**

**Narrowed by**  
-None-



## **ESPN Enters. v. DISH Network L.L.C.**

United States District Court for the Southern District of New York

November 18, 2025, Decided

25-cv-7169 (AS)

### **Reporter**

2025 U.S. Dist. LEXIS 228067 \*; 810 F. Supp. 3d 452; 2025 LX 592938; 2025 WL 3215571

ESPN Enterprises, Inc. et al., Plaintiffs, -against- DISH Network L.L.C., Defendant.

**Opinion by:** ARUN SUBRAMANIAN

**Subsequent History:** As Corrected November 23, 2025.

### **Opinion**

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**Prior History:** [ESPN Enters., Inc. v. Dish Network L.L.C., 2025 U.S. Dist. LEXIS 178072, 2025 WL 2602160 \(Sept. 9, 2025\)](#)

### OPINION AND ORDER

ARUN SUBRAMANIAN, United States District Judge:

### **Core Terms**

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subscriber, network, subscribe, license, dish, sling, user, customer, preliminary injunction, irreparable harm, negotiate, orange, dictionary, advertize, platform, video, likelihood of success, license fee, distributor, calculate

**Counsel:** [\*1] For ESPN Enterprises, Inc., a Delaware Corporation, Plaintiff: Allen W. Burton, LEAD ATTORNEY, O'Melveny & Myers LLP, New York, NY; Daniel M. Petrocelli, LEAD ATTORNEY, O'Melveny & Myers, LLP(C'tyCity), Los Angeles, CA; Brian Quinn, O'Melveny & Myers LLP, Washington, DC; Heather Welles, O'Melveny & Myers LLP, Los Angeles, CA.

For ABC Cable Networks Group, a California corporation, International Family Entertainment, Inc., a Delaware corporation, SOAPnet, L.L.C., a Delaware limited liability company, Plaintiffs: Allen W. Burton, LEAD ATTORNEY, O'Melveny & Myers LLP, New York, NY; Daniel M. Petrocelli, LEAD ATTORNEY, O'Melveny & Myers, LLP(C'tyCity), Los Angeles, CA.

For DISH Network, L.L.C., a Colorado limited liability company, Defendant: Elyse D. Echtman, LEAD ATTORNEY, Steptoe LLP, New York, NY; Emma S Marshak, Michael Jarrett Allan, Michelle Kallen, Steptoe LLP, Washington, DC.

**Judges:** ARUN SUBRAMANIAN, United States District Judge.

### **BACKGROUND**

DISH Network offers customers access to its Sling TV platform through the "Sling Orange" service. With Sling Orange, customers can stream over the Internet a host of TV networks, [\*2] including Disney networks like ESPN. While Sling Orange traditionally had only monthly subscribers, this August DISH began offering shorter-term "Sling Passes" for a day, weekend, or week. See Dkt. 46. Disney says that the Passes violate the parties' licensing agreement, and it wants a preliminary injunction barring their sale. For the reasons below, Disney's motion is DENIED.

### **LEGAL STANDARD**

"A preliminary injunction 'is one of the most drastic tools in the arsenal of judicial remedies.'" [Two Hands IP LLC v. Two Hands Am., Inc., 563 F. Supp. 3d 290, 298 \(S.D.N.Y. 2021\)](#) (quoting [Grand River Enter. Six Nations, Ltd. v. Pryor, 481 F.3d 60, 66 \(2d Cir. 2007\)](#)). "It 'should not be granted unless the movant, by a clear showing, carries the burden of persuasion.'" *Id.* (quoting [Mazurek v. Armstrong, 520 U.S. 968, 972, 117 S. Ct. 1865, 138 L. Ed. 2d 162 \(1997\)](#)). "A party seeking a preliminary injunction must show (1) irreparable harm; (2) either a likelihood of success on the merits or both serious questions on the merits and a balance of hardships decidedly favoring the moving party; and (3)

that granting a preliminary injunction is in the public interest." *N. Am. Soccer League, LLC v. U.S. Soccer Fed'n, Inc.*, 883 F.3d 32, 37 (2d Cir. 2018)).

## DISCUSSION

### I. Disney has not shown a likelihood of success on the merits.

Under New York law, a breach-of-contract plaintiff "must plead and prove: (1) the existence of a contract; (2) a breach of that contract; and (3) damages resulting from the breach." *Vista Food Exch., Inc. v. Comercial De Alimentos Sanchez S De R L De C.V.*, 147 F.4th 73, 88 (2d Cir. 2025). No one disputes [\*3] the existence of the contract—the "OTT License." But Disney says the License allows DISH to distribute its networks only through paid monthly subscriptions. Dkt. 32 at 5. That argument is unlikely to succeed.

Let's start with the text. The License, in the "Grant of Rights" section, grants DISH the right to distribute Disney's networks to "Network Subscribers" through defined "PSS Services." Dkt. 33-1 at 38-39, OTT License § 2; *id.* at 10-11, § 1. So the first question is whether Sling Orange is a "PSS Service." "PSS Service" is defined as "a video programming service . . . as part of which subscribers then-currently entitled to receive applicable linear programming networks . . . may access . . . only one stream of content at any time on a paid subscription basis." *Id.* at 28, § 1. There's more to the definition, but this is the language the parties focus on. Hearing Tr., October 22, 2025, at 20, 64.

No one disputes that as a general matter Sling Orange qualifies as a PSS Service. Hearing Tr. at 6, 13. It's a video programming service fitting all the other parts of the definition. The question is whether the reference to "paid subscription basis" moves Sling Orange out of the definition [\*4] when users access it through Passes, as opposed to traditional monthly subscriptions. "Paid subscription basis" isn't defined in the contract, so Disney points to dictionary definitions and cases to support the idea that it means continuous service over a series of months, excluding the Passes at issue here. Dkt. 32 at 17-19.

But Disney overlooks the full scope of the License's Grant of Rights. As relevant here, that Grant has two parts. First it defines the types of DISH services that are covered, here "PSS Services," and then it expressly defines the subscribers to Disney's networks within

those services who are authorized to receive Disney's programming. *See, e.g.*, Dkt. 33-1 at 38-39, OTT License § 2(a)(i)(A) (noting that for each "DISH PSS English Service" (that is, Sling Orange), DISH has a license to distribute Disney's networks to "Network Subscribers").

Here, when determining who the subscribers to Disney's networks through Sling Orange are, the License makes clear that it's those encompassed by the definition of "Network Subscribers." The parties didn't leave the definition of who subscribers are up to chance. They spelled it out in the contract. Indeed, Disney and DISH included [\*5] 37 pages of definitions in the License, precisely to avoid a dispute like this one arising. So that brings us to the definition of "Network Subscriber."

"Network Subscriber" is defined as a "Subscriber" "intentionally authorized by DISH" to receive the relevant network "via the Sling Platform." Dkt. 33-1 at 22-23, OTT License § 1. "Subscriber," in turn, is defined as "a person intentionally authorized by DISH to receive **any level of video programming service or package of programming networks via the Sling Platform.**" Dkt. 33-1 at 34, OTT License § 1 (emphasis added). The "Subscriber" definition continues to clarify that users of DISH's free services count as Subscribers: "For purposes of this Agreement, a person who accesses programming content via the DISH Free Service will be deemed to be a Subscriber, regardless of whether such person subscribes to a programming service, is charged a fee or has a subscription account." *Id.* at 34-35.

So in the "Subscriber" definition: (1) there's no minimum subscription length or other terms specified, (2) the definition includes anyone authorized to receive "any level of video programming service or package of programming networks," and (3) it even [\*6] includes free-service users regardless of whether they are charged a fee, "subscribe to a programming service," or have an account. That broad definition clearly covers users of the Passes at issue in this case. Indeed, in its briefing, Disney offered no argument as to how Pass users would fall outside this definition. Nor did it explain why the "Network Subscriber" term is in the License if, as Disney argues, the License's Grant of Rights begins and ends with the undefined term "paid subscription basis" in the PSS Service definition.

At oral argument, Disney said that the purpose of the "Network Subscriber" term is solely to distinguish authorized users of the Sling platform from pirates. On this score, Disney points to the use of "intentionally

authorized" in both the "Network Subscriber" and "Subscriber" definitions. Hearing Tr. at 16-17. But that doesn't explain the *rest* of the "Subscriber" definition, which makes clear that in addition to being intentionally authorized, a Subscriber is anyone who receives "any level of video programming service or package of programming networks via the Sling Platform." Nothing in that language shows an intent to limit subscribers solely to traditional [\*7] monthly subscribers, language the parties could have easily inserted into this definition if they wanted to. This is enough to resolve the likelihood-of-success inquiry in DISH's favor.<sup>1</sup>

But even if the Court discarded the definition of "Network Subscriber," and instead looked at conventional understandings about what a "subscription" is, treating the Passes as subscriptions doesn't necessarily defy those understandings. True enough, one understanding of "subscription" is a recurring payment or agreement for multiple periods of time. *See, e.g., Subscription*, Merriam-Webster Dictionary ("an arrangement for providing, receiving or making use of something of a *continuing or periodic nature*" (emphasis added));<sup>2</sup> *Subscription*, Cambridge Dictionary ("an amount of money that you pay *regularly* to receive a product or service" (emphasis added));<sup>3</sup> *see also Subscriber*, Oxford English Dictionary ("a person who makes a *regular payment ....*" (emphasis added)).<sup>4</sup>

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<sup>1</sup> The explicit inclusion of the DISH Free Service in the "Network Subscriber" definition (or "free trial[s] and preview[s]" in the "PSS Service" definition) doesn't suggest that the Passes, in contrast, aren't covered by the License. *See* Dkt. 33-1 at 28, OTT License § 1 (clarifying that offering a "limited free trial or free preview" won't "disqualify a video programming service from being a PSS Service"). As DISH observed at oral argument, clarifying that its free offerings were included in the License was necessary because it otherwise only covers "paid" subscription services. Hearing Tr. at 63-64. That's not an issue with the Passes. They are paid for, and they fit within the License's Grant of Rights, including the express definition of "Network Subscriber," which covers anyone receiving "any level of video programming service or package of programming networks."

<sup>2</sup> *See* <https://www.merriam-webster.com/dictionary/subscription> (last visited October 28, 2025).

<sup>3</sup> *See* <https://dictionary.cambridge.org/dictionary/english/subscription> (last visited October 28, 2025).

<sup>4</sup> *See*

But that isn't always the case.

Take, for instance, the purchase of a trial subscription to a product or service that expires at the end of the trial period. It isn't recurring, but one might reasonably think of it as a subscription. [\*8] Just like the Passes, a trial user *might* decide to buy more of the product or service in the future, but she isn't obligated to do so. In this regard, DISH argues that the real hallmark of a subscription is that unlike the purchase of a thing—for example, a movie à-la-carte—a subscription gives one access for a particular time. This is consistent with the example given in Merriam-Webster, which Disney relies on. *See Subscription*, Merriam-Webster Dictionary (giving the example of a "purchase by prepayment for . . . a certain period of access to or use of something (such as an online service)"); *see also Subscription*, American Heritage Dictionary ("an agreement to receive or be given access to information or services for a specific period of time, especially over the internet").<sup>5</sup> Here, whether the time periods are short or not, the Sling Passes at issue are for specified periods of time, and not for specified programs or titles. For that reason, considering the Passes to be "subscriptions" doesn't necessarily conflict with conventional understandings of what that term means. To be clear, in this case the parties defined who a "Network Subscriber" is in a way that plainly includes the [\*9] Passes. So the Court need not—and does not—make any findings about whether the Passes would be subscriptions absent that definition. Right now, the point in citing these dictionary definitions is that Disney's argument that subscriptions *must* be recurring over *multiple* time periods isn't necessarily right.<sup>6</sup>

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[https://www.oed.com/dictionary/subscriber\\_n?tab=meaning\\_and\\_use#20093165](https://www.oed.com/dictionary/subscriber_n?tab=meaning_and_use#20093165) (last visited October 28, 2025).

<sup>5</sup> *See* <https://ahdictionary.com/word/search.html?q=subscription> (last visited October 28, 2025).

<sup>6</sup> Disney also points to cases under the [Video Privacy Protection Act \(VPPA\)](#) in which courts have concluded that a "subscriber" needs an "ongoing commitment or relationship." Dkt. 32 at 18. But that statute isn't at issue here. In any event, "[t]he VPPA does not define the term 'subscriber,'" [Ellis v. Cartoon Network, Inc., 803 F.3d 1251, 1255 \(11th Cir. 2015\)](#), and DISH points to various reasons why it believes the Pass users would qualify even under the VPPA, including that "Sling Pass subscribers' commitments are 'ongoing' for at least one full day, a three-day weekend or seven days." Dkt. 54 at 20-21.

With no further argument as to the definition of "Network Subscriber," Disney turns to the License's provisions regarding fees. DISH is required to pay Disney, with respect to each "Reporting Period" (basically every month), "monthly fees calculated" by multiplying the per-Network Subscriber rate by the number of Network Subscribers. Dkt. 33-1 at 71, OTT License § 8. Right off the bat, the reference in the License Fees section to "Network Subscribers" makes clear, contrary to Disney's argument, that this defined term governs who has access to Disney's networks. Still, Disney argues that the License's payment framework shows that the parties contemplated that, at least in the main, subscribers would be monthly in nature. But nothing in the License Fees provision purports to say that subscribers *must* contract for services for at least a month.

Disney focuses on the way that License [\*10] Fees are calculated. The License specifies that "[f]or purposes of calculating License Fees due . . . with respect to each Reporting Period, the number of Network Subscribers for each Subscription Network will be calculated by taking the sum of the number of Network Subscribers thereto as of the last day of the (A) Reporting Period in question and (B) immediately preceding Reporting Period, and then dividing that sum by two." Dkt. 33-1 at 71, OTT License § 8(b)(i). The "Reporting Period" spans from the "22nd day of one calendar month [to] the 21st day of the immediately following month." *Id.* at 30. Because of this formula, users of Passes who aren't subscribed on the relevant measurement dates—the 21st day of either the last month or the current one—will fall through the cracks.<sup>7</sup> And because the users of the Passes are signing up for a day, weekend, or week at a time only, a lot of them will fall through. That can't have been the intent of the parties, says Disney.

The parties disagree as to the purpose of the averaging mechanism. But no one suggests that before Sling Passes launched, any paying Sling customer had the choice to contract for just part of a month's worth of service. So [\*11] the Court recognizes that this new offering will result in users left uncounted. Whether that's unfair or not is a hotly disputed question. Among other things, because the License's payment formula requires DISH to pay Disney a full-month license fee for active Pass users on the 21st day of a month, even though they are only signing up for a day, weekend, or a week at a time, it isn't clear that any "overpayment" for

those users won't balance out the non-payment for others.<sup>8</sup>

But in any event, the Court can't rewrite the terms of the License—which was heavily negotiated by the parties over a series of months—to fix any potential unfairness. See [\*Greenfield v. Philles Recs., Inc.\*, 98 N.Y.2d 562, 570, 780 N.E.2d 166, 750 N.Y.S.2d 565 \(2002\)](#) ("[A] court is not free to alter the contract to reflect its personal notions of fairness and equity."); [\*Alta Partners, LLC v. Getty Images Holdings, Inc.\*, 700 F. Supp. 3d 32, 47 \(S.D.N.Y. 2023\)](#) ("A claim for breach of [the] covenant [of good faith and fair dealing] cannot be used to add contract terms not bargained for." (internal quotations omitted)). In this regard, [\*Boosey & Hawkes Music Publishers, Ltd. v. Walt Disney Co.\*, 145 F.3d 481, 487 \(2d Cir. 1998\)](#), is instructive:

If the contract is more reasonably read to convey one meaning, the party benefitted by that reading should be able to rely on it; the party seeking exception or deviation from the meaning reasonably conveyed by the words of the contract should bear [\*12] the burden of negotiating for language that would express the limitation or deviation. This principle favors neither licensors nor licensees. It follows simply from the words of the contract. The words of [DISH's] license are more reasonably read to include than to exclude [Sling Passes]. Thus, we conclude that the burden fell on [Disney], if [it] wished to exclude new markets arising from subsequently developed [offerings, e.g., Passes], to insert such language of limitation in the license, rather than on [DISH] to add language that reiterated what the license already stated.

[\*Id.\* at 487.](#)<sup>9</sup>

<sup>8</sup> In addition, DISH offers evidence that the "License Fee calculation is substantially more favorable to Disney than a daily average subscriber calculation" that includes all Pass users would be. Dkt. 54 at 15 (citing Dkt. 60 ¶¶ 11(c), 26-28). The Court doesn't need to credit that evidence to recognize that the fees mechanism doesn't lead to absurd results that would counsel departing from the plain language of the agreement.

<sup>9</sup> Disney emphasizes the License's reservation-of-rights clause. OTT License ¶ 14(i)(i). But that clause just says that any rights not "expressly granted" to DISH are retained. Here, the parties did expressly define who "Network Subscribers" are in a way that encompasses the Passes. For that reason, the reservation clause doesn't "alter[]" that analysis. [\*Boosey, 145 F.3d at 488\*](#) (noting reservation clause "contributes

<sup>7</sup> Although the License contains a proration provision, Dkt. 33-1 at 73, Disney says it wouldn't apply to the Passes, and DISH doesn't dispute that.



As the Court has explained, the definition of "Network Subscriber" includes anyone authorized to receive "any level of video programming service or package of programming networks," so it plainly includes Pass users. And Disney—who insists that the Passes aren't allowed—didn't insert language into the agreement to guard against them, or to make clear that subscriptions had to last for a month or more. That's so even though the parties expressly dealt in the License with other types of ephemeral offerings—like free trials and previews. Under these circumstances, Disney's recourse is to negotiate more [\*13] specific language in its next license with DISH. See [Greenfield, 98 N.Y.2d at 573](#) ("We realize that our conclusion here effectively prevents plaintiffs from sharing in the profits that defendants have received from [the] licensing. However sympathetic plaintiffs' plight, we cannot resolve the case on that ground under the guise of contract construction. Our guiding principle must be to neutrally apply the rules of contract interpretation because only in this way can we ensure stability in the law and provide guidance to parties weighing the risks and advantages of entering a binding agreement."). As the parties agreed at oral argument, that negotiation is around the corner, given that the License expires in less than a year and everyone agrees that the next round of negotiations will need to commence soon. Hearing Tr. at 67-69.

To be clear, the Court isn't deciding *how* DISH is required to account for Passes in the fees it owes to Disney. If DISH has structured its Passes to purposefully evade the License's payment requirements, then that could constitute either a breach of contract, or at least, breach of the implied covenant of good faith and fair dealing.<sup>10</sup> Those issues can be raised by Disney as this case proceeds. [\*14] The only question on this motion is whether the users of Passes count as subscribers authorized to access Disney's networks in the first place. For the reasons stated above, they are. Accordingly, Disney has failed to show either a likelihood of success or "serious questions" going to the

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nothing to the definition of the boundaries of the license").

<sup>10</sup> For example, in its briefing Disney pointed out that DISH "counts Network Subscribers for License Fee payment at 3 a.m. on the 21st of the month—but does not start Weekend Passes until 4 a.m. Friday and cuts them off at 1 a.m. Monday," to take advantage of the reporting gap. Dkt. 62 at 9 n.3. But after the parties submitted their briefs, DISH appears to have addressed this issue, "chang[ing] time parameters for the Weekend Pass on the Sling Orange service to run from 1 a.m. MT on Friday to 1 a.m. MT on Monday," so "[t]he Weekend Pass is now a full 72 hours." Dkt. 79.

merits.

Because the License isn't ambiguous about who is counted as a subscriber, the Court doesn't delve into the extrinsic evidence put in by the parties. See [JA Apparel Corp. v. Abboud, 568 F.3d 390, 397 \(2d Cir. 2009\)](#) ("In interpreting an unambiguous contract . . . the court is not to consider any extrinsic evidence as to the parties' intentions."). For instance, the Court doesn't consider other contracts between the parties that contained "minimum subscription length" provisions (aiding DISH's argument, given the absence of similar language here) or, on the other hand, the fact that DISH advertised its Passes as not requiring any "subscription" (aiding Disney's). Dkt. 54 at 24; Dkt. 32 at 19; see also, e.g., [Dreni v. PrinterOn Am. Corp., 2021 U.S. Dist. LEXIS 169158, 2021 WL 4066635, at \\*14 \(S.D.N.Y. 2021\)](#) (determining that "after-the-fact statement" by defendants' employees who weren't "involved in [the parties'] contract negotiations . . . sheds no light on the parties' intent and understanding regarding the [contract] during negotiations and at the [\*15] time of contracting"); [Dominick & Dominick LLC v. Deutsche Oel & Gas AG, 2016 WL 11259075, at \\*9 \(S.D.N.Y. Aug. 15, 2016\)](#) (holding that "after-the-fact statement cannot alter the meaning of the unambiguous Agreement"), *aff'd*, [756 F. App'x 58 \(2d Cir. 2018\)](#).

And even if the License were ambiguous, this isn't a case in which the extrinsic evidence furnished by the parties is so clear that a preliminary injunction would be warranted. For instance, neither side has suggested that the issue of partial-month subscriptions or other paid-for temporary offerings were discussed in the parties' negotiations over the License and that they were either accepted or rejected. Cf. [Really Good Stuff, LLC v. BAP Investors, L.C., 813 F. App'x 39, 44 \(2d Cir. 2020\)](#) (holding contract ambiguous and determining that the defendant's interpretation—that the contract required the plaintiff to purchase *all* or *none* of the defendant's inventory—was precluded by the parties' course of conduct, which showed that the plaintiff purchased only *some* of the defendant's inventory "on four occasions").

## II. Disney has not shown irreparable harm.

Even if Disney could show a likelihood of success on the merits, it fails to show irreparable harm warranting preliminary injunctive relief. "The irreparable harm requirement is 'the single most important prerequisite for the issuance of a preliminary injunction.'" [State Farm Mut. Auto. Ins. Co. v. Tri-Borough NY Med. Prac. P.C.,](#)

[120 F.4th 59, 80 \(2d Cir. 2024\)](#) (quoting [Faiveley Transp. Malmö AB v. Wabtec Corp.](#), [559 F.3d 110, 118 \(2d Cir. 2009\)](#)). "To establish [\*16] irreparable harm, the moving party must show an 'injury that is neither remote nor speculative, but actual and imminent and that cannot be remedied by an award of monetary damages.'"

[St. Joseph's Hosp. Health Ctr. v. Am. Anesthesiology of Syracuse, P.C.](#), [131 F.4th 102, 106 \(2d Cir. 2025\)](#) (quoting [New York v. U.S. Dep't of Homeland Sec.](#), [969 F.3d 42, 86 \(2d Cir. 2020\)](#)). Disney hasn't made that showing.

Disney claims it will suffer harm to its 1) relationships with other distributors, 2) business model, 3) value and brand, 4) direct-to-consumer streaming service (ESPN Unlimited), and 5) right to exclude unauthorized distribution of its networks. Dkt. 32 at 26-35. But Disney fails to show that those alleged harms aren't speculative and that they can't be measured and remedied through money damages.

First, Disney says other distributors have already pressured Disney for similar rights. Dkt. 32 at 8; Dkt. 64 ¶¶ 16-17. But any harm from that pressure is speculative, because Disney maintains that the Passes and any similar offerings aren't authorized under its licensing agreements, and it hasn't assented to *any* of those distributors' requests to offer similar products. Dkt. 41-1 ¶¶ 27-28. Relatedly, Disney hasn't alleged that it has lost business relationships with any distributors due to the Passes, and it points to no case showing that "frustration among distributors [\*17] who are denied the right to distribute [television networks] on a transactional basis" is enough to show irreparable harm. Dkt. 32 at 27.

Second, Disney claims the Passes will upend Disney's "overall business model" by disrupting its "robust financial planning" and "projections and calculations based on monthly subscriptions." Dkt. 32 at 28. But Disney's evidence doesn't show that it will have to make a "fundamental change to [its] . . . business model," or will be unable to make "significant investments in content acquisition," *while this case is pending*, Dkt. 35 ¶¶ 22, 26. See [Jayaraj v. Scappini](#), [66 F.3d 36, 40 \(2d Cir. 1995\)](#) (considering only "the harm arising during the interim between the request for an injunction and final disposition of the case on the merits"). Similarly, Disney claims the Passes will undermine its advertising business because they make it harder to predict subscriptions, which will in turn make Disney's networks less attractive to advertisers. Dkt. 36 ¶ 9. But Disney's Executive Vice President of Ad Sales' statement that he

"believe[s] that Day Pass will devalue Disney's advertising inventory and impair our efforts to sell it" does not show that advertising sales have declined or will imminently decline because [\*18] of the Passes. *Id.* ¶ 10. And DISH points to testimony that the Passes may *benefit* advertising sales by increasing viewership. Dkt. 59 ¶ 6. At this stage, the Court finds that the evidence is inconclusive on that issue. And to the extent DISH invalidly sold Passes that diminish Disney's ad revenue or prevent it from acquiring content, that's something that could be measured and remedied with money damages. See [M.V. Music v. V.P. Recs. Retail Outlet, Inc.](#), [653 F. Supp. 3d 31, 40-41 \(E.D.N.Y. 2023\)](#) ("Courts in this Circuit have consistently held that allegations that a defendant's [actions] created an economic disadvantage and an economic loss of sales for a plaintiff are exactly the type of monetary harm [that] can be rectified by financial compensation." (internal quotations omitted)).

Third, although Disney asserts that the Passes' prices "degrade[] the intrinsic value consumers place on" Disney's networks or otherwise impair Disney's goodwill among the public, Disney hasn't offered any evidence from consumers that the Passes make them consider Disney's networks less valuable.<sup>11</sup> See Dkt. 32 at 29 (relying only on DISH's press releases and advertising materials for this point); [Atari Interactive, Inc. v. Printify, Inc.](#), [714 F. Supp. 3d 225, 238 \(S.D.N.Y. 2024\)](#) ("[C]onclusory statements of loss of reputation and goodwill constitute an insufficient basis [\*19] for a finding of irreparable harm."); *cf.* [Broker Genius, Inc. v. Volpone](#), [313 F. Supp. 3d 484, 496 \(S.D.N.Y. 2018\)](#) (issuing preliminary injunction where plaintiff "credibly demonstrated that . . . a perception *is developing* in the industry that [plaintiff] 'rips off' its customers" (emphasis added)). That is, Disney hasn't shown that the Passes irreparably harm any "distinct image it has worked so hard to create in the minds of customers." [Benihana, Inc. v. Benihana of Tokyo, LLC](#), [784 F.3d 887, 896 \(2d Cir. 2015\)](#) (affirming grant of preliminary injunction in part because district court *credited* such evidence).

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<sup>11</sup> Disney relies on *Reuters Ltd. v. United Press Int'l, Inc.* to say its loss of goodwill is "incalculable in dollars and cents." [903 F.2d 904, 909 \(2d Cir. 1990\)](#). But the court in that case focused on the fact that "terminating the delivery of a unique product to a distributor whose customers expect and rely on the distributor for a continuous supply of that product almost inevitably creates irreparable damage to the good will of the distributor." *Id.* at 907-08. That circumstance doesn't apply to Disney. If anything, it would apply to *DISH* if the preliminary injunction were granted.



Fourth, Disney's evidence doesn't show that the Passes siphon customers from ESPN Unlimited. Dkt. 35 at ¶ 33 (Disney employee stating only that he "would expect that Day Pass is siphoning ESPN Unlimited customers" (emphasis added)). And if the Passes *do* siphon customers from ESPN Unlimited, Disney hasn't shown that those losses would not be quantifiable. See [M.V. Music](#), 653 F. Supp. 3d at 40-41.<sup>12</sup> On both counts, this case is different from [Muze Inc. v. Dig. On-Demand, Inc.](#), 123 F. Supp. 2d 118 (S.D.N.Y. 2000). As to "actual and imminent" harm, Muze provided evidence that the defendant—without authorization—offered Muze's copyrighted content "at no charge" to one of Muze's "very significant" customers, causing that customer to remove Muze's products from its "flagship" store and "cancel[] [\*20] almost \$300,000 in purchase orders for" Muze's products. [Muze](#) emphasized that the harm to Muze was "broader than lost license fees and, indeed, broader than lost revenue," in part because the defendant also did not add the required proprietary-rights notices to the Muze products it was selling, "rendering futile Muze's contractual effort to foster consumer identification with its product," and "present[ing] an immediate risk of harm to Muze's reputation as a leader in its field."

[Id. at 130-31](#). That sort of immediate injury and reputational harm doesn't apply here, where Disney hasn't shown it has lost customers due to the Passes, and DISH isn't trying to subvert Disney's proprietary rights in the way the

[Muze](#) defendant did.<sup>13</sup> The networks are being distributed in the same platform, in the same manner, that they always have, but to a broader array of Sling customers.

Fifth, it is true Disney has a right to exclude unauthorized distribution of its networks. But unlike the plaintiffs in Disney's cases, who suffered irreparable harm because they lost their ability to control their intellectual property [\*21] rights and content distribution,<sup>14</sup> Disney retains that right in the License. That is, if Disney is correct that DISH materially breached the agreement, then Disney can seek appropriate remedies for that violation in this case, and it can exercise the termination rights available to it that are set forth in the License. Dkt. 33-1 at 80-81, OTT License § 10. That's unlike a case, such as one involving piracy, where it would be difficult to quantify harm because of the impossibility of collecting data on the number of unauthorized users. See, e.g.,

[WPix, Inc. v. Ivi, Inc.](#), 765 F. Supp. 2d 594, 620 (S.D.N.Y. 2011), *aff'd*, 691 F.3d 275 (2d Cir. 2012) ("There is no way to know how many people have used [the defendant's] rather than sanctioned methods to watch plaintiffs' programming, or how many people have used [the defendant's service] to watch programming that should not have been available.").

In this case, Disney could likely quantify its alleged harm using information that could be readily obtained: data on lost revenue and sales, if there is any, DISH's numbers concerning subscriptions and Passes, customer surveys, testimony from those in the industry, and other relevant evidence. At the very least, Disney hasn't shown at this stage that it won't be able to do what [\*22] is commonplace in commercial litigation of

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<sup>12</sup> Disney relies on [Tom Doherty Assocs., Inc. v. Saban Entm't, Inc.](#), 60 F.3d 27 (2d Cir. 1995), in arguing that the "loss of a concrete opportunity to grow [ESPN Unlimited] is irreparable harm," Dkt. 32 at 30. But the Court in *Doherty* found irreparable harm where, without a preliminary injunction, the plaintiff would be "unable to publish a book based on the Power Rangers" and would "lose an opportunity" to "add[] a unique product line." [60 F.3d at 38](#). Here, Disney has successfully launched ESPN Unlimited, and its alleged lost opportunities are speculative. Dkt. 35 ¶ 31. This case is also materially different from [Regeneron Pharms., Inc. v. United States Dep't of Health & Hum. Servs.](#), where the court credited the plaintiff's "uncontested declaration . . . that it will lose existing business and new customers to competitors as a result of the [defendant], and that these customers are unlikely to return," and noted that monetary damages were unavailable because the government defendant enjoyed sovereign immunity. [510 F. Supp. 3d 29, 39-40 \(S.D.N.Y. 2020\)](#). Here, monetary damages are available, and the Court does not find that Disney's (contested) declarations about potential business and customer loss justify extraordinary injunctive relief at this stage.

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<sup>13</sup> For this reason, Disney's reliance on [Salinger v. Colting](#), 607 F.3d 68 (2d Cir. 2010), is inapposite. Dkt. 32 at 31; see [CJ Prods. LLC v. Snuggly Plushez LLC](#), 809 F. Supp. 2d 127, 145 (S.D.N.Y. 2012) ("The irreparable harm to plaintiff's property interest in the copyright context was based largely on the possibility of market confusion ....").

<sup>14</sup> See, e.g., [Fox Television Stations, Inc. v. FilmOn X LLC](#), 966 F. Supp. 2d 30, 49-50 (D.D.C. 2013) (finding irreparable harm where the plaintiff could not prevent the defendant's piracy of its networks, and the defendant "would likely be unable to pay" money damages if the plaintiff prevailed); [Muze](#), 123 F. Supp. 2d at 129-32 (finding irreparable harm where the plaintiff validly terminated its licensing agreement, but the defendant continued to use the plaintiff's product without authorization or attribution).

this kind—measure and quantify its damages, using experts if need be, come trial. For these reasons, Disney hasn't shown irreparable harm.

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End of Document

**III. Disney has not shown that a preliminary injunction is in the public interest or that the balance of equities favors an injunction.**

"In determining whether the balance of the equities tips in the plaintiff's favor and whether granting the preliminary injunction would be in the public interest, the Court 'must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief.'" [Two Hands IP, 563 F. Supp. 3d at 308](#) (quoting [Winter v. NRDC, Inc., 555 U.S. 7, 24, 129 S. Ct. 365, 172 L. Ed. 2d 249 \(2008\)](#)). Disney's arguments on this factor rest on the assumption that it will prevail on likelihood of success and irreparable harm. Given that Disney has failed to make those showings and DISH has launched its Sling Passes product, it would be inequitable to force DISH to withdraw or change its offering while this case is ongoing. Dkt. 58 (detailing injuries to DISH if the Passes are discontinued); [Steelite Int'l U.S.A., Inc. v. McManus, 2021 U.S. Dist. LEXIS 80528, 2021 WL 1648025, at \\*13 \(S.D.N.Y. 2021\)](#) ("Particularly because plaintiffs have not demonstrated that [defendant's] conduct is anything but legitimate competition, the public interest will be best [\*23] served by denying the preliminary injunction."). To the extent that Disney demonstrates an entitlement to relief at trial, it can seek monetary damages to remedy any harm it has suffered.

**CONCLUSION**

For the reasons stated above, Disney's motion for a preliminary injunction is DENIED. Disney's unopposed motion for judicial notice, Dkt. 37, is GRANTED.

The Clerk of Court is directed to terminate Dkts. 26 and 37.

SO ORDERED.

Dated: November 17, 2025

New York, New York

/s/ Arun Subramanian

ARUN SUBRAMANIAN

United States District Judge

**IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF NEW YORK**

ESPN ENTERPRISES, INC., a Delaware corporation; ABC CABLE NETWORKS GROUP, a California corporation; INTERNATIONAL FAMILY ENTERTAINMENT, INC., a Delaware corporation; and SOAPnet, L.L.C., a Delaware limited liability company,

Plaintiffs,

v.

DISH Network L.L.C., a Colorado limited liability company,

Defendant.

Civil Action No. \_\_\_\_\_

**COMPLAINT FOR BREACH  
OF CONTRACT AND  
INJUNCTIVE RELIEF**

Plaintiffs ESPN Enterprises, Inc.; ABC Cable Networks Group; International Family Entertainment, Inc.; and SOAPnet, L.L.C. (collectively, “Licensor”) for their complaint against Defendant DISH Network L.L.C. (“Dish”), allege as follows:

**NATURE OF THE ACTION**

Licensor brings this action to enjoin Dish’s unauthorized transmittal, distribution, and sale of some of the most in-demand and valuable television programming in the country, including the ESPN Network and Disney Channel (the “Licensor Programming”). By offering a “Day Pass” in its Sling Orange service, an action taken without notice to Licensor and without its consent, Dish has violated the terms of its contract, and undermined Licensor’s decades-long business model.

Dish has a limited over-the-top digital license (“OTT License”) to distribute the Licensor Programming as part of its streaming Sling TV service, which aggregates linear television networks and accompanying on-demand content and delivers it over the Internet to

subscribers who sign up for monthly subscriptions.<sup>1</sup> Under this OTT License as well as previous licenses between the parties, and consistent with the rest of the industry, [REDACTED]

[REDACTED]. A copy of this OTT License is attached to this Complaint as **Exhibit A**.

Just days ago, Dish—without consulting Licensor—decided to offer Licensor’s ESPN networks and other Licensor Programming on a transactional basis as part of a new service called “Day Pass.” In what it heralds as an “industry-first” product,<sup>2</sup> Dish has advertised that users can watch the ESPN Network “*with no subscription*” at all using the Day Pass service, for as little as one day.<sup>3</sup> Dish acted unilaterally, without even informing Licensor of its intention or seeking comment, and timed its ambush to capitalize on the opening of the college football and NFL seasons, and specifically telecasts of marquee games on the ESPN Network and ESPN2.<sup>4</sup>

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<sup>1</sup> “Over-the-top” or “OTT” refers to a service that distributes programming digitally over the Internet, distinct from broadcast, cable, and satellite distribution. OTT services include virtual multichannel video programming distributors (virtual MVPDs or vMPVDs), such as Sling TV and YouTube TV, and subscription-based film and television content (SVOD), like Netflix or Amazon Prime.

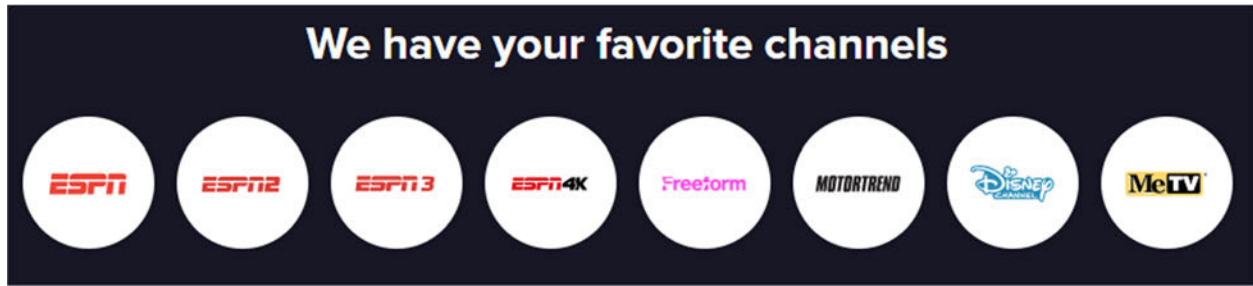
<sup>2</sup> *Sling TV Launches Industry-First \$4.99 Day Pass Redefining How Viewers Watch Live TV*, DISH Newsroom (Aug. 15, 2025), <https://about.Dish.com/2025-08-12-Sling-TV-Launches-Industry-First-4-99-Day-Pass-Redefining-How-Viewers-Watch-Sling-TV>; <https://www.sling.com/service/day-pass> (emphasis added). This Complaint refers to Dish’s Day Pass, Weekend Pass, and Week Pass options collectively as “Day Pass.”

<sup>4</sup> See *Sling TV Launches Industry-First \$4.99 Day Pass Redefining How Viewers Watch Live TV*, *supra* n. 2 (“Now [Dish is] breaking the mold again, just in time for football season . . . ‘With college football just around the corner, our new Day Pass offering is all consumers need to win on game day, for just \$4.99.’”).

5. [REDACTED],

\_\_\_\_\_ent boasted that the service includes “popular sports channels like ESPN, ESPN2, and ESPN3,”<sup>6</sup> and the front page of Sling TV’s website advertised that Day Pass has “your favorite channels,” including three different ESPN networks, ESPN4K, Freeform, and Disney Channel, all of which are Licensor networks:

6 *Day Pass by Sling Gives Sports & TV Fans Unparalleled Flexibility Starting at \$4.99*, Sling (Aug. 12, 2025), <https://www.sling.com/whatson/announcements/sling-day-week-weekendpasses?msocid=200eac672d36c901ccfbacf73336daf>.



Dish's unauthorized conduct is irreparably harming Licensor and must be enjoined. It not only violates the OTT License, but also jeopardizes Licensor's business model, which is structured around, depends on, and uniformly requires monthly subscriptions. It also threatens to severely disrupt Licensor's longstanding contractual and business relationships with its distribution partners by offering unauthorized access to Licensor's valuable programming. And it devalues Licensor's programming [REDACTED] who have never seen Licensor's prized programming sliced and diced this way. - 4 -

When Licensor learned—through the media—of Dish's Day Pass offering, Licensor asked Dish to cease and desist, but Dish refused, forcing Licensor to seek relief from this Court. Licensor accordingly seeks an injunction to stop this illegal distribution and exploitation of the Licensor Programming. Damages are insufficient to remedy the harm Licensor has suffered and will continue to suffer as a result of Dish's purposeful disregard of Licensor's valuable intellectual property and contract rights.

### **PARTIES**

Plaintiffs are a group of parties that granted Dish a limited license to transmit various of Plaintiffs' linear television networks and the content displayed thereon over the Internet to paid subscribers via the OTT License. Dish now offers these Plaintiffs' networks on the Day Pass service. These parties are:



- a. ESPN Enterprises, Inc., a Delaware corporation with its principal place of business in Connecticut;
- b. ABC Cable Networks Group, a California corporation with its principal place of business in California; - 5 -
- c. International Family Entertainment, Inc., a Delaware corporation with its principal place of business in California; and
- d. SOAPnet, L.L.C., a California limited liability company with its principal place of business in California.

Defendant DISH Network L.L.C. is a Colorado limited liability company with its principal place of business in Colorado. Its sole member is DISH DBS Corporation, which is incorporated in Colorado, with a principal place of business in Colorado. Dish is the counterparty to the OTT License, which provides limited rights to distribute Licensor's networks via its virtual multichannel video programming distributor (vMVPD) service, Sling TV.

#### **JURISDICTION AND VENUE**

This Court has jurisdiction pursuant to 28 U.S.C. § 1332(a) because there is complete diversity of citizenship between the parties. Upon information and belief, Dish is a citizen of Colorado. As set forth in Paragraph 8 above, each Plaintiff entity is incorporated in a state other than Colorado and has its principal place of business in a state other than Colorado. Therefore, none of the Plaintiffs is a citizen of Colorado and each Plaintiff is diverse from Dish. Dish's conduct has caused and will cause Licensor irreparable harm and an injury that exceeds \$75,000.

12. This Court has personal jurisdiction over Dish [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Venue is proper in this Court pursuant to , as set forth ab [REDACTED]

### **LICENSOR'S VALUABLE TELEVISION PROGRAMMING**

Licensors own extremely valuable programming, including sports network ESPN and Disney Channel. Licensor authorizes distribution of these and other linear television networks in the United States by multichannel video programming distributors (MVPDs) and vMVPDs like Sling TV, which provide paying subscribers with linear content on live television networks and accompanying video-on-demand streaming content. Licensor authorizes unaffiliated distributors like Dish to provide customers access to these networks solely through contractual licenses.

Licensors linear networks provide an array of content, including a variety of live sports events and original programming, on a 24/7 basis. The ESPN networks, for instance, telecast both college and professional sports, including various NCAA conferences, the NFL, the NBA, the WNBA; original in-studio programming, such as Pardon the Interruption, SportsCenter, and NFL Primetime; and news and documentaries, such as 30 for 30. Licensor's networks include hundreds of different programs that appeal to a wide variety of audiences.

Programming and content-acquisition decisions for the networks covered by the OTT License, including the ESPN networks, depend on a monthly subscription model. For instance, the ESPN networks invest heavily to acquire the exclusive rights to telecast marquee

live sports events like Monday Night Football, the NBA playoffs, and the College Football Playoff.

What makes those enormous, long-term investments possible is Licensor's ability to monetize that content on a monthly basis for a specific monthly, per-subscriber fee across multiple distribution agreements and to reliably forecast the revenue those fees will generate years down the line. The economics of the business model do not account for, and are incompatible with, a transactional service like Day Pass. - 7 -

An underpinning of this monthly subscription-based business model is to retain monthly subscribers over the long term by offering an array of valuable content that appeals to different portions of the market. For example, many ESPN Network subscribers may subscribe to an MVPD or vMVPD service like Sling TV to gain access to specific sports categories or events. Those subscriber volumes support ESPN's longer-term investments in other programming, which in turn have contributed to massive growth in certain sport categories (*e.g.*, women's basketball), benefiting athletes and audience members alike. Licensor's costs of acquiring content reflect this reality.

Licensor's programming decisions also depend on the monthly subscription model. One salient example is America's national tennis championship, the U.S. Open. Licensor acquires rights to the U.S. Open based on a packaged multi-week event; it cannot pick and choose, even though many viewers will only watch a handful of the total number of matches. Licensor justifies its investment based on the fact that subscribers will pay for at least full month of access and makes related programming decisions accordingly. Offering one-time access on a

transactional basis to key U.S. Open matches via a Day Pass would be a very different economic and strategic prospect.

20. Licensor's agreements with Dish go back decades. [REDACTED]

[REDACTED]

[REDACTED].

21. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. ESPN's own direct-to-consumer streaming service, which provides access to the ESPN linear networks, on demand replays, studio shows, and original programming, is also available only on a monthly or annual basis, as is the Disney+ streaming video-on-demand service.

### **DISH ANNOUNCES UNAUTHORIZED "DAY PASS" OFFERING**

On or about August 12, 2025, Dish publicly announced the Day Pass service via press release.<sup>7</sup> The press release described Day Pass as "flipping the script on traditional streaming bundles" with a "first of its kind" service. Dish told the public it was "breaking the mold again, just in time for football season" with "the latest move in Sling's mission to challenge industry norms by creating flexible, fan-first streaming solutions at a time when customers are demanding more control and less cost. This industry-first product gives viewers instant, 24-hour access to live TV, sports and entertainment without a long-term commitment." The press release repeatedly stated that Day Pass could be used to watch college football and professional sports, advertising "24 hours of football for \$4.99" and access to Licensor networks ESPN, ESPN2,

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<sup>7</sup> *Sling TV Launches Industry-First \$4.99 Day Pass Redefining How Viewers Watch Live TV*, *supra* n. 2.

ESPN3, Disney Channel, and more. Sling Orange’s monthly subscription starts at \$45.99.

Dish’s website also published an announcement, dated August 12, advertising that consumers did not need a subscription to access the Day Pass service: “Best of all, you don’t need to remember to cancel: When your access is up, you won’t be charged again until you purchase another Day Pass” because “Day Pass is not a recurring charge.”<sup>8</sup> Again, Dish emphasized that Day Pass “include[s] popular sports channels like ESPN, ESPN2, and ESPN3 (which simulcasts select sports programming on ABC),” and “children’s programming on Disney Channel.”

24. [REDACTED]

[REDACTED], Dish’s website has also prominently advertised that the Day Pass service provides “24 hours of access to ESPN, TNT & more *with no subscription*”:<sup>9</sup>



<sup>8</sup> *Day Pass by Sling Gives Sports & TV Fans Unparalleled Flexibility Starting at \$4.99*, *supra* n. 6.

<sup>9</sup> *Day Pass by Sling TV*, *supra* n. 3 (emphasis added).

Dish similarly admits in its Frequently Asked Questions that Day Pass is not a subscription, stating that “[w]hen the time expires, you will not be charged again until the next time you order another Sling Day Pass *or subscribe to the service*.”<sup>10</sup> Dish contrasts “[m]onthly subscribers” with those who buy “short term viewing options,” *i.e.*, Day Pass.<sup>11</sup> And on its Plan Comparison page, Dish contrasted its “Monthly” service, which it describes as a “Monthly subscription” with “24/7 access,” with its Day Pass service, which is available for a “[o]ne-time charge.”<sup>12</sup>

These statements make clear that Day Pass service is a transactional service, which permits customers to access Licensor Programming on a one-time basis without a monthly subscription, or indeed a subscription of any length. - 10 -

In offering the Day Pass, Dish is delivering and providing customers with access to the following networks of Licensor Programming via the Day Pass service: ESPN, ESPN2, ESPN3, ESPNU, ESPNEWS, ACC Network, SEC Network, SEC Network+, Freeform, Disney Channel, Disney Jr., and Disney XD, either as part of the base offerings or as available add-ons.

Dish did not consult with Licensor before announcing and offering Day Pass. Rather, Licensor learned of Dish’s actions through articles in the trade press, such as Deadline.<sup>13</sup> Deadline reported that, according to Sling TV’s Senior Vice President of Product and Operations, “programming partners were briefed about the company’s plans for the short-term subscriptions.”<sup>14</sup>

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<sup>10</sup> *Id.* (Sling Day Pass FAQ: Is this really a one-time charge?) (emphasis added).

<sup>11</sup> *Sling Orange—Service Details, Channels, & Information*, Sling, <https://www.sling.com/service/sling-orange> (FAQ: What if I want to cancel?).

<sup>12</sup> *Plan Comparison*, *supra* n. 5

<sup>13</sup> Dade Hayes, *Sling TV Slices up the Bundle, Launching Subscriptions for Day, Weekend and Full Week Starting at \$4.99*, Deadline (Aug. 12, 2025), <https://deadline.com/2025/08/slingtv-slices-up-the-bundle-subscriptions-Dish-streaming-1236483566/>.

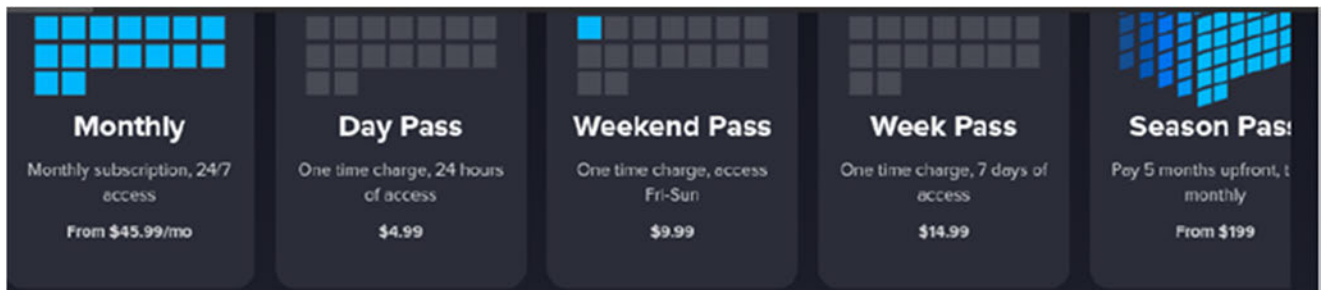
<sup>14</sup> *Id.*



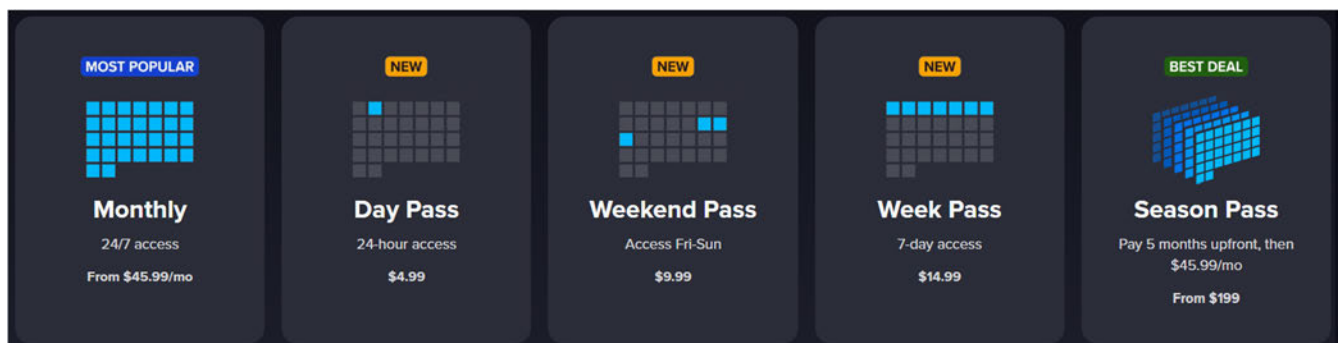
That representation was false. Even though all but two of the networks prominently displayed in Dish's ads for Day Pass belong to Licensor (with another eight available as Day Pass "Extras"), Dish never consulted with Licensor about the Day Pass service. On the contrary, once it learned about Day Pass, Licensor swiftly contacted Dish to object to the Day Pass on the grounds that it is inconsistent with, and constitutes a breach of, the OTT License, and demanded that Dish cease and desist offering it. Dish has refused.

After Dish received these communications from Licensor, it began removing references to Day Pass's "one-time access" from its website in an attempt to obscure that its Day Pass offering is unauthorized by the parties' agreement. For instance, on Dish's main Sling webpage as well as its Plan Comparison page, Dish removed the comparison between a "Monthly subscription" versus the Day Pass "One-time charge":

Original Description:

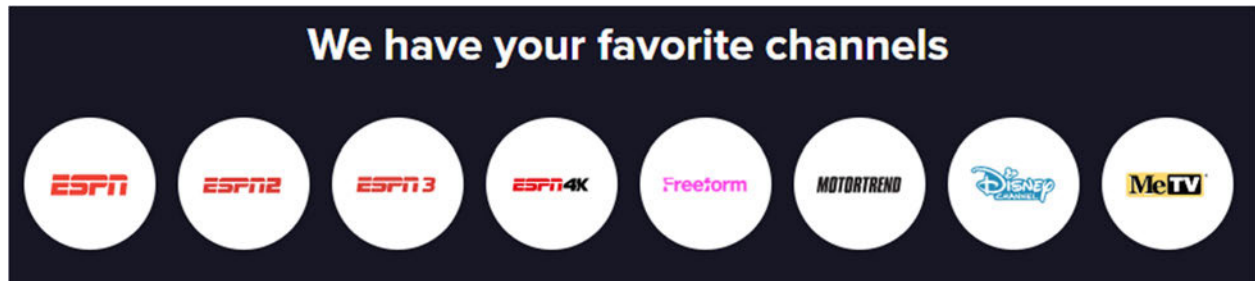


Modified Description:

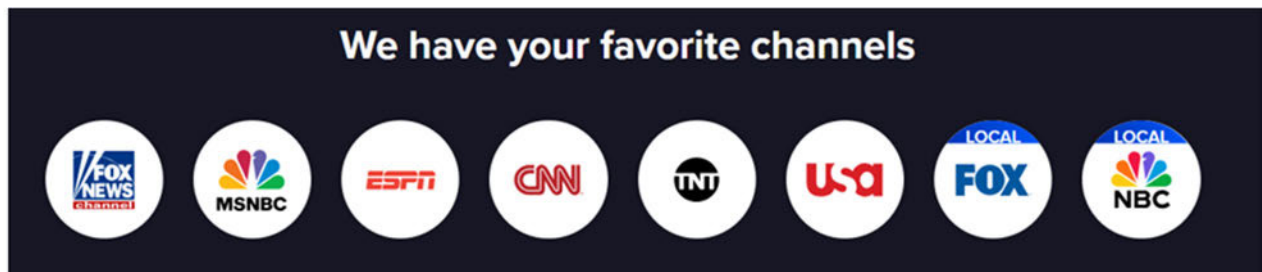


Dish also changed its list of highlighted channels on its main Sling TV webpage in an attempt to downplay its reliance on the Licensor Programming:

Original Graphic:



Modified Graphic:



**"DAY PASS" BREACHES DISH'S LIMITED LICENSE TO DISTRIBUTE LICENSOR PROGRAMMING**

Licensor<sup>32</sup> and Dish entered into an agreement granting Dish [REDACTED] distribute Licensor Programming to subscribers through OTT services offered by Dish's Sling TV platform. . [REDACTED]

The OTT<sup>33</sup> License grants Dish a limited and carefully circumscribed set of nonexclusive distribution rights [REDACTED]

[REDACTED]

[REDACTED].

34. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

35. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

36. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

37. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

38. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

39. Upon information and belief, un [REDACTED]  
offering its customers access to [REDACTED]

Licensor Programming exclusively on a monthly subscription basis, [REDACTED]

[REDACTED].

Dish's ~~Day~~ Pass program is not permitted by the OTT License. That agreement gives Dish the right to distribute Licensor Programming [REDACTED]

[REDACTED]. Subscribers sign up for a recurring monthly subscription to Dish's vMVPD service, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Dish's own advertising requires "no subscription."<sup>16</sup>

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<sup>16</sup> *Day Pass by Sling TV, supra* n. 3.

41. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

42. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

43. Dish's rights [REDACTED] are limited to those granted to it by the OTT License. Those rights do not include Dish's new Day Pass offering. Dish is in material breach of the OTT License.

**DISH'S UNLICENSED DISTRIBUTION OF THE LICENSOR PROGRAMMING HAS CAUSED AND WILL CAUSE IRREPARABLE HARM**

Dish's ~~un~~authorized distribution of the Licensor Programming is causing, and will continue to cause, irreparable harm to Licensor unless and until Dish stops offering Day Pass to its customers. Dish's Day Pass is unprecedented in the industry. Dish itself recognized this,

advertising Day Pass as a “first of its kind” and “industry-first product.”<sup>17</sup> Dish’s unprecedented move threatens Licensor’s overall business model in several ways that cannot be remedied by damages, and such harms continue to worsen each day that Day Pass is permitted to continue.

Licensor’s business is the development and distribution of linear television networks, such as the ESPN networks. The fundamental mechanics of that business model, from the cost of licensing content to the networks’ programming decisions, are based on monthly subscriptions. Allowing distributors to slice and dice these 24/7 linear networks on a day-by-day basis is inconsistent not only with the basic economics underlying that business model, including Licensor’s programming acquisition costs and the viability of various programming. - 16 -

Licensor’s brand is built on offering linear television networks, not transactional access to its most popular programs. Licensor has intentionally and strategically chosen to develop flagship brands like ESPN as 24/7 linear networks that offer a multitude of sports and related original content, not available through one-time transactions. Day Pass represents a serious and imminent threat to the value of these established brands by suggesting that they can be sold in one-time chunks for \$4.99.

Dish’s conduct is harming Licensor’s goodwill and relationships in the marketplace with other distributors and causing market confusion about the availability of the Licensor Programming. Licensor has already been contacted by other distributors requesting authorization to distribute Licensor Programming on a less-than-monthly basis as a result of Dish’s actions. Dish’s conduct [REDACTED]

[REDACTED]

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<sup>17</sup> *Sling TV Launches Industry-First \$4.99 Day Pass Redefining How Viewers Watch Live TV*, *supra* n. 2.



[REDACTED] . Yet Licensors face the very real risk that Day Pass starts a domino effect of claims to the contrary.

**COUNT I: BREACH OF CONTRACT**

Licensors incorporate herein by this reference each and every allegation contained in paragraphs 1 through 44 above.

49. Licensors and Dish are parties to the OTT License, which is a binding contract.

50. Licensors have performed all material obligations imposed by the OTT License. Dish's Day Pass, Weekend Pass, and Weekly Pass services, collectively referred to herein as "Day Pass," constitute a material breach of the OTT License, including the implied covenant of good faith and fair dealing contained therein, which provides the sole terms by which Dish is authorized to distribute the Licensors Programming via an OTT service.

As a result of Dish's acts and conduct, including its breach of the OTT License and the implied covenant contained therein, Licensors have sustained and will continue to sustain substantial, immediate, and irreparable injury, for which there is no adequate remedy at law. Licensors are informed and believe, and on that basis aver, that unless enjoined by this Court, Dish will continue to breach the OTT License by advertising, distributing, and selling the Licensors Programming inconsistent with the terms of the OTT License. Licensors are entitled to injunctive relief to restrain and enjoin Dish's conduct.

Licensors have suffered substantial harm attributable to Dish's breach in the period prior to issuance of an injunction.

**COUNT II: INJUNCTIVE RELIEF**

Licensors incorporate herein by this reference each and every allegation contained in paragraphs 1 through 50 above.

55. Licensors have a likelihood of success on the merits.

Licensors<sup>56</sup> has sustained and will continue to sustain substantial, immediate, and irreparable injury in the absence of an injunction, including threats to its overall business model, brand strategy and value, confusion in the marketplace, and relationships with other distributors. Remedies available at law, such as damages, are insufficient to remedy these harms. Moreover, quantifying damages would be virtually impossible given the nature of these harms to Licensors' goodwill, marketplace relationships, and fundamental business.

The balance<sup>57</sup> of harms tips strongly in Licensors' favor. Dish just launched the Day Pass service on August 12, 2025. It has no dedicated customer base for the service—on the contrary, Dish explicitly advertised Day Pass as requiring no loyalty or commitment whatsoever. Dish can simply remove Licensors' networks from the service or cease offering it in favor of the monthly subscriptions it has always offered. On the other hand, Licensors is being irreparably harmed in numerous ways, as described herein, that are core to its business functions. - 18 -

The public<sup>58</sup> interest will not be harmed by an injunction. On the contrary, an injunction would simply restore the status quo, under which the public has a variety of options available to view Licensors Programming pursuant to the terms of valid license agreements.

### **PRAYER FOR RELIEF**

WHEREFORE, Licensors prays for a judgment in its favor and against Dish as follows:

- A. That Dish is in breach of the OTT License;
- B. An injunction preliminarily and permanently enjoining Dish, its employees, agents, officers, directors, attorneys, successors, affiliates, subsidiaries, and assigns, and all of those in active concert and participation with any of the foregoing, from:
  - i. Distributing, marketing, advertising, promoting, displaying, performing, selling, transmitting, or authorizing any third party to distribute, market,

advertise, promote, display, perform, sell, or transmit the Licensor Programming in any manner other than as a monthly subscription in accordance with the OTT License, specifically including via Dish's Day Pass, Weekend Pass, and Week Pass services; and

- ii. Aiding, assisting, or abetting any other individual or entity in doing any such act. - 19 -

C. Any other and further relief as the Court deems just and proper.

Dated: August 26, 2025

Respectfully Submitted,

**O'MELVENY & MYERS LLP**

By: 

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\* Pro hac vice application forthcoming

*Attorneys for Plaintiffs ESPN Enterprises,  
Inc., et al.*

**Kristi Thompson**

---

**From:** Connor Glisson  
**Sent:** Tuesday, June 2, 2026 1:05 PM  
**To:** Brendan Carr (Internal)  
**Cc:** Greg Watson; Allison Howell; Anthony Patrone  
**Subject:** DRAFT Letter Senator Markey Disney Early Renewal  
**Attachments:** DRAFT Markey Response 6.2.26.docx

Chairman,

Attached for your digital review is the updated DRAFT response letter to Senator Markey and other Senate Dems. (b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

Best,

**Connor Glisson**  
Director, Office of Legislative Affairs  
Federal Communications Commission  
connor.glisson@fcc.gov | 202-418-2064

(b) (5)



(b) (5)

(b) (5)

(b) (5)

(b) (5)

## Kristi Thompson

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**From:** Connor Glisson  
**Sent:** Tuesday, May 12, 2026 6:50 PM  
**To:** Brendan Carr; Greg Watson; Allison Howell  
**Subject:** DRAFT Response Letter E&C Dem. April 30, 2026  
**Attachments:** 2026.04.30 Letter to Chairman Carr re FCC Weaponization.pdf; DRAFT Pallone Letter Response 5.12.26.docx

Attached for review is the DRAFT response letter to Rep. Pallone, Clark and Matsui we discussed earlier today. Also attached is the incoming letter.

(b) (5)

Best,  
Connor

ONE HUNDRED NINETEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-3641  
Minority (202) 225-2927

April 30, 2026

The Honorable Brendan Carr  
Chairman  
Federal Communications Commission  
45 L Street NE  
Washington, D.C. 20554

Dear Chairman Carr:

We write to express our concern over your blatant efforts to chill speech and intentionally favor friends and allies of President Trump. Your selective interpretation and threatened weaponization of Federal Communications Commission (FCC) rules and regulations to curry favor with President Trump undermines the independence of your agency and erodes the public trust that is essential to a free press and our democratic system.

As your most recent abuse of power, you ordered an early review of Disney's ABC licenses in obvious retaliation for a joke made by Jimmy Kimmel on "Jimmy Kimmel Live!" on April 23.<sup>1</sup> Instead of carrying out the work of the FCC as an independent agency, you have again decided to use the FCC as a weapon to punish protected speech at the behest of the President and, this time, the First Lady.<sup>2</sup> On April 28, claiming that the FCC is seeking to ensure that "the broadcaster has been meeting its public interest obligations," the FCC issued an order to Disney and its eight broadcast stations requiring that Disney file to renew its licenses within 30 days.<sup>3</sup> This is a flagrant political move on your part, given that the earliest license renewal is not due until 2028, and some not even due until 2031.<sup>4</sup> As FCC Commissioner Gomez put it, "This is the most egregious action this FCC has taken in violation of the First Amendment to date."<sup>5</sup> Any effort on your part to revoke Disney's licenses on the basis of protected speech will fail, which you well know. Instead, this is a blatant attempt to hold your investigation and license

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<sup>1</sup> *F.C.C. Orders a Review of ABC's Broadcast Licenses*, The New York Times (Apr. 28, 2026).

<sup>2</sup> First Lady Melania Trump (@FLOTUS), X (Apr. 27, 2026, 10:19 AM) (<https://x.com/FLOTUS/status/2048769128513585618>).

<sup>3</sup> Federal Communications Commission, *Order* (Apr. 28, 2026) (DA 26-416).

<sup>4</sup> See note 1.

<sup>5</sup> Federal Communications Commission, *Gomez: FCC Assault on 1st Amendment Will Fail* (Apr. 29, 2026) (press release).



renewal proceedings over the heads of Disney executives in an effort to chill future speech on news and entertainment programs at Disney and across the entire industry. And while you do so, you not only violate the FCC's prohibition on censorship, but you also waste taxpayer dollars that fund this crusade and the time and expertise of the FCC career staff tasked with carrying it out.

Your partisan attacks on media figures and companies that Trump does not like was also apparent at the recent Conservative Political Action Conference, where you stated, "PBS, defunded. NPR, defunded. Joy Reid, gone from MSNBC. Sleepy-eyes Chuck Todd, gone. Jim Acosta, gone. John Dickerson, gone... Stephen Colbert is leaving. CBS is under new ownership. And soon enough, CNN is going to have new ownership as well... President Trump is winning."<sup>6</sup> Since laying out this disturbing manifesto, however, a federal court overturned Trump's Executive Order defunding NPR and PBS, stating that the President "may not... use his governmental power" to cut funding "in retaliation for saying things that he does not like."<sup>7</sup> Trump and you will only see more losses in court and losses to your credibility, including in Congress, if you continue to issue threats and take official actions in a partisan and legally indefensible manner.

Several other incidents have demonstrated the partisan and hypocritical nature of your decisions as Chairman of the FCC. On the morning of Saturday, March 7, 2026, Trump and other government officials attended the dignified transfer ceremony at Dover Air Force Base for six soldiers killed in Kuwait due to the war in Iran.<sup>8</sup> At the ceremony, Trump wore a white baseball hat with "USA" emblazoned in gold lettering with "45-47" embroidered on one side and an American flag on the other.<sup>9</sup> This display, which was captured on tape by countless media outlets present, drew bipartisan criticism for being an inappropriate and irreverent choice of attire. Even several high-profile Republicans called the choice "shameful" and a reflection of Trump having "no sense of dignity or appreciation for the moment."<sup>10</sup>

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<sup>6</sup> *WATCH LIVE: FCC Chair Brendan Carr speaks at CPAC*, PBS NewsHour (Mar. 27, 2026).

<sup>7</sup> *National Pub. Radio, Inc. v. Donald J. Trump*, No. 25-1674, 53 (D.D.C. 2026).

<sup>8</sup> *Trump Attends Dignified Transfer of 6 Fallen Service Members Killed in Kuwait Amid Iran war*, ABC News (Mar. 7, 2026).

<sup>9</sup> Trump Store, *USA 45-47 Hat* (<https://www.trumpstore.com/headwear/usa-45-47-hat>) (accessed Apr. 29, 2026).

<sup>10</sup> *Trump's Wearing of Baseball Cap during Dignified Transfer Draws Criticism*, The Washington Post (Mar. 9, 2026).



*March 7, 2026, Dover Air Force Base, Dover, Delaware. Anna Moneymaker/Getty Images*

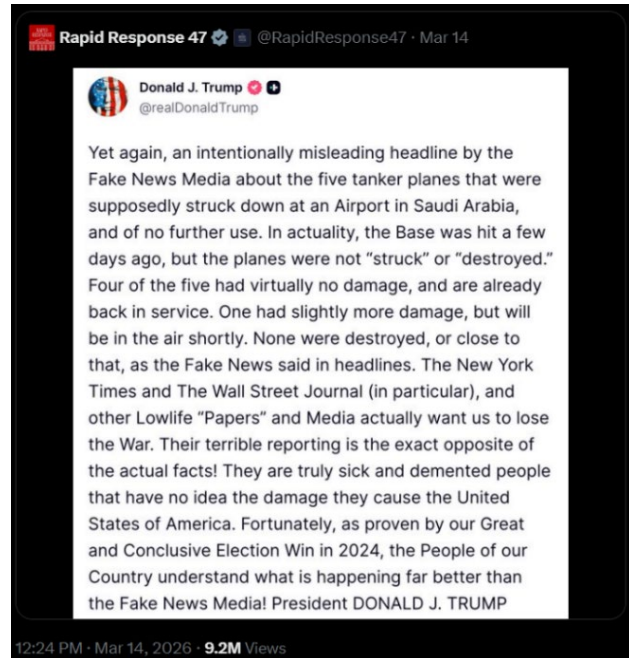
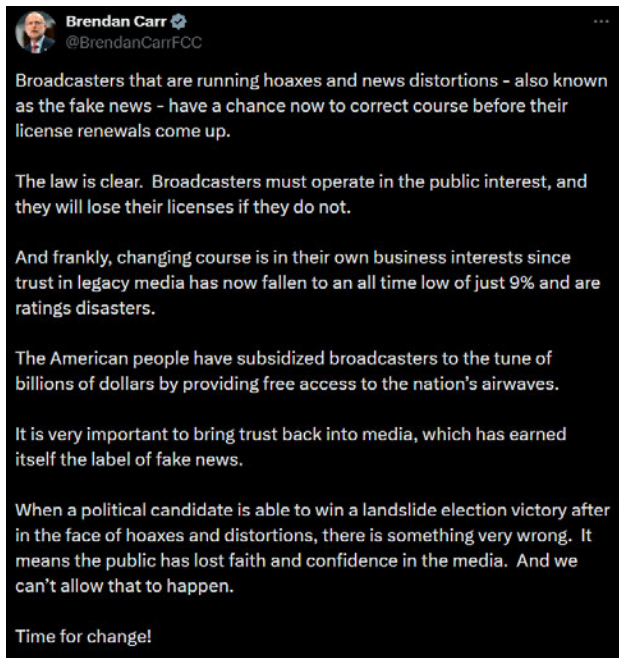
Notwithstanding the President’s lack of decorum and respect, reflected by wearing a hat, Fox News chose not to air accurate video footage from that morning. Instead, Fox News chose to repeatedly air an old video from a dignified transfer ceremony in December where Trump was dressed appropriately.<sup>11</sup> Fox News’ viewers, including Fox News Sunday viewers on the Fox television network, were shown inaccurate coverage of the dignified transfer ceremony, preventing them from seeing the white baseball hat. Although Fox News Sunday airs on hundreds of local broadcast stations across the country, you were uncharacteristically quiet about its misleading coverage—a stark contrast to your threats against broadcasters for coverage that President Trump finds unfavorable.

In fact, on March 14, 2026, you responded to a post from Trump criticizing news reports of damage to American military equipment by threatening broadcasters’ licensees for running “hoaxes and news distortions.”<sup>12</sup>

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<sup>11</sup> *Fox’s Donald Trump Dignified Transfer ‘Mistake’ Under Fire: ‘Would be a Huge Scandal’*, Penn Live (Mar. 9, 2026).

<sup>12</sup> Brendan Carr (@BrendanCarrFCC), X (Mar. 14, 2026, 12:24 PM) (<https://x.com/BrendanCarrFCC/status/2032855414233047172>).



Your manipulation of the news distortion policy is apparent in your selective threats and investigations of news distortion complaints as you reopened three of the four previously closed news distortion complaints (against ABC, NBC, and CBS), while notably leaving the closed case against Fox untouched.<sup>13</sup> Earlier, you also reinstated a lawfully denied complaint against CBS for alleged news distortion for engaging in routine editing of an interview with former Vice President Kamala Harris.<sup>14</sup> Following that reinstatement, you launched a formal investigation of CBS all while Skydance's merger with Paramount was under federal review. After a \$16 million settlement was made to President Trump for alleged "damages" arising from the same allegations, the merger was approved and the FCC investigation was effectively dropped.

Since assuming the role of Chairman, you have weaponized the agency against news outlets by not only questioning the speech and expressive conduct of targeted entities but also by abusing your power to formally accuse these speakers of wrongdoing.<sup>15</sup> As we said in prior

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<sup>13</sup> *FCC Chair Brendan Carr Threatens to Revoke Broadcasters' Licenses over Iran Coverage*, BBC (Mar. 15, 2026); *Carr FCC sets aside Rosenworcel Closure of "News Distortion" Complaints against CBS, ABC and NBC, but not Fox*, REC Networks Substack (Jan. 22, 2025).

<sup>14</sup> Letter from Peter S. Hyun, Acting Enforcement Bureau Chief, Federal Communications Commission, to Daniel R. Suhr, President, Center for American Rights (Jan. 16, 2025).

<sup>15</sup> *How an AM Radio Station in California Weathered the Trump administration's Assault on Media*, AP News (Dec. 15, 2025); *FCC Chairman Threatens ABC Over Jimmy Kimmel's Remarks About Charlie Kirk's Killer*, Variety (Sept. 17, 2025); *FCC Reinstates Complaints over ABC Presidential Debate, Harris TV Appearances*, Reuters (Jan. 23, 2025); *Brendan Carr Plans to Keep Going After the Media*, The New York Times (Sept. 24, 2025); *Federal Regulators Take New Aim at Late-Night TV*, The New York Times (Jan. 21, 2026).

correspondence, these actions assault the freedom of the press and violate the FCC's statutory prohibition against censorship.<sup>16</sup> As explained on the FCC's website, "[t]he First Amendment and the Communications Act expressly prohibit[s] the Commission from censoring broadcast matter."<sup>17</sup> Prior to your position as Chairman, you appeared to accept this as true, saying "[s]hould the government censor speech it doesn't like? Of course not. The FCC does not have a roving mandate to police speech in the name of the 'public interest.'"<sup>18</sup>

In your attempts to justify your partisan actions, you have posted entirely inapplicable quotes from case law while ignoring the central principle that "government censorship of a particular program contrary to... the official government view" is never permitted.<sup>19</sup> This Administration's repeated attempts to threaten news outlets and rewrite the facts is egregious, blatant, and, as FCC Commissioner Gomez said, "grounded in neither reality nor law and would not survive judicial scrutiny."<sup>20</sup>

Beyond your biased threats regarding news distortion and serving the public interest, your selective interpretation and inconsistent enforcement threats regarding the equal time rule further demonstrate your clear bias in favor of Trump. In January, you reversed the decades-old policy regarding the bona fide news exception to the equal time rule and issued a notice that the exception would no longer apply to daytime talk shows and late-night programs.<sup>21</sup> These thinly disguised acts all appear to support the same goal: chill speech that Trump doesn't like.

This tactic's inevitable and intended outcome is already materializing. In February, reports indicated that the FCC was investigating "The View" for hosting a segment featuring Texas Senate candidate James Talarico apparently based on their new interpretation that a

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<sup>16</sup> Letter from Rep. Frank Pallone, Jr., Ranking Member, House Committee on Energy and Commerce, Rep. Doris Matsui, Ranking Member, Subcommittee on Communications and Technology, House Committee on Energy and Commerce, and Rep. Yvette D. Clarke, Ranking Member, Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce, to Brendan Carr, Chairman, Federal Communications Commission (Mar. 31, 2025).

<sup>17</sup> Federal Communications Commission, *The Public and Broadcasting* (Sept. 2021) (<https://www.fcc.gov/media/radio/public-and-broadcasting#FCC>); Donald J. Trump (@realDonaldTrump), Truth Social (Mar. 15, 2026, 7:48 PM) (<https://truthsocial.com/@realDonaldTrump/posts/116235861005528220>); 47 U.S.C. § 326.

<sup>18</sup> Brendan Carr (@BrendanCarrFCC), X (Feb. 14, 2019, 10:05 AM) (<https://x.com/BrendanCarrFCC/status/1096062915201953795?s=20>).

<sup>19</sup> Brendan Carr (@BrendanCarrFCC), X (Mar. 14, 2026, 4:00 PM) (<https://x.com/BrendanCarrFCC/status/2032909862305235397>); *Democrats Blast FCC Chair Carr's Broadcast License Threats as Anti-First Amendment, 'Totalitarian'*, CNBC (Mar. 16, 2026).

<sup>20</sup> Federal Communications Commission, *Gomez: Stop Falling for FCC Intimidation Tactics* (Mar. 16, 2026) (press release); *FCC Chair Threatens TV Networks Amid Iran War Coverage — but his Warning Rings Hollow*, CNN (Mar. 15, 2026).

<sup>21</sup> Federal Communications Commission, *FCC's Media Bureau Provides Guidance on Political Equal Opportunities Requirement for Broadcast Television Stations* (Jan. 21, 2026) (press release).

daytime talk show no longer qualified for the bona fide news exception.<sup>22</sup> Commissioner Gomez called out the transparent maneuver, saying “Let’s be clear on what this is. This is government intimidation, not a legitimate investigation.”<sup>23</sup> Similarly, less than two weeks later, network lawyers advised Stephen Colbert that hosting James Talarico on “The Late Show with Stephen Colbert” could expose the network to consequences from the FCC unless opposing candidates were offered equal opportunities.<sup>24</sup> These concerns were enough to force Colbert to interview Talarico on YouTube to avoid any chance of retribution from the Trump FCC, even though the equal time rule places the burden on the opposing candidate, not the broadcast licensee, to request equal time.<sup>25</sup> If an opposing candidate fails to request equal time within the designated period, the licensee has no obligation and no ability to force them to participate.

The chilling effect here is therefore doubly troubling, as it is being achieved not by a legitimate interpretation or enforcement of the law, but by exploiting broadcasters’ fear of a hostile FCC. Further, the new interpretations are not being enforced against daytime and late-night talk shows equally. Instead, the FCC has announced it will assess whether a show has a “partisan purpose” when determining whether the equal time rule is implicated.<sup>26</sup> Given your FCC’s track record of favoritism towards Trump, this level of subjectivity is alarming. If the FCC’s investigation into “The View” and CBS’s decision to move the Talarico interview to YouTube portends a broader trend, Americans may see and hear from fewer candidates this election year, which is not in the public interest.<sup>27</sup>

These recent actions uniformly and improperly wield the regulatory power of your agency to erode the First Amendment rights of your and Trump’s targets. They have provoked widespread concern across the political spectrum and demand both continued oversight by Congress and answers from you. Even the appearance of partisan action by the FCC is inappropriate and raises questions about whether the FCC is acting within its statutory obligations and limitations.

Because you failed to adequately respond to our prior correspondence, we renew those requests which are attached to this letter. Additionally, please provide written responses to the following new requests by May 14, 2026.

1. Explain and provide all documents related to your decision to order the early license renewal of Disney ABC stations. Include in your explanation and production of

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<sup>22</sup> *Trump FCC Investigates The View, reportedly says “Fake News” will be Punished*, Ars Technica (Feb. 9, 2026).

<sup>23</sup> Federal Communications Commission, *Gomez on Sham “Investigation” of The View* (Feb. 6, 2026) (press release).

<sup>24</sup> *Stephen Colbert Slams CBS, says Lawyers told him James Talarico Interview could not Air on “The Late Show”*, CBS News (Feb. 18, 2026).

<sup>25</sup> 47 C.F.R. § 73.1941.

<sup>26</sup> See note 20.

<sup>27</sup> *Brendan Carr’s ‘Equal Time’ Curveball Crashes the Midterms*, POLITICO (Mar. 17, 2026).

documents how this proceeding would “ensure that the broadcaster has been meeting its public interest obligations” and what, if any, issues you purportedly identified in your ongoing investigation of Disney that are somehow relevant to upholding the “public interest” or any other FCC authority.<sup>28</sup>

2. Explain and provide all documents related to your decision to reverse long-standing FCC policy and subject daytime and late-night talk shows to the equal time rule. Include in your explanation and production of documents the rationale behind issuing this change without formal rulemaking, which is open to public comment.
3. Specifically describe and provide documentation of any complaints raised about the interview on “The View” with James Talarico that led to your investigation of potential violation of the equal time rule. Also provide all other documentation related to your investigation to date. Include in your response which other eligible candidates, if any, requested and were refused equal time by the broadcaster. To the extent that there were no candidates that were refused equal time, describe the basis of your investigation and what authority you believe the FCC has to conduct this investigation.
4. Provide any communications with CBS or its affiliates regarding the interview of James Talarico on “The Late Show with Stephen Colbert.”
5. Explain your interpretation of the “public interest standard” you frequently cite and the FCC’s authority to enforce your interpretation of such standard.<sup>29</sup> Provide all documentation regarding your interpretation and purported authority, including memoranda and communications.
6. Explain what criteria you purport to use to determine whether a program is “motivated by a partisan purpose” and provide all documentation regarding these criteria including related memoranda and communications.<sup>30</sup>
7. Provide all records related to travel to Trump’s personal residence in Florida including itineraries for that travel, participants in meetings held at Trump’s personal residence, detailed receipts of all associated costs paid or reimbursed by the FCC, and any formal or informal ethics advice that was provided related to such travel.

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<sup>28</sup> See note 3.

<sup>29</sup> *Trump’s CBS Lawsuit Ties Media Freedom to FCC’s Regulatory Power*, The Brookings Institution (Feb. 19, 2025); *Will the FCC’s ‘Public Interest’ Standard Limit Broadcast Free Speech?*, DC Journal (Dec. 3, 2024); *FCC Chief Brendan Carr Wants to ‘Re-Empower’ Local TV Stations and Consider Tighter Regulation of Social Media Giants*, Variety (Feb. 27, 2025).

<sup>30</sup> *Trump FCC’s Equal-Time Crackdown Doesn’t Apply Equally—or at all—to Talk Radio*, Ars Technica (Mar. 2, 2026).



Finally, preserve all documents and records potentially responsive to the issues and requests raised in this letter and in our letter of March 31, 2025, including text messages, emails, and digital and physical documents. This preservation request applies to existing and future materials that are responsive to these requests, including those that would otherwise be automatically deleted. If you have any questions about this request, please contact the Committee Democratic staff at (202) 225-2927.

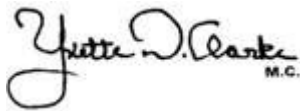
Sincerely,



Frank Pallone, Jr.  
Ranking Member



Doris Matsui  
Ranking Member  
Subcommittee on Communications  
and Technology



Yvette D. Clarke  
Ranking Member  
Subcommittee on Oversight  
and Investigations

cc: The Honorable Brett Guthrie  
Chairman

The Honorable Richard Hudson  
Chairman  
Subcommittee on Communications and Technology

The Honorable John Joyce  
Chairman  
Subcommittee on Oversight and Investigations

ONE HUNDRED NINETEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-3641  
Minority (202) 225-2927

March 31, 2025

The Honorable Brendan Carr  
Chairman  
Federal Communications Commission  
45 L Street NE  
Washington, DC 20554

Dear Chairman Carr:

We write to express deep concern over your actions to target and intimidate news organizations and broadcasters in violation of the First Amendment.<sup>1</sup> These troubling actions assault the Constitutionally protected freedom of the press and violate the Federal Communications Commission's (FCC) statutory prohibition against engaging in censorship.<sup>2</sup> Moreover, directing FCC staff to devote time and resources to bogus investigations constitutes a violation of the law, gross mismanagement, extreme waste of funds, and an abuse of authority. Therefore, we are also sharing a copy of this letter with the FCC's Office of Inspector General and are recommending that it open an investigation.<sup>3</sup>

Since assuming the role of Chairman on January 20, 2025, you have weaponized the agency against news outlets by not only questioning the speech and expressive conduct of targeted entities but also by abusing your power to formally accuse these speakers of wrongdoing. These actions are in flagrant disregard of the statutory jurisdiction of the Commission, lack any evidence of actual violations, and are conducted with apparent willful ignorance of FCC practice and legal precedent.

As you know, the FCC is an independent government agency, overseen by Congress, with authority to regulate interstate and international communications and related technologies. Your partisan goals are transparent and inappropriate, particularly given your previous experience as FCC General Counsel. You have launched sham investigations into entities disfavored by President Trump, Elon Musk, and the Republican Party to censor journalists and news coverage. In the absence of actual agency authority and any real evidence of wrongdoing, your pursuit of

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<sup>1</sup> U.S. Const. amend. I.

<sup>2</sup> 47 U.S.C. § 326.

<sup>3</sup> *Id.*

these actions is clearly intended to punish and burden broadcasters and other media companies by inflicting incalculable reputational harm and excessive costs to defend themselves.

Additionally, and alarmingly, some of your actions are aligned with a private lawsuit in which President Trump in his personal capacity is seeking extensive monetary damage from the same entities you are targeting. This is an obvious effort to create additional leverage in Trump's settlement negotiations and encourage payment in a sham lawsuit in exchange for favorable regulatory outcomes. Furthermore, your frequent travel with the President to his property in Florida is inappropriate of the Chairman of an independent agency. It calls into doubt your understanding of the agency's purpose and raises questions about whether you are inappropriately receiving direction from the President.<sup>4,5</sup>

Perhaps your most concerning action to date is your harassment of CBS. You recently reinstated a lawfully denied complaint against CBS for alleged news distortion for engaging in routine editing of an interview with former Vice President Kamala Harris.<sup>6</sup> Following this reinstatement, you launched a formal investigation of the broadcaster by sending a letter of inquiry demanding videos and transcripts. You also opened an unnecessary comment period—advertised with a banner on the FCC website's consumer complaints page—even after receiving and publishing unedited videos and transcripts that clearly show no deception.<sup>7,8</sup> You have taken these actions while the Commission is reviewing a merger proposed by CBS's parent company, Paramount Global, and President Trump is suing the company in his personal capacity for damages based on the same allegations. As others have noted, undertaking these official actions to pressure the regulated entity to settle its lawsuit with President Trump for monetary damages could give the appearance that you are facilitating a bribe to the President to drop these

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<sup>4</sup> Broadband Breakfast, *Exclusive Q&A with Chairman Brendan Carr* (Feb. 25, 2025) (<https://broadbandbreakfast.com/exclusive-q-a-with-chairman-brendan-carr/>).

<sup>5</sup> Axios, *Tech: Agencies Go MAGA* (Mar. 18, 2025) ([https://www.axios.com/pro/tech-policy/newsletters/2025/03/18/tech-agencies-go-maga?utm\\_source=axios&utm\\_medium=email&utm\\_campaign=pro\\_policy\\_daily\\_03-20-2025&utm\\_content=Final&utm\\_term=pro\\_policy\\_preview\\_tech](https://www.axios.com/pro/tech-policy/newsletters/2025/03/18/tech-agencies-go-maga?utm_source=axios&utm_medium=email&utm_campaign=pro_policy_daily_03-20-2025&utm_content=Final&utm_term=pro_policy_preview_tech)).

<sup>6</sup> Letter from Peter S. Hyun, Acting Bureau Chief, Enforcement Bureau, Federal Communications Commission, to Daniel R. Suhr, Center for American Rights (Jan. 16, 2025).

<sup>7</sup> Federal Communications Commission, *Consumer Inquiries and Complaints Center* (<https://consumercomplaints.fcc.gov/hc/en-us>) (accessed Mar. 21, 2025).

<sup>8</sup> Federal Communications Commission, *In the Matter of News Distortion Complaint Involving CBS Broadcasting Inc. re: Preserving the First Amendment (GN Docket No. 25-11)* (<https://docs.fcc.gov/public/attachments/DA-25-85A1.pdf>) (Jan. 22, 2025).

investigations and approve the transaction.<sup>9</sup> Broadcasters, public interest organizations, and free speech advocates have been uniformly critical of your pursuit of this matter.<sup>10,11,12</sup>

Additionally, in your few weeks as Chairman of the FCC, you have:

- Reinstated a lawfully denied complaint against ABC for alleged news distortion for conducting an otherwise unremarkable presidential debate.<sup>13,14</sup>
- Reinstated a lawfully denied complaint against NBC for violations of the FCC's equal time rule stemming from former Vice President Kamala Harris's appearance on Saturday Night Live, despite numerous clear deficiencies in the complaint including the uncontested fact that NBC's stations satisfied the Commission's regulations by appropriately filing public notice of the appearance and promptly acceding to equal time requests made by other legally qualified candidates.<sup>15</sup>
- Selectively reinstated the aforementioned complaints against ABC, CBS, and NBC while conspicuously not reinstating a petition filed against FOX that was contemporaneously denied.<sup>16</sup>
- Launched a formal investigation of KCBS-AM in San Jose, an entity owned by Audacy, for simply reporting on publicly available information about Immigration and Customs Enforcement (ICE) activity in a local neighborhood.<sup>17</sup> This is after you had previously highlighted Audacy's connection with a fund owned by George Soros and threatened to delay Audacy's business before the Commission.<sup>18</sup>

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<sup>9</sup> *Paramount Executives Ask: Could They Be Sued for Settling Trump's \$20 Billion CBS Lawsuit?*, Wall Street Journal (Feb. 14, 2025).

<sup>10</sup> Federal Communications Commission, *Comments of the National Association of Broadcasters* (Mar. 2025) (MB Docket No. 25-73).

<sup>11</sup> Federal Communications Commission, *Comments of Free Press* (Mar. 2025) (MB Docket No. 25-73).

<sup>12</sup> Federal Communications Commission, *Comments of the Foundation for Individual Rights and Expression* (Mar. 2025) (MB Docket No. 25-73).

<sup>13</sup> See note 7.

<sup>14</sup> See note 9.

<sup>15</sup> Federal Communications Commission, *In the Matter of Equal Opportunities Complaint Involving NBC Telemundo License. re: Preserving the First Amendment* (GN Docket No. 25-11) (<https://docs.fcc.gov/public/attachments/DA-25-56A1.pdf>) (Jan. 16, 2025).

<sup>16</sup> MSN, *The FCC's MAGA Standard: Target Trump's Enemies, Let Fox News off the Hook* (<https://www.msn.com/en-us/news/us/the-fcc-s-maga-standard-target-trump-s-enemies-let-fox-news-off-the-hook/ar-AA1ArnOc?ocid=BingNewsSerp>) (accessed Mar. 21, 2025).

<sup>17</sup> *FCC Investigates Calif. Radio Station that Shared ICE Agents' Location*, Los Angeles Times (Feb. 6, 2025).

<sup>18</sup> RadioInk, *Carr's FCC To 'Take A Very Hard Look' at Audacy's Soros Plan* (Nov. 26, 2024) (<https://radioink.com/2024/11/26/carrs-fcc-to-take-a-very-hard-look-at-audacy-plan-with-soros/>).

- Directed the FCC's Enforcement Bureau to launch an investigation into NPR and PBS based on false allegations of violations of the Commission's underwriting and advertisement rules, without offering any specific evidence indicating such violations.<sup>19</sup> This was despite the fact that NPR and PBS do not hold broadcast licenses and are not subject to those rules. Shortly thereafter, you followed up that threat with letters to 13 public radio stations, demanding information about on-air sponsorship announcements.<sup>20</sup>
- Baselessly accused YouTubeTV of religious discrimination based on business decisions about what channels to carry on its service.<sup>21</sup>
- Threatened, using dubious legal authority, to reinterpret Section 230 of the Communications Act to require private social media entities to carry speech that they disagree with or that violates their terms of service and community guidelines.<sup>22</sup>

These recent actions uniformly and improperly wield the regulatory power of your agency to abridge the First Amendment rights of the entities you target. Many of these actions also impermissibly attempt to stretch the bounds of the FCC's authority or engross statutory requirements in ways that are inappropriate, particularly in light of recent court decisions (that you had celebrated) which seek to narrow agency discretion.<sup>23,24</sup> In addition to weaponizing the FCC's Enforcement Bureau, you have also politicized the Media Bureau's licensing regime, echoing persistent calls from President Trump to revoke the broadcast licenses of news outlets that were deemed critical of him.

These recent actions have provoked widespread concern among stakeholders across the political spectrum. A bipartisan group of former Chairs of the FCC each recently criticized this overreach arguing that it threatens fundamental constitutional rights and undermines the

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<sup>19</sup> Letter from Brendan Carr, Chairman, Federal Communications Commission, to Katherine Maher, President and Chief Executive Officer, National Public Radio, and Paula A. Kerger, President and Chief Executive Officer, PBS (Jan. 29, 2025).

<sup>20</sup> MSN, *FCC Asks Public Radio Stations for Details on Sponsorships* (<https://www.msn.com/en-us/news/us/fcc-asks-public-radio-stations-for-details-on-sponsorships/ar-AA1AphqZ?ocid=BingNewsSerp>) (accessed Mar. 21, 2025).

<sup>21</sup> Brendan Carr (@BrendanCarrFCC), X (Mar. 7, 2025 at 2:07 PM) (<https://x.com/BrendanCarrFCC/status/1898088195675283501>).

<sup>22</sup> *Brendan Carr Has Big Ideas About the FCC and Critics Across the Spectrum*, The Washington Post (Mar. 11, 2025).

<sup>23</sup> Broadband Breakfast, *FCC's Carr: Loper Bright 'Directionally a Really Good Thing'* (Jul. 17, 2024) (<https://broadbandbreakfast.com/fccs-carr-loper-bright-directionally-a-really-good-thing/>).

<sup>24</sup> See, e.g., *Loper Bright Enterprises v. Raimondo*, 603 U.S. \_\_ (2024).

independence of the Commission.<sup>25,26,27,28,29</sup> Other experts have raised similar concerns related to the lack of FCC jurisdiction to conduct some of these investigations and obvious attempts to attack and punish speech that you, or the President and his supporters, don't like.<sup>30,31</sup>

Further, your current agenda for the FCC stands in sharp contrast to some of your own prior statements condemning actions you considered government censorship. During the prior administration, you were critical of, in your words, "selectively target[ing] a handful of news media outlets for their coverage of political events" and lamented that "regulated entities will pay a price if the targeted newsrooms do not conform to [a President's] preferred political narratives."<sup>32,33</sup> What happened to your concern about "concerted effort[s] . . . to drive political dissent from the public square"?<sup>34</sup> Your own words and previously held beliefs about freedom of speech are crystal clear, and we call on you to end this misconduct and join us "in publicly denouncing [attempts] to stifle political speech and independent news judgment."<sup>35</sup>

The following questions are intended to help us understand how your recent actions and decisions comply with federal law and reflect the FCC's mission and statutory obligations. For each question, please provide any and all responsive information from January 20, 2025, to the present and provide written responses by April 14, 2025.

- 1) Provide all documents related to the following investigations of media entities, including letters of inquiry, subpoenas, and similar official requests for information as well as all responses to these requests:

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<sup>25</sup> Brookings Institute, *Not 'Deregulation' but Heavy-handed Regulation at the Trump FCC* (Feb. 25, 2025) (<https://www.brookings.edu/articles/not-deregulation-but-heavy-handed-regulation-at-the-trump-fcc/>).

<sup>26</sup> The Talbot Spy, *Trump Versus Free Speech by Al Sikes* (Feb. 5, 2025) (<https://talbotspy.org/trump-versus-free-speech-by-al-sikes/>).

<sup>27</sup> *Trump, CBS, and 'News Distortion'*, The Wall Street Journal (Feb. 9, 2025).

<sup>28</sup> The Federalist Society, *Expression over Radio Waves Is Not Exempt from the First Amendment* (Feb. 11, 2025) (<https://fedsoc.org/commentary/fedsoc-blog/expression-over-radio-waves-is-not-exempt-from-the-first-amendment>).

<sup>29</sup> Broadband Breakfast, *3 Former FCC Chairmen Condemn Brendan Carr's Threats Targeting Media Outlets* (Feb. 20, 2025) (<https://broadbandbreakfast.com/3-former-fcc-chairmen-condemn-brendan-carrs-threats-targeting-media-outlets/>).

<sup>30</sup> Columbia Journalism Review, *A Plea for Institutional Modesty* (Feb. 6, 2025) (<https://www.cjr.org/politics/a-plea-for-institutional-modesty-fcc-corn-revere-brendan-carr-inconsistent-hypocrisy.php>).

<sup>31</sup> See note 28.

<sup>32</sup> Federal Communications Commission, *FCC Commissioner Carr Responds to Democrats' Efforts to Censor Newsrooms* (Feb. 22, 2021) (press release).

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*



- the FCC investigation of CBS related to the editing of a 60 Minutes episode featuring Vice President Kamala Harris;
  - the FCC investigation of ABC related to a 2024 presidential debate;
  - the FCC investigation of NBC related to Vice President Harris' appearance on Saturday Night Live and the equal time rule;
  - the decision not to reinstate the FCC investigation of FOX related to its coverage of the 2020 election;
  - the FCC investigation of KCBS-AM in San Jose, CA related to coverage of ICE activity;
  - the FCC investigations of NPR and PBS purportedly related to underwriting and advertisement rules;
  - the FCC inquiry of YouTubeTV related to faith-based programming; and
  - the FCC inquiry of social media companies related to Section 230.
- 2) Provide all communications between you and current White House officials and between you and other Trump Administration officials that relate to investigations of these or other media entities.
- 3) Provide all communications between you and third parties related to investigations of these or other media entities.
- 4) Explain and provide all supporting documents related to your decision to reinstate the complaints against ABC, CBS, and NBC but not a similar complaint against FOX, including but not limited to any advice provided by the Office of General Counsel.
- 5) Specifically describe your interpretation of the "public interest standard" you frequently cite and specifically describe the FCC's plan and authority to enforce your interpretation of such standard.<sup>36,37,38</sup>

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<sup>36</sup> Brookings Institute, *Trump's CBS Lawsuit Ties Media Freedom to FCC's Regulatory Power* (Feb. 19, 2025) (<https://www.brookings.edu/articles/trumps-cbs-lawsuit-ties-media-freedom-to-fccs-regulatory-power/>).

<sup>37</sup> Inside Sources, *Will the FCC's 'Public Interest' Standard Limit Broadcast Free Speech?* (Dec. 3, 2024) (<https://dcjournal.com/will-the-fccs-public-interest-standard-limit-broadcast-free-speech/>).

<sup>38</sup> Variety, *FCC Chief Brendan Carr Wants to 'Re-Empower' Local TV Stations and Consider Tighter Regulation of Social Media Giants* (Feb. 27, 2025) (<https://variety.com/2025/tv/news/fcc-brendan-carr-re-empower-tv-stations-1236323044/>).

- 6) Specifically describe and provide all documents related to your interpretation of the FCC's authority over national broadcast networks.
- 7) Specifically describe and provide all documents related to your interpretation of the FCC's authority over online video streaming.
- 8) Specifically describe and provide all documents related to your interpretation of the FCC's authority to interpret Section 230 of the Communications Act.<sup>39</sup>
- 9) Please provide an accounting of the staff time you have directed toward the investigations identified in this letter and an estimate of the cost associated with that time.
- 10) Please explain your previous statements adopting the President's agenda and describe any discussions you have had with the President or other executive branch officials during your multiple visits to the President's personal residence in Florida.
- 11) Please provide all records related to travel with the President on government aircraft and travel to the President's personal residence in Florida for meetings with the President or other White House officials, including detailed receipts of all associated costs borne by the FCC and any ethics advice that was provided related to such travel.

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<sup>39</sup> 47 U.S.C. § 230.

The Honorable Brendan Carr

March 31, 2025

Page 8

If you have any questions about this request, please contact the Committee Democratic staff at (202) 225-2927.

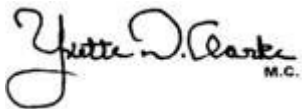
Sincerely,



Frank Pallone, Jr.  
Ranking Member



Doris Matsui  
Ranking Member  
Subcommittee on Communications  
and Technology



Yvette D. Clarke  
Ranking Member  
Subcommittee on Oversight  
and Investigations

cc: The Honorable Brett Guthrie  
Chairman

The Honorable Richard Hudson  
Chairman  
Subcommittee on Communications and Technology

The Honorable Gary Palmer  
Chairman  
Subcommittee on Oversight and Investigations

(b) (5)

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(b) (5)

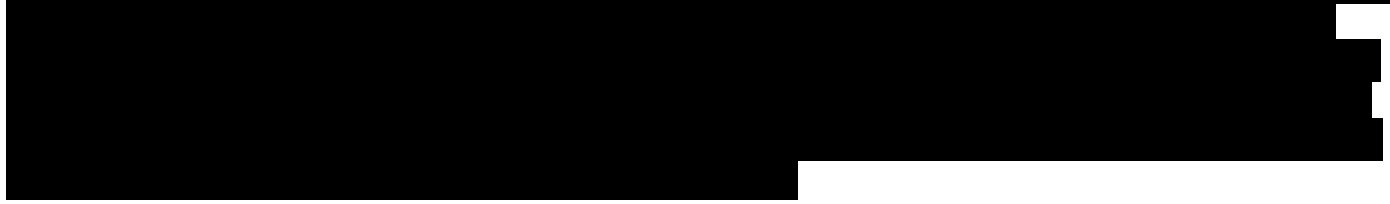
**Kristi Thompson**

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**From:** Anthony Patrone  
**Sent:** Wednesday, May 27, 2026 4:57 PM  
**To:** Brendan Carr (Internal)  
**Cc:** Greg Watson; Allison Howell; Courtney Cowper  
**Subject:** Early Renewal Pleading PN Draft to OCH 5.27.2026.docx  
**Attachments:** Early Renewal Pleading PN Draft to OCH 5.27.2026.docx

Chairman,

Here is MB's draft of the Disney renewal accepted for filing public notice. (b) (5)



**Anthony Patrone**  
Senior Counsel  
Office of FCC Chairman Brendan Carr  
[Anthony.Patrone@fcc.gov](mailto:Anthony.Patrone@fcc.gov)

(b) (5)

(b) (5)

(b) (5)



(b) (5)

(b) (5)

## Kristi Thompson

---

**From:** Allison Howell  
**Sent:** Friday, May 8, 2026 11:22 AM  
**To:** Brendan Carr (Internal)  
**Subject:** Fw: [EXTERNAL]: Petition for Declaratory Ruling  
**Attachments:** As filed - Petition for Declaratory Ruling.pdf

---

**From:** Tatel, Jennifer <JTatel@wbklaw.com>  
**Sent:** Friday, May 8, 2026 11:03:23 AM  
**To:** Allison Howell <Allison.Howell@fcc.gov>  
**Subject:** [EXTERNAL]: Petition for Declaratory Ruling

You don't often get email from jtatel@wbklaw.com. [Learn why this is important](#)

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Allison,

Attached please find a courtesy copy of a Petition for Declaratory Ruling filed yesterday.

Please let me know if you have any questions.

Thanks,  
Jennifer

WILKINSON ) BARKER ) KNAUER ) LLP

**Jennifer Tatel**

Partner, Management Committee Member

1800 M Street NW Suite 800N

Washington, DC 20036

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

|                                               |   |                  |
|-----------------------------------------------|---|------------------|
| In the Matter of                              | ) |                  |
|                                               | ) |                  |
| KTRK Television, Inc. and                     | ) | Docket No. _____ |
| American Broadcasting Companies, Inc.         | ) |                  |
|                                               | ) |                  |
| Petition for Declaratory Ruling Under Section | ) |                  |
| 315(a) of the Communications Act of 1934, as  | ) |                  |
| Amended                                       | ) |                  |

**PETITION FOR DECLARATORY RULING**

May 7, 2026

## Summary

The Commission's order to file this Petition for Declaratory Ruling is unprecedented, beyond the Commission's authority, and counterproductive to the Commission's stated goal of encouraging free speech and open political discussion. The Commission's actions threaten to upend decades of settled law and practice and chill critical protected speech, both with respect to *The View* and more broadly.

*The View* has been broadcasting under a bona fide news exemption granted to it more than twenty years ago, consistent with longstanding Commission interpretations designed to minimize the serious First Amendment problems inherent in the equal time regime.<sup>1</sup> *The View*'s exemption remains valid and the constitutional infirmities in the equal time doctrine are even more pronounced today, when the broadcast airwaves account for a slice of the numerous media options through which Americans get their political information. Indeed, the marketplace of ideas has never been more robust, and people can hear virtually any brand of political commentary by listening to a podcast, watching cable, scrolling social media, or streaming on a phone, computer or connected TV. The free flow of ideas flourishes on these non-broadcast platforms even though the equal opportunities rule does not apply there.

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<sup>1</sup> *The View* is a live, one-hour talk show created by legendary journalist Barbara Walters and television producer William Geddie. Since its inception, the fundamental format of the program has featured a panel of women of different backgrounds discussing news, politics, entertainment, popular culture, and social issues. Although the line up of the co-hosts has changed over the years, *The View* has consistently prioritized having a panel of women from different backgrounds in order to facilitate interesting discourse and the exchange of divergent perspectives. *The View* currently is co-hosted by Joy Behar, Alyssa Farah Griffin, Whoopi Goldberg, Sara Haines, Sunny Hostin, and Ana Navarro. Among its dozens of awards and nominations over the years, *The View* has received more than 30 Daytime Emmy Awards from the National Academy of Television Arts and Sciences and, in 2024, the program received the prestigious DuPont-Columbia Award for journalism.

The public interest would best be served by supporting broadcasters’ efforts to maintain their place in this marketplace of ideas. Narrowing the Commission’s long-established approach to bona fide news exemptions, however, would risk restricting political discourse exactly when it is needed most. While candidates are always able to connect with voters on cable, podcasts, and social media, specifically requiring broadcast airtime for all qualified candidates does not expand speech; rather, it makes coverage infeasible, which ultimately reduces it. In California’s upcoming gubernatorial “jungle primary,” for instance, affording equal time would mean accommodating over 60 legally qualified candidates, regardless of their perceived newsworthiness. The government should neither suppress nor compel speech in support of any political viewpoint in order “to achieve [the state’s] own conception of speech nirvana.”<sup>2</sup> That includes telling a private publisher “how to exercise their editorial discretion about what content to carry or favor.”<sup>3</sup>

Some may dislike certain—or even most—of the viewpoints expressed on *The View* or similar shows. Such dislike, however, cannot justify using regulatory processes to restrict those views. The government does not get to decide “what shall be orthodox in politics, nationalism, religion, or other matters of opinion.”<sup>4</sup> Or which “ideas and beliefs [are] deserving of expression [and] consideration.”<sup>5</sup> The danger is that the government will simply decide which perspectives to regulate and which to leave undisturbed. In fact, while the Commission now questions *The View*’s decades-long exemption, it has not expressed any inclination to apply a similar

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<sup>2</sup> *Moody v. NetChoice, LLC*, 603 U.S. 707, 742 (2024).

<sup>3</sup> *U.S. Telecom Ass’n v. FCC*, 855 F.3d 381, 435 (D.C. Cir. 2017) (Kavanaugh, J., dissenting from denial of rehearing en banc).

<sup>4</sup> *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

<sup>5</sup> *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 641 (1994).



interpretation of the equal opportunities rule to other broadcasters, including the many voices—conservative and liberal—on broadcast radio. And as a broad array of voices, including many conservatives, have recognized, if the government is allowed to discriminate on the basis of viewpoint in a Republican administration, there is little preventing it from doing so when the Democrats are in charge.<sup>6</sup>

Until now, it has never been disputed that *The View* qualifies as a bona fide news interview program. In 2002, ABC requested and obtained a Declaratory Ruling from the Mass Media Bureau confirming that status. That Declaratory Ruling remains in full force and effect. The Commission has taken no action over the last two decades to modify or overturn the Declaratory Ruling and there is no basis for doing so now. Given that KTRK Television acted in good faith reliance on the Declaratory Ruling and the consistent guidance provided by the Commission for decades, the Commission cannot find now that KTRK Television violated any of the Commission’s rules with respect to appearances by legally qualified candidates on *The View*.

Nevertheless, at the end of March, the Media Bureau ordered KTRK Television to file another Petition for Declaratory Ruling regarding *The View*’s status as a bona fide news interview program. In parallel, on April 28, 2026, the Media Bureau issued an extraordinary order demanding the early filing of all of ABC’s license renewal applications, including for KTRK-TV. Combined with the Commission’s other recent actions, including publicly

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<sup>6</sup> See, e.g., Alexandra Koch, *Cruz warns conservatives ‘will regret’ FCC censorship push against ABC, other media outlets*, Fox News (Sept. 19, 2025), <https://foxnews.com/politics/cruz-warns-conservatives-will-regret-fcc-censorship-push-against-abc-other-media-outlets>; Ben Shapiro, *Glad Kimmel’s Gone But Don’t Overreach*, The Daily Wire (Sept. 18, 2025), <https://www.dailywire.com/news/glad-kimmels-gone-but-dont-overreach>.

announcing its investigation concerning *The View* and presaging an outcome,<sup>7</sup> this suggests that the Commission is implementing major shifts in policy and practice, including how the Commission intends to apply the equal opportunities requirements. Such an abrupt and substantial change in long-established policy requires the action of the full Commission and the oversight of the courts.

*The View* continues to qualify as a bona fide news interview program because it continues to meet all of the legal requirements set forth by Congress and the Commission. Specifically, (1) *The View* is a regularly scheduled program, (2) *The View* is fully controlled by ABC, which produces the show for broadcast by the ABC Television Network, and (3) decisions concerning *The View*'s format, content, and participants are based on newsworthiness rather than on an intention to advance or harm an individual's candidacy. With respect to whether a broadcaster's programming decisions are based on newsworthiness, the Commission has long recognized that it was Congress's intent that the Commission respect the good faith news judgments of broadcast licensees.

Uncertainty as to the scope of broadcast licensees' editorial discretion threatens to limit news coverage of political candidates and chill core First Amendment-protected speech for years and potentially decades to come. As the 2026 midterm election approaches, the American people need more access to political news and more exposure to political candidates, not less. The Commission therefore must act quickly to assure broadcasters that it will uphold long-established legal standards by affirming that *The View* continues to qualify for the bona fide news interview exemption under Section 315(a).

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<sup>7</sup> See, e.g., Madison Columbo, *FCC chair warns 'The View' faces 'uphill climb' in equal-time probe*, Fox Business (Feb. 27, 2026), <https://www.foxbusiness.com/media/fcc-chair-warns-the-view-faces-uphill-climb-equal-time-probe>.

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

|                                               |   |                  |
|-----------------------------------------------|---|------------------|
| In the Matter of                              | ) |                  |
|                                               | ) |                  |
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| American Broadcasting Companies, Inc.         | ) |                  |
|                                               | ) |                  |
| Petition for Declaratory Ruling Under Section | ) |                  |
| 315(a) of the Communications Act of 1934, as  | ) |                  |
| Amended                                       | ) |                  |

**PETITION FOR DECLARATORY RULING**

**I. INTRODUCTION.**

By this Petition, KTRK Television, Inc. (“KTRK Television”), licensee of station KTRK-TV, Houston, Texas (“KTRK”), and its parent company, American Broadcasting Companies, Inc. (individually and together with KTRK Television, “ABC”), comply with the Commission’s unprecedented order to request that the Commission affirm that *The View* is a “bona fide news interview” program under 47 U.S.C. § 315(a).<sup>8</sup> The Commission has analyzed this program already, and the factors that drove that decision remain controlling today. In 2002, ABC requested and obtained a Declaratory Ruling from the Mass Media Bureau that *The View* qualifies as a bona fide news interview program. Consistent with that ruling, hundreds of political candidates across the political spectrum and other notable and newsworthy figures have appeared on *The View* over the past two decades, in full compliance with the Act and the Commission’s rules.

However, as the 2026 election season approaches, recent statements from the Commission suggest a significant change in how it will apply its long-standing rules and

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<sup>8</sup> While the Commission’s order was directed to KTRK Television, the existing Declaratory Ruling was issued to ABC.

standards concerning the bona fide news exemptions to the equal opportunities requirements. On January 21, 2026, the FCC’s Media Bureau released a *Public Notice* which purports to provide guidance on the equal opportunities requirement.<sup>9</sup> Rather than provide clarity, however, the *Public Notice* has created harmful ambiguity in an area where none previously existed and has a chilling effect on First Amendment-protected free speech on the eve of the 2026 elections. The *Public Notice* states that the Media Bureau “has not been presented with any evidence” that any current late night or daytime television talk show would qualify as a bona fide news interview program.<sup>10</sup> The *Public Notice* thus “encourages” any program or station that wishes to obtain formal assurance that it qualifies for the bona fide news exemption to file a request for declaratory ruling. The *Public Notice* reiterates certain elements of the standards that have long applied to the equal opportunities requirements and the bona fide news exemption, while simultaneously casting doubt on whether the Commission would continue to interpret those standards consistently with the approach it has taken for over 40 years.<sup>11</sup>

On February 11, 2026, the Media Bureau sent a Letter of Inquiry (“LOI”) to KTRK Television concerning the appearance of senatorial primary candidate James Talarico on *The*

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<sup>9</sup> *FCC’s Media Bureau Provides Guidance on Political Equal Opportunities Requirement for Broadcast Television Stations*, Public Notice, DA 26-68 (rel. MB Jan. 21, 2026) (“*Public Notice*”).

<sup>10</sup> *Id.* at 4. The *Public Notice* conspicuously omits any reference to radio broadcasters.

<sup>11</sup> The *Public Notice* also contradicts prior Commission statements that formal petitions for declaratory ruling are not necessary for stations to be covered by the bona fide news exemptions. See *Request of Infinity Broadcasting Operations Inc.*, Declaratory Ruling, 18 FCC Rcd 18603, 18604 (MB 2003) (“*Infinity Declaratory Ruling*”) (“[W]e emphasize that licensees airing programs that meet the statutory news exemption, as clarified in our case law, need not seek formal declaration from the Commission that that such programs qualify as news exempt programming under Section 315(a).”).

*View*, which aired on KTRK on February 2, 2026.<sup>12</sup> The LOI inquired whether the station had placed a record of the Talarico appearance in the station’s political file and whether KTRK Television took the position that *The View* qualified as a bona fide news interview program. KTRK Television responded on February 12, 2026 that *The View* qualifies as a bona fide news interview program and, accordingly, the station had not placed a record of the Talarico appearance in the station’s political file.

On March 26, 2026, the Media Bureau sent KTRK Television a Supplemental Letter of Inquiry (“SLOI”) stating that it needed additional information concerning the matter.<sup>13</sup> The Bureau based its need for further inquiry on its assertion that “19 ABC affiliates serving parts of Texas all filed a notice of Mr. Talarico’s February 2 appearance on *The View* pursuant to 47 CFR § 73.1943.”<sup>14</sup> Thus, the Bureau suggested, “the assertion by KTRK Television, Inc. that *The View* qualifies for the *bona fide* news interview exception is not a position uniformly held by broadcasters that air the program.”<sup>15</sup> The Bureau neglected to note, however, that while certain ABC affiliates documented Talarico’s appearance in their online public inspection files, the filings were made more than two weeks after Talarico’s appearance and apparently at the request of the FCC, which reportedly promised to eschew enforcement for the late filing. KTRK Television received no such request and no such offer, despite the Bureau specifically contacting

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<sup>12</sup> Letter from Erin Boone, Acting Chief, Media Bureau, FCC, to KTRK Television Inc., KTRK, Houston, TX (Fac. Id. 35675) (Feb. 11, 2026) (“LOI”).

<sup>13</sup> Letter from Erin Boone, Chief, Media Bureau, FCC, to KTRK Television, Inc., KTRK, Houston, TX (Fac. Id. 35675), at 3 (Mar. 26, 2026) (“SLOI”).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*



it about the Talarico appearance less than 10 days after it occurred.<sup>16</sup> The Bureau concluded the SLOI with an unprecedented order: “[W]e direct KTRK Television, Inc. to produce and submit to the Commission a petition for declaratory ruling regarding *The View* that satisfies the statutory requirements for a bona fide news exemption.”<sup>17</sup>

The Bureau lacks the authority to issue an order mandating a licensee to file a petition for declaratory ruling. In support of its unprecedented order, the Bureau cited to the Commission’s general authority to issue orders and conduct its proceedings as necessary to execute its functions.<sup>18</sup> Such authority, however, gives the Commission latitude to determine the manner in which it conducts its business, not blanket authority to order licensees to file petitions or initiate legal proceedings. Moreover, such an order flatly contradicts prior statements that “licensees airing programs that meet the statutory news exemption, as clarified in our case law, need not

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<sup>16</sup> At the time of the February 11, 2026, LOI, it appears that *none* of the 19 ABC affiliates referenced by the Media Bureau had seen fit to place a notification of the February 2 Talarico appearance in their political files.

<sup>17</sup> *Id.* On April 28, 2026, the Bureau issued an extraordinary order demanding that KTRK Television, along with all of ABC’s broadcast licensees, file their license renewal applications years ahead of schedule, and has cited as its rationale the inadequacy of the Company’s response to the FCC’s investigation into the Company’s diversity, equity, and inclusion (DEI) practices. *The Walt Disney Company, American Broadcasting Company, et. al.*, Order, DA 26-416, ¶ 2 n.1 (MB rel. Apr. 28, 2026). In that DEI investigation, the Company received a Letter of Inquiry from the Enforcement Bureau on June 5, 2025, and promptly negotiated an agreed scope and timetable for its responses with the Bureau. Between July and September 2025, the Company produced over 6,200 pages of documents in response consistent with the schedule and scope agreed to by the Bureau. The Company next heard from the Commission five months later when the Commission issued an expansive Supplemental Letter of Inquiry. The Company completed its response to the Supplemental Letter of Inquiry on April 21, 2026, on the timetable agreed to by the Bureau, producing a 38 page narrative response to the Commission’s 78 additional written requests and producing an additional 4,839 pages of documents—one week before the Bureau’s order requiring early license renewal applications.

<sup>18</sup> *Id.* (citing 47 U.S.C. § 154(i) and(j) and 47 C.F.R. § 1.1).

seek formal declaration from the Commission that such programs qualify as news exempt programming under Section 315(a).”<sup>19</sup>

As for the merits, the Commission should interpret the exception to cover *The View* to avoid the serious constitutional problems that would arise from applying the equal opportunities rule to the program. While the Supreme Court may once have upheld the FCC’s distinct “personal attack” and “political editorial” regulations,<sup>20</sup> the fundamental factual predicates of that decision no longer exist. The decision to hold broadcasters—and broadcasters alone—to a different First Amendment standard was dubious then and unsupportable now. In the absence of any meaningful scarcity of information resources, it is difficult to see how the equal opportunities rule can survive First Amendment scrutiny. The Commission should avoid those constitutional concerns by affirming that *The View* still qualifies for a Section 315(a) exemption as a bona fide news interview program.

As noted above, the Commission previously ruled that *The View* is exempt from the equal opportunities requirements as a bona fide news interview program. There has been no subsequent action from the Commission modifying or overturning that ruling. As KTRK (and all other stations airing *The View*) acted in accordance with that determination, the Commission cannot find that KTRK Television or any other licensee violated any aspect of those requirements with respect to the appearance of Talarico or any other political candidate on *The View*.

ABC stresses its full commitment to compliance with all regulations, statutes and, of course, the Constitution, and believes it has acted consistently with them. As demonstrated herein, there can be no doubt that *The View* continues to qualify as an exempt bona fide news

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<sup>19</sup> See *Infinity Declaratory Ruling*, 18 FCC Rcd at 18604.

<sup>20</sup> *Red Lion Broad. Co. v. FCC*, 395 U.S. 367 (1969).

interview program. As additional elections approach, however, ABC and similarly situated broadcasters face complex programming decisions, including with respect to bookings of legally qualified candidates. Uncertainty fostered by the *Public Notice* as to the scope of broadcast licensees' editorial discretion and, conversely, their obligation to air material that they otherwise might not, chills core First Amendment-protected speech.

Because of this uncertainty and its harmful effects on free speech, it is critical that the Commission act quickly to reaffirm its long-standing principles concerning bona fide news programming, as well as *The View*'s qualification as a bona fide news interview program. Affirming *The View*'s exempt status will advance the Congressional mandate to bring "the news concerning political races to the greatest number of citizens,"<sup>21</sup> support the public interest service provided by broadcast station licensees, and ratify the Commission's dedication to core First Amendment principles. Indeed, constitutional avoidance compels *The View*'s continued qualification for an equal opportunities exemption.

It is equally critical that any further action in this matter be conducted via consideration by and a vote of the full Commission and not by Media Bureau staff acting under delegated authority. While the Commission may delegate some functions to Bureau staff, changes in long-standing Commission rulings can only be made by the Commission itself.<sup>22</sup> The Commission established its current approach to bona fide news interview programs over 40 years ago and has consistently applied it ever since. Changes in the law must come from the Commission itself, not Bureau staff. In addition, because this matter will impact elections—many of which are in full swing—it is vital that this matter be resolved quickly by the Commission and, if necessary,

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<sup>21</sup> 105 Cong. Rec. 14451 (1959) (statement of Sen. Holland).

<sup>22</sup> See 47 U.S.C. §§ 155(c)(1)-(3); 47 C.F.R. § 0.5(c).

the courts. Bureau level action in this matter would only result in delay that will chill time sensitive news coverage of elections. News delayed is news denied and, as Senators Ted Cruz and Maria Cantwell recently reminded the Commission, “[t]hat concern is not merely academic. Process choices in high-profile cases establish precedent.”<sup>23</sup>

ABC therefore requests that the Commission act expeditiously to affirm its long-standing approach to the bona fide news interview exemption and the Commission’s continued support of the public interest services provided by broadcast stations.

## **II. FIRST AMENDMENT CONSIDERATIONS MUST GOVERN THE COMMISSION’S ACTIONS.**

### **A. The Equal Opportunities Rule Raises Profound First Amendment Concerns.**

The First Amendment emphatically protects “both the right to speak freely and the right to refrain from speaking at all.”<sup>24</sup> Since “all speech inherently involves choices of what to say and what to leave unsaid,” it is bedrock law that “one who chooses to speak may also decide ‘what not to say.’”<sup>25</sup> For the broadcast media, each right is equally important. Curating news programming requires editorial decisions about what stories, guests, and topics to feature—choices that inevitably require trade-offs. Those decisions define a broadcaster’s speech offering and its contribution to public discourse. And those editorial decisions are especially important today, as broadcasters attempt to inform and entertain the public in competition with a cacophony of other voices and sources of information, from cable television to social media to artificial intelligence tools. The First Amendment thus protects “editorial discretion in the

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<sup>23</sup> Letter from Ted Cruz & Maria Cantwell to Brendan Carr, Chairman, FCC (Mar. 30, 2026) (Chair & Ranking Member, Senate Committee on Commerce, Science, and Transportation).

<sup>24</sup> *Wooley v. Maynard*, 430 U.S. 705, 714 (1977).

<sup>25</sup> *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Boston*, 515 U.S. 557, 573 (1995).

selection and presentation” of speech.<sup>26</sup> Under the First Amendment, the government is not in the business of compelling or suppressing speech to achieve officials’ ideal or preferred news presentations.

Governments are free to criticize private speech, but not to compel or suppress it. When the government has sought to shape the news landscape, the Supreme Court has roundly rejected those efforts. In *Miami Herald Pub. Co. v. Tornillo*, for instance, the Court invalidated a Florida law requiring newspapers to offer political candidates space to respond to negative press.<sup>27</sup> The Court stressed that the “choice of material to go into a newspaper, and the decisions made as to ... treatment of public issues and public officials—whether fair or unfair—constitute the exercise of editorial control and judgment,” which is itself protected speech.<sup>28</sup> Whatever interest the state may have had in “ensur[ing] that a wide variety of views reach[ed] the public” is not sufficiently compelling to force a newspaper to “print that which it would not otherwise print.”<sup>29</sup>

That is hardly the only context in which the Court has rejected the notion that the government may restrict the First Amendment rights of private parties in service of “balancing” the public’s information diet. Most recently, the Court rejected state efforts to force social media companies to disseminate speech in order “to achieve [the state’s] own conception of speech nirvana.”<sup>30</sup> Whatever the medium, the government may not tell private parties “how to exercise their editorial discretion about what content to carry or favor.”<sup>31</sup> The government may not “tell

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<sup>26</sup> *Ark. Educ. Television Comm’n v. Forbes*, 523 U.S. 666, 674 (1998).

<sup>27</sup> *Miami Herald Pub. Co. v. Tornillo*, 418 U.S. 241, 256 (1974).

<sup>28</sup> *Id.* at 258.

<sup>29</sup> *Id.* at 248.

<sup>30</sup> *Moody*, 603 U.S. at 742.

<sup>31</sup> *U.S. Telecom Ass’n*, 855 F.3d at 435 (Kavanaugh, J., dissenting from denial of rehearing en banc).

Amazon or Politics & Prose what books to promote; or tell *The Washington Post* or the *Drudge Report* what columns to carry; or tell ESPN or the NFL Network what games to show; or tell *How Appealing* or *Bench Memos* what articles to feature; or tell Twitter or YouTube what videos to post; or tell Facebook or Google what content to favor.”<sup>32</sup>

The equal opportunities rule operates in the teeth of these principles, compelling and chilling speech by broadcasters. The rule provides, in relevant part, that “[i]f any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station.”<sup>33</sup> By forcing broadcasters to air *all* qualified candidates without regard to their newsworthiness, the rule squelches editorial discretion: Sometimes that means a broadcaster will be compelled to change its offerings and broadcast speech it views as unnewsworthy, and sometimes it means a broadcaster will self-censor and refrain from speech it believes is newsworthy to avoid obligations to multitudes of less-newsworthy aspirants to elected office. The equal opportunities rule is utterly irreconcilable with the Court’s repeated admonitions that “a speaker has the autonomy to choose the content of [its] own message.”<sup>34</sup> Just as the government may not compel private parties to convey its own message,<sup>35</sup> it may not compel one private speaker to convey the message of another.<sup>36</sup>

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<sup>32</sup> *Id.*

<sup>33</sup> 47 U.S.C. § 315(a).

<sup>34</sup> *Hurley*, 515 U.S. at 573.

<sup>35</sup> *W. Va. State Bd. of Educ.*, 319 U.S. 624.

<sup>36</sup> 303 *Creative LLC v. Elenis*, 600 U.S. 570, 588-89 (2023); *Hurley*, 515 U.S. at 573; *Pac. Gas and Elec. Co. v. Pub. Utils. Comm’n*, 475 U.S. 1, 11 (1986) (plurality op.); *Tornillo*, 418 U.S. at 258.



To be sure, the Supreme Court’s decision in *Red Lion* held that those principles applied somewhat differently in the 1960s broadcasting context.<sup>37</sup> But *Red Lion*’s factual predicates no longer obtain.<sup>38</sup> The *Red Lion* Court upheld the FCC’s “personal attack” and “political editorial” regulations, reasoning that these aspects of the fairness doctrine were permissible in view of scarce broadcast spectrum and the right of the public to information.<sup>39</sup> These justifications were dubious then—“[t]he text of the First Amendment makes no distinctions among print, broadcast, and cable media,”<sup>40</sup> and in any event “[a]ll economic goods are scarce, not least the newsprint, ink, delivery trucks, computers, and other resources that go into the production and dissemination of print journalism.”<sup>41</sup> But they are unsupportable now in an age of information ubiquity. The public does not rely on compelling broadcasters’ speech “to receive suitable access to social, political, esthetic, moral, and other ideas and experiences,”<sup>42</sup> when seemingly endless sources of information abound at the tap of a smartphone. Indeed, *Red Lion* itself “implied that its result would have been different in the absence of such a [scarcity] predicate,”<sup>43</sup>—a reservation to which the Court,<sup>44</sup> and several justices,<sup>45</sup> have subsequently alluded.

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<sup>37</sup> *Red Lion*, 395 U.S. at 386-93.

<sup>38</sup> See *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 530 (2009) (Thomas, J., concurring).

<sup>39</sup> 395 U.S. at 389-92.

<sup>40</sup> *Denver Area Educ. Telecomm. Consortium, Inc. v. FCC*, 518 U.S. 727, 812 (1996) (Thomas, J., joined by Rehnquist, C.J. and Scalia, J., concurring in part).

<sup>41</sup> *Telecommunications Rsch. & Action Ctr. v. FCC*, 801 F.2d 501, 508 (D.C. Cir. 1986).

<sup>42</sup> *Red Lion*, 395 U.S. at 390.

<sup>43</sup> *Time Warner Ent. Co., L.P. v. FCC*, 105 F.3d 723, 725 (D.C. Cir. 1997) (Williams, J. dissenting from denial of rehearing en banc).

<sup>44</sup> *FCC v. League of Women Voters of Cal.*, 468 U.S. 364, 376 n.11 (1984).

<sup>45</sup> *Fox Television Stations*, 556 U.S. at 533 (Thomas, J., concurring).

Shorn of scarcity concerns that are no longer tenable, the equal opportunities rule is in serious tension with the First Amendment. Much as with Section 315(a), the State in *Tornillo* argued that the right-of-reply statute was critical “to ensure that a wide variety of views reach the public.”<sup>46</sup> The press, the State lamented, had become “enormously powerful and influential in its capacity to manipulate popular opinion and change the course of events.”<sup>47</sup> The “result,” the state continued, was “to place in a few hands the power to inform the American people and shape public opinion,” leading to “homogeneity of editorial opinion, commentary, and interpretive analysis” and “abuses of bias and manipulative reportage.”<sup>48</sup> The Court refused to allow these fears to override the speech rights of newspapers, finding that the law’s blatant “intrusion into the function of editors” decidedly failed to “clear the barriers of the First Amendment.”<sup>49</sup> The Court has rejected precisely the same speech-balancing rationale in invalidating a ban on public-broadcaster editorializing.<sup>50</sup> *League of Women Voters of Cal.* emphasized that determining the constitutionality of broadcaster regulations “requires a critical examination of the interests of the public and broadcasters in light of the particular circumstances of each case,”<sup>51</sup> and ultimately struck down the policy.

Because Section 315(a) “restrict[s] precisely that form of speech which the Framers of the Bill of Rights were most anxious to protect—speech that is ‘indispensable to the discovery

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<sup>46</sup> 418 U.S. at 247-48.

<sup>47</sup> *Id.* at 249.

<sup>48</sup> *Id.* at 250.

<sup>49</sup> *Id.* at 258.

<sup>50</sup> *League of Women Voters of Cal.*, 468 U.S. at 398 (invalidating the Communications Act’s prohibition in Section 399 for noncommercial broadcast stations that received grants from the Corporation for Public Broadcasting from engaging in editorializing).

<sup>51</sup> *Id.* at 381.

and spread of political truth’—[courts] must be especially careful in weighing the interests that are asserted in support of this restriction and in assessing the precision with which” the requirement operates.<sup>52</sup> It is difficult to see how Section 315(a) can survive that “careful ... weighing.” In short, if the Supreme Court were to consider the question anew—as several Justices have suggested it should—it is hard to see how it could hold the equal opportunities rule constitutional.

**B. At Minimum, the Equal Opportunities Rule Could Not Survive Constitutional Scrutiny Without a Robust Bona Fide News Exemption.**

At a minimum, the equal opportunities rule could not survive constitutional scrutiny without the kind of robust bona fide news exemption that the Commission has applied for decades. “When legislation and the Constitution brush up against each other,” an agency’s “task is to seek harmony, not to manufacture conflict.”<sup>53</sup> By adding the bona fide news exemption to the equal opportunities rule, Congress provided a means by which the rule can be “construed to avoid serious constitutional doubts.”<sup>54</sup> But the bona fide news exemption can operate as a First Amendment pressure-release valve only if the Commission maintains the robust interpretation of the exemption that it has long employed.

The equal opportunities rule was adopted as part of the Radio Act of 1927 to help ensure that candidates for public office were treated in an equal manner with respect to access to broadcast facilities. This was particularly important at that time and for the next several decades, when broadcast radio and television represented the sole forms of mass media and the only

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<sup>52</sup> *Id.* at 383.

<sup>53</sup> *United States v. Hansen*, 599 U.S. 762, 781 (2023).

<sup>54</sup> *Fox Television Stations*, 556 U.S. at 516.

means by which political candidates could communicate their direct message to mass audiences. Nevertheless, Congress had come to recognize even by the time of *Red Lion* that the equal opportunities rule imposed substantial burdens on, and threatened to chill, broadcast stations' coverage of political information. That concern became particularly acute after the Commission reversed longstanding precedent and imposed equal-opportunities obligations based on candidate appearances during newscasts.<sup>55</sup>

Congress responded in 1959 by adding the bona fide news exemption to foster coverage of political campaign activity and preserve broadcasters' discretion to exercise their good faith news judgment in deciding which candidates to cover and in what formats.<sup>56</sup> As the legislative history confirms, Congress's goal in doing so was "to enable what probably has become the most important medium of political information to give the news concerning political races to the greatest possible number of citizens, and to make it possible to cover the political news to the fullest degree."<sup>57</sup> To that end, Congress provided:

Appearance by a legally qualified candidate on any—

- (1) bona fide newscast,
- (2) bona fide news interview,
- (3) bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary), or
- (4) on-the-spot coverage of bona fide news events (including but not limited to political conventions and activities incidental thereto),

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<sup>55</sup> *Petitions of Columbia Broadcasting System, Inc., and National Broadcasting Co.*, Interpretive Opinion, 26 F.C.C. 715 (1959); see *Chisholm v. FCC*, 538 F.2d 349, 351-52 (D.C. Cir. 1976).

<sup>56</sup> See, e.g., 105 Cong. Rec. 14446 (1959) (statement of Sen. McNamara) (the amendments leave "the control of news coverage of politics in the hands of the broadcasters"); see also *Request by Multimedia Entertainment, Inc. for Declaratory Ruling*, Memorandum Opinion and Order, 56 Rad. Reg. 2d 143, 144 (1984) ("*Donahue Decision*") ("Congress contemplated and intended to encourage increased news coverage of political campaign activity.").

<sup>57</sup> 105 Cong. Rec. 14451 (1959) (statement of Sen. Holland).

shall not be deemed to be use of a broadcasting station within the meaning of this subsection.<sup>58</sup>

Those exemptions notably are not confined to traditional “newscasts,” but rather sweep in (among other things) “bona fide news interview” programs.<sup>59</sup> While Congress did not attempt to specifically define the types of programs that would qualify as bona fide news interviews, the legislative history identified factors such as whether a program is “regularly scheduled,” and whether its “content and format” are “determined by the licensee” or by the network “in the exercise of its ‘bona fide’ news judgement and not for the political advantage of the candidate for public office.”<sup>60</sup>

In keeping with that guidance, which the Commission concluded Congress had “enjoined” it to follow,<sup>61</sup> the Commission established three factors to determine whether something qualifies as a bona fide news interview: (1) whether the program is regularly scheduled; (2) whether the broadcaster or an independent producer controls the program; and (3) whether the broadcaster’s or independent producer’s decisions on format, content, and participants are based on newsworthiness rather than on an intention to advance or harm an individual’s candidacy.<sup>62</sup> The overarching newsworthiness consideration reflects Congress’s

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<sup>58</sup> 47 U.S.C. § 315(a).

<sup>59</sup> 105 Cong. Rec. 17776, 17777 (1959) (Conference Report) (“[A]n appearance on a ‘bona fide news interview’ is exempted without regard to whether it is included as part of a newscast.”).

<sup>60</sup> 105 Cong. Rec. at 17777. *See also id.* at 17782 (statement of Sen. Harris) (“This requirement regarding the bona fide nature of the newscast, news interview or news events was not included without careful thought by the conference committee. It sets up a test which appropriately leaves reasonable latitude for the exercise of good faith news judgment on the part of broadcasters and networks.”).

<sup>61</sup> *See Inquiry Concerning “Equal Time” Requirements Under Section 315 of the Communications Act of 1934, as amended*, 40 F.C.C. 395, 396 (1964).

<sup>62</sup> *See, e.g., Hearst Television Inc., Declaratory Ruling*, 31 FCC Rcd 7191, 7192-93 (MB 2016) (citing *ANE Productions Inc., Declaratory Ruling*, 26 FCC Rcd 16148, 16149 (MB 2011) (“*ANE*

decision to qualify each exemption with the term “bona fide,” thereby emphasizing that the key question is whether programming at issue is of genuine news value, as opposed to designed for the partisan purpose of advancing or harming any particular candidate.<sup>63</sup>

While the Commission’s application of that three-part test evolved in the early years, it has remained largely stable since the landmark *Donahue Decision* in 1984, in which the Commission recognized that the exemption must be interpreted consistent with “Congress’ overriding intent to increase news coverage of the political campaign process.”<sup>64</sup> In the *Donahue Decision*, the Commission reversed a prior decision denying a bona fide news interview exemption to the talk show *Donahue*.<sup>65</sup> In doing so, the Commission applied the standard three-part test. First, the Commission recognized that there was no dispute as to whether *Donahue* was regularly scheduled. With respect to the second prong, whether the program’s producers maintained control over the program, the Commission explicitly concluded that a talk show format did not preclude a finding of licensee control:

[I]t would be unsound to rule that a program involving a unique or innovative approach to interviewing its guests somehow lacks sufficient licensee control evident in more traditional news interview programs like

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*Declaratory Ruling*”); *Request of ABC, Inc. for Declaratory Ruling*, 15 FCC Rcd 1355, 1358 (MMB 1999) (“*ABC Declaratory Ruling*”).

<sup>63</sup> See *Petitions of Henry Geller and National Association of Broadcasters and the Radio-Television News Directors Association to change Commission interpretation of Subsections 315(a)(3) and (4) of the Communications Act*, Report and Order, 95 F.C.C.2d 1236, 1243 (1983), *aff’d sub nom League of Women Voters Educ. Fund v. FCC*, 731 F.2d 995 (D.C. Cir. 1983).

<sup>64</sup> *ABC Declaratory Ruling*, 15 FCC Rcd at 1358 (recognizing a shift in focus from programs with “more traditional question and answer formats” to “varying less conventional interview formats”); see also *Requests of Fox Broadcasting Company, Public Broadcasting Service, and Capital Cities/ABC, Inc. for Declaratory Rulings*, Declaratory Ruling, 11 FCC Rcd 11101, 11108 (1996) (“*Fox Declaratory Ruling*”) (“Initially, the Commission interpreted the exemptions narrowly. Over the last twenty years, however, the Commission has interpreted the exemptions to allow for more diverse kinds of news programming, particularly with respect to the *bona fide* news interview and on-the-spot coverage of *bona fide* news event exemptions.”).

<sup>65</sup> *Donahue Decision*, 56 Rad. Reg. 2d 143-44.



“Meet the Press” or “Face the Nation” when the licensee has implemented reasonable techniques to ensure control. To do so would discourage programming innovation by sending a signal to broadcasters that to be exempt an interview program should adhere only to the format of certain programs mentioned by Congress over twenty-five years ago.<sup>66</sup>

Regarding the third prong, the Commission held that “[t]he proper Commission concern is limited to whether a licensee’s claim of newsworthiness is reasonable” and that “it would seem elemental that Congress contemplated interviews with elected officials and candidates for elected office as newsworthy subject matter.”<sup>67</sup> Noting that “Congressional intent is to defer substantially to the good faith news judgments of broadcast licensees,” the Commission held *Donohue* qualified for the bona fide news interview exemption.<sup>68</sup>

In the ensuing 40 years, the Commission has consistently reaffirmed this approach, finding that a wide variety of programs qualify as bona fide news interview programs, including programs that featured non-traditional formats and hosts without formal journalistic backgrounds. As the Mass Media Bureau explained in 1999, “[i]n attempting to fulfill the letter and the spirit of the law, the Commission’s decisions in this area have continued to expand the kinds of programming eligible for exemption in recognition of change and innovation in broadcast production.”<sup>69</sup> Programs deemed qualified as bona fide news interview programs include such varied programs as *The Morning Program* (1987), *Geraldo* (1988), *Sally Jessy Raphael* (1991), *Later with Bob Costas* (1991), *The Jerry Springer Show* (1994), *The Howard Stern Show* (2003), *Governor Heineman’s Call-In Show* (2006), and *The Tonight Show* (2006).<sup>70</sup>

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<sup>66</sup> *Id.* at 146.

<sup>67</sup> *Id.* at 147.

<sup>68</sup> *Id.* at 148.

<sup>69</sup> *ABC Declaratory Ruling*, 15 FCC Rcd at 1359.

<sup>70</sup> *Request by CBS Inc. for Declaratory Ruling*, 2 FCC Rcd 4377 (MMB 1987); *Request of Tribune Broadcasting Company for Declaratory Ruling*, 3 FCC Rcd 6248 (MMB 1988); *Request*

For example, in 2008 the Media Bureau found that the news interview segments of *The 700 Club* qualified for the bona fide news interview program exemption.<sup>71</sup> In making its determination, the Bureau emphasized assurances that, among other things, “all questions are prepared by a CBN employee based upon journalistic news principles” and that interviewees were selected based on newsworthiness and other factors.<sup>72</sup>

Similarly, in *ANE Productions Inc.*, the Media Bureau found that the daytime talk show *Anderson*, which featured “a mixture of news and entertainment topics,” qualified for the bona fide news interview exemption.<sup>73</sup> The producers of the program stated that “the format also includes interviews with celebrity guests and that ‘qualified candidates for political office will be interviewed when their stories are considered by the producers to be relevant and newsworthy.’”<sup>74</sup> In its discussion of the case, the Bureau noted its long-standing position that “its ‘role is not to decide, by some qualitative analysis, whether one kind of news story is more *bona fide* than another ... [s]o long as the program characteristics set out by Congress are met,

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*of Multimedia Entertainment, Inc. for Declaratory Ruling*, 6 FCC Rcd 1798 (MMB 1991); *Request of National Broadcasting Co., Inc. for Declaratory Ruling*, 6 FCC Rcd 5200 (MMB 1991); *Request of Multimedia Entertainment, Inc. for Declaratory Ruling*, 9 FCC Rcd 2811 (MMB 1994); *Infinity Declaratory Ruling*, 18 FCC Rcd 18603; *Request of Nebraska Broadcasters Association for Declaratory Ruling*, 21 FCC Rcd 10742 (MB 2006) (“*NBA Declaratory Ruling*”); *Equal Opportunities Complaint Filed by Angelides For Governor Campaign Against 11 California Television Stations*, 21 FCC Rcd 11919 (MB 2006).

<sup>71</sup> *Petition of The Christian Broadcasting Network for Declaratory Ruling*, 23 FCC Rcd 7165, 7166 (MB 2008).

<sup>72</sup> *Id.*

<sup>73</sup> *ANE Declaratory Ruling*, 26 FCC Rcd at 16148.

<sup>74</sup> *Id.*

[its] role is properly limited to determining whether a broadcaster was reasonable in deciding that a program fits within an exemption.”<sup>75</sup>

Likewise, in 1999 the Bureau found that *Politically Incorrect with Bill Maher* qualified for the bona fide news interview exemption.<sup>76</sup> The Bureau followed the standard three-part test; with respect to the second prong—whether the broadcaster controls the program—the Bureau credited the broadcaster’s “various reasonable mechanisms” for maintaining control over the production, finding that “those structural safeguards appear reasonably designed to assure that good faith news judgment can be adequately protected.”<sup>77</sup> Acknowledging the guidance from Congress and the Commission’s decision in *Donohue* to “not second-guess broadcasters about the relative newsworthiness of the interviewees or the topics of discussion,” the Bureau found that decisions about format, content and selection of participants on *Politically Incorrect* were based on newsworthiness and not motivated by any partisan purpose, despite the satirical nature of some of the program content.<sup>78</sup>

Notably, the Commission’s analysis of the “bona fide” nature of a program has never rested on an examination of the political views of the program’s host or required a host to profess partisan neutrality. Indeed, the Commission has granted exemptions to programs hosted by elected officials (a group not generally known for partisan neutrality). For instance, in 2006, the Media Bureau concluded that both *Governor Heineman’s Call-In Show* and *Senator Ben*

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<sup>75</sup> *Id.* at 16469 (quoting *Request for Declaratory Ruling By Paramount Pictures Corporation, Cox Broadcasting Corporation, Taft Television Productions, and Television Program Enterprises*, 3 FCC Rcd 245, 245-46 (MMB 1988)).

<sup>76</sup> *ABC Declaratory Ruling*, 15 FCC Rcd 1355.

<sup>77</sup> *Id.* at 1359.

<sup>78</sup> *Id.*

*Nelson's Call-In Show* qualified for the bona fide news interview exemption under Section 315(a)(2) of the Act.<sup>79</sup>

In short, in accordance with Congressional intent and the requirements of the First Amendment, the Commission has consistently given deference to broadcasters' good faith judgment.<sup>80</sup> And courts have long affirmed that this deference is necessary to avoid the equal opportunities rule's encroaching on core First Amendment rights. As the D.C. Circuit put it, "absent evidence of broadcaster intent to advance a particular candidacy, the judgment of the newsworthiness of an event is left to the reasonable news judgment of professionals."<sup>81</sup> The First Amendment demands nothing less.

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<sup>79</sup> *NBA Declaratory Ruling*, 21 FCC Rcd at 10742-43.

<sup>80</sup> See, e.g., *Fox Declaratory Ruling*, 11 FCC Rcd at 11108 ("In recognition of Congress' primary goal in enacting the exemptions – to facilitate a better informed electorate through greater news coverage of the political process – the Commission has accorded greater deference to a licensee's good faith news judgment."); *Donahue Decision*, 56 Rad. Reg. 2d at 148.

<sup>81</sup> *Kennedy for President Comm. v. FCC*, 636 F.2d 417, 427 (D.C. Cir. 1980) (quoting *Chisholm*, 538 F.2d at 359). Courts have long recognized this Congressional intent in interpreting the scope and application of the Section 315(a) exemptions. The D.C. Circuit, for instance, noted that Congress had concluded that "the concept of absolute equality among competing political candidates would have to give way, to some extent, to two other 'worthy and desirable' objectives: First, the right of the public to be informed through broadcasts of the political events; and Second, the discretion of the broadcaster to be selective with respect to the broadcasting of such events." *Chisholm*, 538 F.2d at 352 (citing Hearings on Political Broadcasts Equal Time Before the Subcommittee on Communications and Power of the House Committee on Interstate and Foreign Commerce, 86th Cong., 1st Sess. 2 (1959) (statement of Chairman Harris)). Thus, the Court stated, "[i]n creating a broad exemption to the equal time requirements in order to facilitate broadcast coverage of political news, Congress knowingly faced risks of political favoritism by broadcasters, and opted in favor of broader coverage and increased broadcaster discretion." *Chisholm*, 538 F.2d at 366.

### **III. *THE VIEW* IS A BONA FIDE NEWS INTERVIEW PROGRAM TODAY, JUST AS IT WAS IN 2002.**

As the foregoing should make clear, the best way for the Commission to avoid the grave First Amendment problems that the equal opportunities rule presents is by holding, as it did in 2002, that *The View* qualifies for a Section 315(a) exemption as a bona fide news interview program. *The View* continues to easily satisfy the criteria the Commission has long applied. And interpreting the bona fide news interview program exemption to exclude shows like *The View* would only exacerbate the constitutional problems with the statutory scheme.

#### **A. Description of *The View*.**

*The View* is an ABC Television Network program that has aired weekday mornings since August 1997. *The View* is a live, one-hour talk show created by legendary journalist Barbara Walters and television producer William Geddie. Since its inception, the fundamental format of the program has featured a panel of women of different backgrounds discussing news, politics, entertainment, popular culture, and social issues. Each episode includes the panel's discussion of the day's "hot topics," along with interviews with newsmakers from all walks of life and points of view.

Now in its 29th season, *The View* has remained committed to this format that has made it one of the most successful and longest-running daytime programs of all time. Although the co-host line up has changed over the years, *The View* has consistently prioritized having a panel of women from different backgrounds in order to facilitate interesting discourse and the exchange of divergent perspectives. *The View* currently is co-hosted by Joy Behar, Alyssa Farah Griffin, Whoopi Goldberg, Sara Haines, Sunny Hostin, and Ana Navarro.<sup>82</sup>

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<sup>82</sup> *The View* also features guest co-hosts from time to time including, for example, Savannah Chrisley, who filled in during Griffin's maternity leave in February 2026. See Olivia Rondeau,

- Joy Behar was one of the original hosts of *The View* when it premiered in 1997. Ms. Behar is among today's leading media personalities and has won numerous awards, including the 2009 Daytime Emmy Award for Outstanding Talk Show Host.<sup>83</sup> Ms. Behar's professional background is rooted in education and news production. She went on to serve as a producer for ABC News' *Good Morning America*, hosted *The Joy Behar Show* on CNN's HLN, and frequently guest-hosted *Larry King Live*.<sup>84</sup> She also hosted a WABC radio program, and worked as a high school English teacher for several years before transitioning to media.<sup>85</sup> Ms. Behar holds a Bachelor of Arts in sociology from Queens College and a Master's Degree in English Education from Stony Brook University.<sup>86</sup>
- Alyssa Farah Griffin is a Republican political strategist who joined *The View* as a co-host in 2022.<sup>87</sup> Ms. Griffin served as White House Director of Strategic Communications and Assistant to President Donald Trump during his first term and previously held roles as Press Secretary for the Department of Defense and Deputy Assistant to the Secretary of Defense in prior Republican administrations. From 2017 to 2019, she served as Press Secretary for former Vice President Mike Pence, and previously spent several years working as a senior communications aide for Representative Mark Meadows (R-NC) and the House Freedom Caucus under Representative Jim Jordan (R-OH) and Meadows. Ms. Griffin began her career in journalism as a broadcast media intern at the National Journalism

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*Trump-Supporting TV Personality Savannah Chrisley to Guest Host 'The View'*, Breitbart (Feb. 5, 2026), <https://www.breitbart.com/entertainment/2026/02/05/trump-supporting-tv-personality-to-guest-host-the-view>. More recently, former co-host Elisabeth Hasselbeck returned to the show last month, garnering attention due to her defense of U.S. military actions in Iran. See Julia Moore, *Elisabeth Hasselbeck's Return to The View Is Interrupted by Trump's Remarks on Iran*, People (Mar. 2, 2026), <https://people.com/elisabeth-hasselbeck-return-to-the-view-interrupted-by-trumps-remarks-on-iran-11917380>. Co-host selection is "all about a different point[s] of view at the table," and ensuring the panel consists of people "who are good at this job." Ted Johnson, *Elisabeth Hasselbeck, Abby Huntsman & Savannah Chrisley To Be Among Guest Co-Hosts On 'The View' During Alyssa Farah Griffin's Maternity Leave*, Deadline (Feb. 4, 2026), <https://deadline.com/2026/02/the-view-guest-co-hosts-alyssa-farah-griffin-1236708881>.

<sup>83</sup> Joy Behar, ABC.com, <https://abc.com/cast/b2ffc195-a56a-49d4-812a-a918a6fa717c> (last visited Apr. 25, 2026) (cast biography).

<sup>84</sup> Lacey Rose, *HLN Confirms 'The Joy Behar Show' Has Not Been Renewed*, The Hollywood Reporter (Nov. 17, 2011), <https://www.hollywoodreporter.com/news/general-news/hln-confirms-joy-behar-show-cancelled-263095>.

<sup>85</sup> Joy Behar, CNN, [https://www.cnn.com/CNN/anchors\\_reporters/behar.joy.html](https://www.cnn.com/CNN/anchors_reporters/behar.joy.html) (last visited Apr. 25, 2026) (anchors and reporters biography).

<sup>86</sup> Zoey Lyttle, *Joy Behar's Life in Photos*, People (Oct. 7, 2022), <https://people.com/tv/joy-behars-life-in-photos>.

<sup>87</sup> Alyssa Farah Griffin, ABC.com, <https://abc.com/cast/8003d444-bb1c-4fcb-9fd4-4f941247fef0> (last visited Apr. 25, 2026) (cast biography).



Center.<sup>88</sup> Ms. Griffin holds a Bachelor of Arts in journalism from Patrick Henry College.<sup>89</sup>

- Whoopi Goldberg has served as moderator and co-host of *The View* since 2007. An award-winning actress, producer and author,<sup>90</sup> Ms. Goldberg's career launched on Broadway in 1984 with her critically acclaimed one-woman stage show, *Whoopi Goldberg*. Ms. Goldberg made her Hollywood debut in Steven Spielberg's *The Color Purple*, earning an Academy Award nomination for Best Actress, and later won the Academy Award for Best Supporting Actress for her role in *Ghost*. In 2001, she received the Mark Twain Prize for American Humor. In 2002, she completed the rare EGOT distinction, having earned an Emmy, Grammy, Oscar, and Tony Award (as a producer of the musical *Thoroughly Modern Millie*).<sup>91</sup> Prior to joining *The View*, Ms. Goldberg also hosted *The Whoopi Goldberg Show* and a nationally syndicated morning radio program, *Wake Up with Whoopi*. Beyond performance, she has written several books, including a collection of humorous essays, and two children's books, and serves as a UNICEF International Goodwill Ambassador.<sup>92</sup> She has been honored with an honorary degree from Wilson College.<sup>93</sup> Goldberg has stated she does not identify with a specific political party.<sup>94</sup>
- Sara Haines, a former ABC News correspondent, joined *The View* as a co-host from 2016 to 2018, and returned to the program in 2020 after co-hosting ABC's

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<sup>88</sup> Alyssa Griffin, Legistorm.com, [https://www.legistorm.com/person/bio/220812/Alyssa\\_Farah\\_-\\_Griffin/hashkey/f7c373fb.html](https://www.legistorm.com/person/bio/220812/Alyssa_Farah_-_Griffin/hashkey/f7c373fb.html) (last visited Apr. 25, 2026).

<sup>89</sup> Marjorie Pratt, *White House Spotlight: Alyssa Farah* (May 18, 2020), <https://www.phc.edu/-learnphc/alyssa-farah>.

<sup>90</sup> Whoopi Goldberg, ABC.com, <https://abc.com/cast/00fdbde0-e115-4778-9dc8-b7091ce2caa9> (last visited Apr. 25, 2026) (cast biography).

<sup>91</sup> Whoopi Goldberg, Encyclopedia Britannica (last updated Apr. 13, 2026), <https://www.britannica.com/biography/Whoopi-Goldberg>.

<sup>92</sup> Whoopi Goldberg, American Academy of Achievement, <https://achievement.org/achiever/whoopi-goldberg> (last visited Apr. 25, 2026); Whoopi Goldberg, Yale Center for Dyslexia & Creativity, <https://dyslexia.yale.edu/story/whoopi-goldberg> (last visited Apr. 25, 2026) (biographical profile and interview).

<sup>93</sup> William C. Trott, *Whoopi By Degrees*, UPI (Dec. 4, 1987), <https://www.upi.com/Archives/1987/12/04/WHOOPI-BY-DEGREES/7754565592400>.

<sup>94</sup> Goldberg declared on the show that she does not subscribe to a particular political party ideology, in that she believes “the only way to get stuff done is to have both parties represented at the same time.” Amanda Bell, *Whoopi Goldberg Explains Exactly Why She's Not a Democrat on 'The View'*, TV Insider (June 5, 2025), <https://www.tvinsider.com/1195574/the-view-whoopi-goldberg-not-democrat-explained>.

*GMA Day*.<sup>95</sup> Before joining ABC in 2013, Ms. Haines worked for NBC's *Today* show, beginning as a production coordinator in 2002 after completing NBC's Page Program.<sup>96</sup> She expanded her role at *Today* in 2008 as host of *TODAYshow.com*'s entertainment video blog *Backstage Pass*, through which she conducted celebrity interviews and offered behind-the-scenes coverage of the show. At ABC, she served as a network correspondent and pop news anchor for the weekend editions of *Good Morning America*, before transitioning to *The View*. Ms. Haines holds a Bachelor of Arts in government from Smith College.<sup>97</sup>

- Sunny Hostin, an attorney and investigative journalist, has been a co-host of *The View* since 2016. Before her television career, Ms. Hostin worked as an appellate law clerk to Chief Judge of the Maryland Court of Appeals Robert M. Bell.<sup>98</sup> Later, she joined the Department of Justice's antitrust unit under President Bill Clinton. Ms. Hostin also served as an assistant United States attorney specializing in child sex crimes under Attorney General Janet Reno, from whom she received a Special Achievement Award.<sup>99</sup> Moving into private practice, Ms. Hostin served as a Managing Director of Business Intelligence and Investigations at Kroll.<sup>100</sup> She subsequently built a prominent media presence, appearing weekly on the "Is It Legal?" segment of Fox News' *The O'Reilly Factor* and serving as a host and legal analyst at CNN. Ms. Hostin has also filled in as co-anchor for ABC News' *World News Now* and *America This Morning*.<sup>101</sup> She holds a degree in Communications from Binghamton University and a Juris Doctorate from Notre Dame Law School.

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<sup>95</sup> Hilary Lewis, *It's Official: Sara Haines Joins 'The View' as Season 20 Co-Host*, The Hollywood Reporter (Aug. 3, 2016), <https://www.hollywoodreporter.com/news/general-news/sara-haines-joins-view-as-916914>; Meaghan Darwish, *Why Was 'Strahan, Sara, and Keke' Canceled at ABC?*, TVInsider (Aug. 4, 2020), <https://www.tvinsider.com/944258/strahan-sara-keke-canceled-abc>.

<sup>96</sup> Sara Haines, ABC.com, <https://abc.com/cast/59670fc4-d5a9-4101-96bd-7a83d68dbed8> (last visited Apr. 25, 2026) (cast biography).

<sup>97</sup> *Id.*

<sup>98</sup> Laurie Yarnell, *The View's Sunny Hostin Talks Life On and Off the Camera*, Westchester (Sept. 24, 2018), <https://westchestermagazine.com/things-to-do/the-view-sunny-hostin-interview>.

<sup>99</sup> *Breaking News, Everyone's Watching Sunny Hostin*, Executive Woman Media (Jan. 7, 2015), <https://www.executivewomanmedia.com/breaking-news-everyones-watching-sunny-hostin>.

<sup>100</sup> About Sunny, Sunny Hostin, <https://sunnyhostin.com/about/> (last visited Apr. 25, 2026).

<sup>101</sup> Sunny Hostin, The State University of New York, <https://www.suny.edu/events/eop/sunny-hostin/> (last visited Apr. 25, 2026).

- Ana Navarro joined *The View* as a co-host in 2022, having previously appeared as a guest co-host on several occasions in 2013 and 2018.<sup>102</sup> Ms. Navarro is a Republican political strategist and senior political commentator on CNN. She has advised numerous federal and state campaigns in Florida and nationally. She subsequently worked on Governor Jeb Bush’s transition team and served as his first Director of Immigration Policy. Ms. Navarro served as the National Hispanic co-chair and a national surrogate for John McCain’s 2008 presidential campaign.<sup>103</sup> She also briefly held the same role for Governor Jon Huntsman’s 2012 presidential campaign.<sup>104</sup> She self-identifies as a “lifelong Republican,” “a centrist,”<sup>105</sup> and has credited President Ronald Reagan’s support for the anticommunist rebels in Nicaragua as her inspiration for becoming a Republican. Ms. Navarro holds a Bachelor in Arts with Majors in Latin American Studies and Political Science from the University of Miami and a Juris Doctorate degree from St. Thomas University.<sup>106</sup>

While *The View* is known for engaging and entertaining banter between its co-hosts, the program also has been widely recognized for the journalistic impact of its content—particularly its interviews with newsmakers, including political candidates. Among its dozens of awards and nominations over the years, *The View* has received more than 30 Daytime Emmy Awards from the National Academy of Television Arts and Sciences and, in 2024, the program received the prestigious DuPont-Columbia Award for journalism.

Brian Teta is currently the Executive Producer of *The View*. Teta, a highly experienced television producer, joined *The View* in 2015 as co-Executive Producer and was named Executive Producer in 2017. Teta reports to Almin Karamahmedovic, the President of ABC News. As

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<sup>102</sup> Ana Navarro, ABC.com, <https://abc.com/cast/8b1e427a-f54f-40a8-91f2-0cbd48dd347c> (last visited Apr. 25, 2026) (cast biography).

<sup>103</sup> Ana Navarro-Cárdenas, Carnegie Corporation of New York, <https://www.carnegie.org/awards/honoree/ana-navarro-cardenas> (last visited Apr. 25, 2026).

<sup>104</sup> Navarro, ABC cast biography, *supra* note 102 .

<sup>105</sup> Ana Navarro, *Ana Navarro: Why I’m voting for Andrew Gillum (a Democrat!)*, CNN (Nov. 3, 2018), <https://www.cnn.com/2018/11/02/opinions/why-im-voting-for-andrew-gillum-navarro/index.html>.

<sup>106</sup> Ana Navarro, Harvard Kennedy School Institute of Politics (2013), <https://iop.harvard.edu/fellows/ana-navarro>.

Executive Producer, Teta is responsible for and is the final decision maker with respect to all aspects of the production of *The View*, including the format, content, and participants of the program.<sup>107</sup>

Interview subjects are selected and invited through a booking process overseen by the Executive Producer. The Executive Producer holds a twice-weekly meeting with *The View*'s booking staff to discuss and select potential guests. *The View*'s booking staff generally make suggestions for interview subjects based on current events in news, entertainment, popular culture, and politics. Publicists and other outside public relations professionals routinely "pitch" potential guests (e.g., book authors) to *The View*'s booking staff. *The View*'s co-hosts also suggest potential guests. Importantly, however, while he receives this input, the Executive Producer is the sole decisionmaker with respect to the selection of interviewees. He selects potential interview subjects based on newsworthiness, anticipated audience interest, and their potential to "make news" on the show.<sup>108</sup>

After potential interview subjects are selected by the Executive Producer, *The View*'s booking staff contacts the interview subjects or their representatives to issue the invitation and discuss scheduling. As part of the booking process, the booking staff will describe in general terms the topics they expect will be covered in the interview. Interview guests are not provided with any guarantees as to what content will be covered or included in the broadcast of the program. Interview guests who agree to appear on the program are scheduled based primarily on the guests' availability and the overall balance of each day's program.<sup>109</sup>

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<sup>107</sup> Declaration of Brian Teta ("Teta Declaration") ¶ 8.

<sup>108</sup> *Id.* ¶ 20.

<sup>109</sup> *Id.* ¶ 27.

Once a guest agrees to appear on the program, a segment producer prepares an outline of potential interview questions. The interview outline generally is based on research provided to the segment producer by *The View*'s staff and the "pre-interview" conducted by the segment producer with the guest and/or the guest's representatives. The interview outline is reviewed and edited by *The View*'s co-hosts and may be further reviewed and edited by other ABC personnel. Final review and approval of the interview outline is conducted by the Executive Producer. Interview guests do not review, edit, or approve the interview outline and are not provided with interview questions in advance of the interview.<sup>110</sup>

*The View*'s co-hosts conduct guest interviews based on the interview outline approved by the Executive Producer, although they may deviate from the outline during the course of the interview, particularly based on the guest's responses and the co-hosts' or the audience's reactions. The co-hosts rely on their experience and judgment to ensure that they, rather than the interview subjects, manage the conduct and flow of each interview (and, at all times during the interview, the show's producers can communicate directions to the co-hosts as needed). While some interview segments are recorded prior to broadcast, most interviews are conducted before a studio audience and typically are not edited prior to broadcast. Indeed, most regular season episodes of *The View* are aired live on eastern time zone stations, with a five second delay to help ensure compliance with broadcast standards. Interview subjects are not given any option to edit or otherwise control the broadcast of the interview, and do not see the final interview until it airs.<sup>111</sup>

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<sup>110</sup> *Id.* ¶ 30.

<sup>111</sup> *Id.* ¶ 33.

**B. *The View* Was Properly Determined to Be a Bona Fide News Interview Program in 2002.**

Following the Commission’s long-established three-part test, the Bureau concluded in 2002 that *The View* is exempt from Section 315(a) of the Act as a bona fide news interview program.<sup>112</sup> That determination has remained unchallenged and unchanged since that time and, to this day, *The View* remains fully qualified for the exemption under the applicable legal standards.

On October 20, 2000, ABC filed a petition for declaratory ruling (the “Petition”) with the Commission requesting that the Commission’s Mass Media Bureau issue a declaratory ruling that *The View* is a bona fide news interview program and thus exempt from the equal opportunities provision of Section 315(a) of the Act.<sup>113</sup> In the Petition, ABC explained that *The View* planned to invite additional political candidates to appear on the program and thus sought the Commission’s formal assurance that the equal opportunities requirements did not apply to *The View*.<sup>114</sup>

The Petition explained that *The View* was co-produced by the ABC Television Network (owned and operated by ABC) and BarWall Productions<sup>115</sup> and described the content and format of *The View*. In addition, the Petition detailed how *The View* satisfied each of the Commission’s criteria for exemption as a bona fide news interview program. In addressing the established

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<sup>112</sup> Letter from Robert Baker, Chief, Office of Political Programming, Policy and Rules Division, Mass Media Bureau, FCC, to ABC, Inc. (Mar. 1, 2002) (“2002 Declaratory Ruling”).

<sup>113</sup> Letter from ABC, Inc., to Bobby Baker, Chief, Office of Political Programming, Policy and Rules Division, Mass Media Bureau, FCC (Oct. 20, 2000) (the “Petition”).

<sup>114</sup> *Id.*

<sup>115</sup> BarWall Productions is a production company co-founded by Barbara Walters and Bill Geddie.

three-part test for the exemption, ABC first showed that *The View* was regularly scheduled. Second, ABC demonstrated that *The View* was exclusively controlled by its producers and that the producers decided the program's format, content and participants for each segment of the program. Finally, ABC stated that programming decisions were based solely on the producers' good faith judgments regarding newsworthiness and viewer preferences and not for the purpose of supporting or opposing a particular candidate or for any other partisan purpose.<sup>116</sup>

By letter ruling dated March 1, 2002, the Mass Media Bureau granted the Petition without qualification, stating "[b]ased on the record before us, we conclude that the program '*The View*' qualifies for the *bona fide* news interview exemption under Section 315(a)(2)."<sup>117</sup> Accordingly, every appearance by every legally qualified candidate on *The View* since March 1, 2002, (including the Talarico appearance) has been in accordance with a valid and effective formal determination that *The View* qualifies for the *bona fide* news interview exemption under Section 315(a)(2).<sup>118</sup> Such appearances thus are not deemed to be "uses" of KTRK or any other station. Given that KTRK Television and many other licensees acted in good faith reliance on the explicit ruling provided by the Mass Media Bureau in 2002 and the consistent guidance provided by the Commission since 1984, the Commission cannot find that KTRK Television, or

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<sup>116</sup> Petition.

<sup>117</sup> 2002 Declaratory Ruling.

<sup>118</sup> Even if ABC had not sought and received a formal determination, *The View*, since its inception, has fully qualified for exemption under all of the long-standing criteria for *bona fide* news interview programs and, as previously noted, the Commission has previously stated that no prior formal declaration is required for a *bona fide* news exemption to apply. See *Infinity Declaratory Ruling*, 18 FCC Rcd at 18604.



any other licensee, violated any of the Commission's rules with respect to appearances by legally qualified candidates on *The View*.<sup>119</sup>

**C. *The View* Remains a Bona Fide News Interview Program Today.**

In the 24 years since the Commission issued the 2002 Declaratory Ruling, the format and production processes of *The View* that were previously reviewed have remained the same, notwithstanding changes in hosts and staffing. *The View* continues to meet all three of the factors considered by the Commission in determining whether a program qualifies for the bona fide news interview exemption under Section 315(a)(2): (1) it is regularly scheduled, (2) ABC, through the program's Executive Producer, controls the program, and (3) decisions on format, content, and participants are based on newsworthiness rather than on an intention to advance or harm any individual's candidacy.

**i. *The View* is regularly scheduled and is in the same timeslot since it first aired in 1997.**

*The View* has been a regularly scheduled part of ABC Network programming for almost 30 years. Since August 1997, *The View* has been broadcast on weekdays, Monday to Friday, from 11:00 a.m. to 12:00 p.m. (EST). Over its entire history, *The View* has consistently maintained its 11:00 am ET weekday timeslot. The program takes an annual summer production break for the month of August, during which the ABC Network airs "encore" episodes (*i.e.*, previously aired episodes of *The View*). The show generally resumes production at the end of

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<sup>119</sup> *Star Wireless, LLC v. FCC*, 522 F.3d 469, 473 (D.C. Cir. 2008) (cleaned up) (citation omitted) ("In assessing forfeitures against regulated entities, the Commission is required to provide 'adequate notice of the substance of the rule.' The court must consider 'whether by reviewing the regulation and other public statements issued by the agency, a regulated party acting in good faith would be able to identify, with ascertainable certainty, the standards with which the agency expects parties to conform.'").

August, and a new season begins the Tuesday after Labor Day. ABC Network intends to maintain this schedule.<sup>120</sup>

**ii. ABC continues to control the format, content and participants of *The View*.**

As was the case in 2002, *The View* continues to be produced by the ABC Television Network. In this capacity, ABC has ultimate control over all aspects of *The View*, including its format, content and participants.<sup>121</sup> Day-to-day control over *The View* is exercised by the program's Executive Producer who reports to the President of ABC News, which is a division of the ABC Television Network. *The View*'s format, first established by Walters and Geddie, has remained fundamentally unchanged throughout its history. The Executive Producer, and the producers, hosts, and production staff under his supervision, decide the program's content, as well as the participants for each program segment.<sup>122</sup>

The show's production processes ensure that ABC (through the show's Executive Producer and production staff) maintains control over all aspects of the program. With respect to interviews included in the program in particular, as described herein, the Executive Producer and the production staff under his direction control all aspects of the selection of potential interview subjects and the questions asked during interviews in accordance with ABC News standards and practices. The Executive Producer has final review and approval authority over this process. The production process is designed to mitigate the possibility that a candidate can usurp the

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<sup>120</sup> Teta Declaration ¶ 12.

<sup>121</sup> BarWall Productions continues to be credited as a co-producer of the show but, subsequent to Ms. Walter's retirement in 2014 and death in 2022, ABC exercises sole and exclusive responsibility and control over the production.

<sup>122</sup> *Id.* ¶¶ 8, 17.

functions of the program for his or her own purposes or use *The View* as a soapbox.<sup>123</sup> Once taped, the Executive Producer oversees the production process, and interviewees are not provided any opportunity to influence or affect the content of their interview prior to airing during the scheduled timeslot.<sup>124</sup>

**iii. Newsworthiness is, as it always has been, the lodestar of programming decisions on *The View*.**

The Executive Producer of *The View* bases all decisions related to the format, content, and participants, including interviews of political candidates and other newsmakers, on the good faith judgments of newsworthiness and audience interest and not for the purpose of supporting or opposing any particular candidate or for any other partisan purpose.<sup>125</sup>

It is in ABC's interest to book guests on *The View* who are in the news and who will generate interest among its audience members. Over the past ten years alone, hundreds of elected officials, political candidates, and political commentators from various parties have appeared on *The View*, providing the public with a broad variety of views. Of course, any list of interviewees on *The View* would not reflect individuals who have been invited by the producers but declined to appear. Over the past two seasons, for example, producers have extended

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<sup>123</sup> *Id.* ¶ 17. As explained above, the seasoned co-hosts of *The View* follow the interview outlines approved by the Executive Producer. While they may deviate from the outline at times, they rely on their experience and judgment to ensure that they, rather than the interview subjects, manage the conduct and flow of each interview. In addition, co-hosts wear earpieces as they conduct interviews that allow producers to communicate directions to the co-hosts during the interviews as needed.

<sup>124</sup> The results speak for themselves. See e.g., David Rutz, *Kamala Harris' bungled answer on 'The View' about Biden seen as turning point in campaign*, Fox News (Nov. 7, 2024), <https://www.foxnews.com/media/kamala-harris-bungled-answer-the-view-about-biden-seen-turning-point-campaign>.

<sup>125</sup> Teta Declaration ¶ 20.

invitations to JD Vance, Robert F. Kennedy, Jr., Lindsey Graham, Josh Hawley, Elon Musk, Kevin McCarthy, and Marco Rubio, each of whom declined the invitation to appear on the program.<sup>126</sup> The critical consideration, however, is not whether the program achieves some government-approved roster of participants but the fact that the producers' decisions are not motivated by partisan purposes and are instead motivated by the desire to interview the most newsworthy and impactful guests.

The February 2, 2026, appearance of Texas primary candidate for Senate James Talarico is a prime example of *The View*'s pursuit of newsworthy material. Following Representative Jasmine Crockett's January 6, 2026, appearance on *The View*, co-hosts Farah Griffin and Goldberg both suggested to Teta that Talarico, Crockett's leading opponent in the Texas Democratic Primary for United States Senate, should be a potential interview guest. Talarico's candidacy at the time was gaining national attention, including on social media, which informed Teta's judgment that Talarico was a newsworthy subject.<sup>127</sup>

A booking staff member on *The View* reached out to Talarico's campaign with an invitation to appear on the program. After Talarico's campaign accepted the invitation, one of *The View*'s veteran producers (who came to *The View* following stints with *Yahoo News with Katie Couric* and *Good Morning America*) prepared the interview outline in accordance with the program's standard processes. The interview outline was reviewed and edited by the co-hosts and other ABC personnel before being finally reviewed and approved by Teta. Neither the interview outline nor any of the questions were provided to Talarico or his representatives prior to the interview, the

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<sup>126</sup> *Id.* ¶ 26.

<sup>127</sup> *Id.* ¶ 37. As *The View* is an exempt bona fide news interview program, Talarico's appearance was not made in accordance with any request by the Talarico campaign for "equal time" resulting from Crockett's appearance on *The View* or out of any consideration that he might be entitled to such "equal time."

producers provided no assurances to Talarico or his representatives as to the content of the program, and neither Talarico nor his representatives were provided any opportunity to suggest edits or view the final interview before it aired.<sup>128</sup> Thus, as with all candidate appearances on *The View*, Talarico's appearance was under the control of ABC through the program's Executive Producer and his team. The decision to include Talarico was driven by considerations of newsworthiness and audience interest and not an intent to advance his candidacy.

As that demonstrates, *The View*'s ability to rely on the bona fide news exemption to select interview candidates based on newsworthiness, as it has for over two decades, has advanced Congress's goal of facilitating political discourse on the airwaves. Of course, that may not always mean that *The View* may achieve the Commission's preferred complement of guests or particular views (although, as noted above, any list of interviewees on *The View* would not reflect individuals who have been invited by the producers but declined to appear). But the Commission has expressly disavowed efforts to "second guess broadcasters about the relative newsworthiness of the interviewees or the topics of discussion"<sup>129</sup>—as it must since any effort to evaluate the qualification of *The View* as a bona fide news interview program that centered on the identity of the guests that appeared on the program or the views they expressed would be at odds with Congress's decision to exempt bona fide news interview programs from any equal opportunities rule (not to mention the First Amendment). After all, if a program had to provide equal opportunities to qualify for the exemption, then the exemption would be left with no work to do. *The View* thus readily qualifies for the bona fide news exemption, as the Commission has recognized for decades.

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<sup>128</sup> *Id.* ¶¶ 40-41.

<sup>129</sup> *ABC Declaratory Ruling*, 15 FCC Rcd at 1358.

#### **IV. SUBJECTING *THE VIEW* TO THE EQUAL OPPORTUNITIES RULE WOULD VIOLATE THE FIRST AMENDMENT.**

##### **A. The Equal Opportunities Rule Cannot Be Applied to *The View* Consistent with the First Amendment.**

Even if the bona fide news interview exemption were not broad enough to cover *The View*, the Commission could not apply the equal opportunities rule to *The View* consistent with the First Amendment. While *Red Lion* held the “personal attack” and “political editorial” rules constitutional, this petition involves “a different statute” at “a different point in the development” of broadcast regulation, which suffices to merit “plenary consideration” of this “substantial First Amendment challenge.”<sup>130</sup> And, as explained, whatever may be said of the rule at its inception, at this point in time it is fundamentally incompatible with bedrock First Amendment principles.<sup>131</sup> If the rule applied here, it would seemingly require every station broadcasting *The View* to provide airtime to every legally qualified candidate running for office in a particular race in their service areas, without regard to the newsworthiness of the candidate. In large races, like this year’s California open gubernatorial primary, this could mean the difference between interviewing the leading candidates in a tight race, or interviewing no candidates at all because fulfilling dozens of demands for free time would overburden the local stations airing *The View*. This “chilling” effect is exactly the result Congress sought to avoid when it adopted the bona fide news exemption.<sup>132</sup> But to the extent Congress failed to provide an exemption broad enough to avoid that result, the rule cannot survive.

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<sup>130</sup> *McCutcheon v. FEC*, 572 U.S. 185, 203 (2014).

<sup>131</sup> See *supra* Part II.

<sup>132</sup> See *supra* note 55 and accompanying text.