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No Basis Exists in 2025 for Rules Targeting Traditional Video Providers

by

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I. Introduction and Summary

On Friday, February 21, 2025, cable operator Altice USA (doing business as Optimum) and programmer MSG Networks announced that "*they* have reached an agreement for the relaunch of MSG Networks on Optimum video lineups" (emphasis added). This two-party resolution of a temporary carriage impasse should dissuade local lawmakers intent upon meddling in the vibrant multichannel video programming distribution (MVPD) marketplace. In light of the more-than-sufficient competition that exists today, the FCC abandoned its widely criticized proposal requiring legacy distributors – cable operators, satellite TV providers such as DIRECTV, and Telco TV operators – to provide rebates to subscribers during blackouts. So, too, should the New York area congressmen that introduced legislation reviving that doubly discriminatory, and ultimately anti-consumer, plan.

In any industry, potential partners negotiating at arms' length rationally employ all the tools available to obtain their best bargain. One option is to allow an existing agreement to expire. Absent clear evidence of inefficient marketplace operations, government objections to such measures are misplaced. In 2025, the robustly competitive video marketplace in which MVPDs and programmers broker deals ensures optimal outcomes for consumers. The agreement reached by MSG Networks and Altice USA demonstrates this to be true. Nevertheless, the temporary absence of the New York Knicks, New York Rangers, New York Islanders, and New Jersey Devils from Optimum subscribers' screens led New York Governor Kathy Hochul to direct the Department of Public Service "to demand that all customers are either provided with alternative means to view the games of the affected New York sports or be provided with a pro rata refund."

It also inspired Representative Pat Ryan (D-NY) and Senator Chris Murphy (D-CT) to revive a Biden Era proposal requiring struggling facilities-based MVPDs – cable, DBS, and Telco TV providers – but not ascendant streaming substitutes to provide rebates to subscribers. The Notice of Proposed Rulemaking (NPRM) issued by the FCC under the leadership of then-Chairwoman Jessica Rosenworcel solicited a record replete with compelling reasons not to move forward. Those same objections should doom the Stop Sports Blackouts Act of 2025 – legislation which, despite its name, is not limited to sports-related blackouts.

The press release announcing the introduction of the Stop Sports Blackouts Act of 2025 lays bare its flawed premise:

> If *cable companies* can't provide the service you're paying for, *they* owe you a refund…. [W]e're putting down a marker: everyone will get their money back when a blackout stops them from watching TV, no questions asked. That means dollars back in your pockets, and, equally importantly, *it provides a hell of an incentive to these billion dollar corporations to make sure these blackouts don't happen in the future*.

Of course, "cable companies" – along with other facilities-based MVPDs singled out by this legislation, including the two Direct Broadcast Satellite (DBS) providers (DIRECTV and DISH TV) and Telco TV offerings like Verizon's Fios TV – represent only one half of the bargaining equation. Incidentally, the half that, as the result of shrinking subscriber numbers and ever-expanding competitive alternatives, has the most to lose from a blackout.

Specifically, the Stop Sports Blackouts Act of 2025 would require the Commission:

> To require [cable, DBS, and Telco TV providers] to issue to a subscriber of such provider a rebate with respect to any period during which the provider denies such subscriber, as a result of a covered negotiation, access to video programming that such provider agreed, at the time of subscription entry or renewal (as the case may be), to provide to such subscriber during such period [and] to establish the appropriate amount of a rebate issued….

In January 2024, the FCC voted along party lines to issue a Notice of Proposed Rulemaking (NPRM) with a similar aim: "to require cable operators and DBS providers to give their subscribers rebates when they blackout a channel due to a retransmission consent dispute or a failed negotiation for carriage of a non-broadcast channel." As then-Commissioner Brendan Carr pointed out in his Dissenting Statement, the Commission did so "at a time when consumer choice has never been greater and traditional MVPDs are bleeding market share to new, unregulated competitors."

As the record made plain when the FCC considered requiring blackout rebates, such an obligation would heighten the substantial competitive challenges from other video distribution platforms that traditional MVPDs' already confront. It also would tip the scales toward programmers in negotiations, increase traditional MVPDs' costs, and, ultimately, subject their subscribers to higher prices. This would not be a good outcome for consumers.

II. Traditional MVPDs Lack Undue Market Power and Face Growing Competition

Due to abundant choice, the video distribution marketplace in 2025 operates efficiently. The suggestion that additional regulations should apply exclusively to traditional MVPDs because of some privileged status vis-à-vis their competitors cannot withstand even the slightest scrutiny. For proof, I direct your attention to the *2024 Communications Marketplace Report* adopted during the final weeks of Chairwoman Rosenworcel's tenure, which acknowledged "a downward trend that began in 2012" from a high of 101.6 million subscribers to 54.1 million subscribers at the end of 2023 – a 46.8 percent decline. Recently released earnings reports reveal that those losses continue:

- Charter, the largest cable operator, lost 1.23 million subscribers (or 8.7 percent) between year-end 2023 and year-end 2024.
- Comcast, the second-largest cable operator, shed 1.583 million subscribers (or 11.2 percent) during the same timeframe.
- DISH TV, one of two DBS providers (along with DIRECTV) and the only one to disclose publicly subscriber totals, lost 580,000 subscribers (or 9.0 percent) during the first three financial quarters of 2024.
- Verizon shed 267,000 subscribers (or 9.0 percent) during 2024.

By contrast, the 800-pound gorilla, Netflix, reported an additional 4.82 million subscribers in the United States and Canada during the fourth quarter of 2024, bringing its total to 89.63 million – more than 2.5 times the combined total of all four major traditional MVPDs listed above. Meanwhile YouTube TV, the largest virtual MVPD (vMVPD) by far, had approximately 8 million subscribers at the beginning of 2024, is *adding* roughly 1.5 million subscribers each year, and is expected to surpass Charter by the end of next year.

vMVPDs were not targeted by the FCC's proposed rebate requirement and fall outside of the scope of the Stop Sports Blackouts Act. Consequently, should the latter become law, it would accelerate traditional MVPD subscriber losses, further tilt the regulatory status quo toward ascendant streaming options, and lead to less competition overall. Suppressed competition between distributors would result in a decrease in overall consumer welfare: fewer options, less product differentiation, diminished incentives to innovate, and higher prices.

III. Setting Aside the Targeting of Traditional MVPDs, a Rebate Requirement Also Would Skew Negotiations Toward Programmers and Lead to Higher Prices

There is another reason, wholly separate from the singling out of traditional MVPDs, damning a rule that would force distributors to provide subscriber rebates when blackouts occur: it would paint them as the "bad guys" and, consequently, incentivize programmers to demand more than the marketplace otherwise would bear. As Verizon in its comments emphasized, however, in 2020 the FCC itself acknowledged that "retransmission consent and program carriage negotiations are not within the control of the cable operator because cable operators cannot unilaterally control the outcome of such negotiations. *Or, as the saying goes, it takes two to tango*" (emphasis added).

Because the distributor would be the one to provide the rebate in the event of a blackout, it – not the programmer exploiting the regulatory opportunity a rebate-requirement presents – would suffer disproportionately the reputational and economic fallout. Numerous interested parties responding to the FCC's NPRM explained how all of this would play out in practice.

- The International Center for Law & Economics in its reply comments offered valuable insight into the reputational harms that would arise: a requirement that the distributor provide a rebate "explicitly and unfairly assigns liability for blackouts to the cable operator or DBS provider. As a result, the proposal would provide channels with additional negotiating leverage relative to the status quo…. [Facilities-based MVPDs] would be made to face reputational harms stemming from a federal agency suggesting the fault for any retransmission-consent or carriage-agreement blackouts fall squarely on their shoulders."
- Verizon elaborated that "[i]f a failed negotiation means that a video provider will have to pay out rebates, video providers and their subscribers will be forced to accept higher prices for such programming…. The proposed rule ignores the reality that video distributors … are the party with the incentive to keep consumer prices down in a highly competitive marketplace with rampant cord cutting."
- NCTA – The Internet & Television Association explained in its comments that "[a] rebate mandate … would disrupt the marketplace by placing the government's thumb on the scale to the detriment of cable subscribers [and] distort negotiations by putting pressure on cable operators and DBS providers to agree to unfavorable rates and terms to avoid the risk of paying the rebates."
- In reply comments, USTelecom – The Broadband Association argued that a rebate mandate "would force [traditional MVPDs] to accept higher fees. While MVPDs strive to keep prices as low as possible to remain competitive in the current dynamic video marketplace, this hike in retransmission fees would leave them no choice but to pass the increased cost onto consumers."

Thus, rather than benefiting consumers, an overabundance of commentary reveals that the Stop Sports Blackouts Act of 2025 would lead to higher prices.

IV. Conclusion

Even where well intentioned, regulatory intervention inescapably leads to economic inefficiencies. Here, requiring traditional MVPDs – and not streaming substitutes – to provide rebates to consumers in the event of a negotiating impasse would discriminate in favor of both unregulated distributors and programmers, doubly driving subscriber prices higher. Given the abundance of competition in the video distribution space, the better choice is to allow the efficiently operating marketplace to determine optimal outcomes.

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Further Readings

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Reply Comments of the Free State Foundation, *Promoting Competition in the American Economy: Cable Operator and DBS Provider Billing Practices*, MB Docket No. 23-405 (March 5, 2024).

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