

NATIONAL SPORTS LAW

NEGOTIATION COMPETITION 2022

ROUND TWO

“Apple of Her Eye”

GENERAL FACTS FOR BOTH TEAMS

To many, women’s sports is an untapped market, full of potential. Following the controversy surrounding the NCAA’s alleged inequitable treatment between the men’s and women’s Division I basketball tournaments in 2021, the NCAA commissioned a sports media rights report to probe into the gender equity issues in women’s college basketball. This report found that the NCAA had drastically undersold media rights to the women’s tournament, receiving \$34 million per year from ESPN in a deal that includes the rights to 28 other NCAA championships, while the value of the women’s basketball tournament rights alone would likely reach roughly \$100 million by 2025.

While much of this misevaluation was traced in this report to perceived indifference by the NCAA to the value of the rights, a large reason for the increase also lies with the sharp rise in interest in women’s sports over the past decade. Indeed, the NCAA-commissioned report found that viewership of the NCAA Division I basketball women’s championship game has increased by 32 percent since 2015 and that total impressions of the entire tournament are up 48 percent over the same period. To this end, a recent study by Learfield found that fans of women’s college sports make up more than 42 percent of all sports fans.

Similar increases in viewership are evident among the professional women’s sports ranks as well. When the National Women’s Soccer League (NWSL) was founded in 2012, matches were streamed for free on Youtube, drawing only a few thousand viewers at a time. Eight years later in March 2020, the NWSL signed a three-year media rights agreement with CBS Sports and video game streaming service Twitch to broadcast games for totals of \$4.5 million and \$1 million, respectively. And as the NWSL’s contract with these two services is set to expire in 2023, the NWSL is expecting even greater numbers as the league continues to grow and gain exposure.

Regardless of gender, one major disrupting force within the media rights market landscape has been the rise of streaming services. Not too long ago, the serious market competitors for sports media rights were exceptionally small in number. Now however, the sharp growth of online streaming services (and the corresponding decline of cable) has allowed numerous other companies to compete with the traditional sports broadcasters, and the traditional broadcasters have had to adapt by creating streaming services of their own. Notably, while many of these new streaming services are standalone, entrepreneurial efforts, some are explicitly tied to and partnered with bigger companies like Amazon and Apple who, despite being known for ventures far outside of the sports broadcasting realm, have looked to add to their portfolio with streaming services and hunt constantly for content that will draw eyeballs.

Apple in particular has made an aggressive push for broadcasting rights all across the spectrum. These efforts paid off in March 2022 through the purchase of the rights to one Friday night game per week for \$85 million. This deal has allowed Apple to both advertise its “AppleTV+” platform to baseball fans and to boost subscriptions, as the deal made games free through June 24, 2022, before requiring a subscription for the rest of the season. The MLB package also allowed Apple to advertise itself to other leagues, as despite a rocky debut of Friday Night Baseball marred with complaints about buffering streams and commentators focusing on pets and Apple products during the games, fans were impressed by the 4k video quality and minimalist graphics in the AppleTV broadcasts.

The latter has, in part, led to other Apple ventures into the sports broadcasting world. AppleTV has emerged as a major bidder for the NFL’s coveted Sunday Ticket Package and has been heavily involved in the bidding for whole or partial rights to several college football conference media rights packages, including the Big Ten, Pac-12, Big East, and Big 12 conferences. But in June 2022, Apple secured perhaps its biggest sports broadcasting get so far, agreeing to terms with MLS for a ten-year, \$2.5 billion deal for exclusive rights to the broadcast of all MLS broadcasts.

On the heels of this agreement, Apple has approached the NWSL about pairing its rights to the premier American men’s soccer league with the rights to the premier American women’s soccer league. Both parties have given their representatives full authorization to be creative and—if possible—craft a mutually beneficial agreement to advance each side’s interests.

CONFIDENTIAL FACTS FOR THE NATIONAL WOMEN’S SOCCER LEAGUE

The NWSL is incredibly proud of the growth of the league, especially over the past few years. While the league has had more than its share of negative exposure, including abuse scandals, tortured collective bargaining negotiation, and an eye-catching (and disastrous) lawsuit by Portland Thorns rising star Olivia Moultrie, the league feels that it has ultimately emerged from these challenges stronger than ever. As while the cliché of ‘any exposure is good exposure’ is slightly uncomfortable when that exposure comes from what felt like a near-constant stream of players blowing the whistle on abuse by their coaches, ratings have spiked over the past few years as more potential fans have learned that the NWSL existed—even if that discovery was in not exactly in the context the NWSL was hoping to achieve.

Regardless, the league feels that the new collective bargaining agreement reached with the players more than addresses those abuses, giving the league a much brighter future than what is directly behind them. Furthermore, a large portion of the challenges in navigating the relationship between the league and its players has been, unsurprisingly, related firmly to money—a problem that an agreement with AppleTV can do much to alleviate. Due in large part to the pitiful \$5.5 million per year that the league has received from CBS and Twitch combined, the league is simply unable to pay the players what they are worth (the average NWSL salary is just \$35,000) and engage in marketing to really bring out the value of its brand. A new media rights deal that pays the league the actual value that they can provide will also provide the league with the capital to continue to ensure that their relationship with their players is strong enough to weather any future storm.

That actual value is, the league feels, with firm and directly applicable recent precedent: the deal that Apple signed with MLS. The NWSL feels that they and MLS are two sides of the same coin: MLS is the premier men’s soccer league in the United States while the NWSL has firmly established itself as the premier women’s soccer league in the United States. As such, any deal that the NWSL signs with Apple should ultimately be comparable to the ten-year, \$2.5 billion nonexclusive deal that Apple gave to MLS. In fact, the NWSL feels that their brand is ultimately even stronger than MLS’s brands given the higher ratings that they have achieved when compared to MLS; the league drew 525,000 viewers for the 2021 NWSL championship game, while MLS’s peak viewership during the same year was just 475,000 (for a regular season match between

Charlotte FC and the LA Galaxy). Indeed, when comparing United States ratings between all soccer leagues—the NWSL, MLS, and its European competitors—the NWSL has consistently been the only league between itself and MLS to be able to compete on a weekly basis with Europe.

Unlike MLS, the NWSL has star power. The biggest American names in men’s soccer rarely—if ever—play in MLS, preferring instead the much more lucrative pitches overseas, but the current top American names in women’s soccer—including Megan Rapinoe and Alex Morgan—all play in the NWSL. The NWSL has even been able to draw top international names like Canada’s Christine Sinclair, who beyond leading Canada’s national team to an Olympic gold medal and a CONCACAF championship has also captained the Portland Thorns since the NWSL’s inaugural season in 2013. While MLS has some strong names both from within the American ranks and elsewhere, they simply cannot compete with the Premier League over in Europe, whereas the NWSL has much less competition from overseas for the biggest names. With sufficient exposure—and without the complications of featuring on about a dozen different channels and streaming services under the CBS/Twitch deals—the NWSL is confident that their star power will shine and that they will take off in a big way.

With all of that in mind, the NWSL does not see why it should take anything less than what Apple received from MLS. The NWSL knows that this may be difficult to sell, particularly given that such a deal would represent a jump in valuation for their media rights from \$5.5 million per year to \$250 million per year. But given this precedent—and given the NWSL’s strong interests in making a statement about gender equity—the \$250 million per year that represents the MLS package should be at or near the goal for the NWSL in their next media rights deal—regardless of whether it is with Apple or anyone else.

Of course, that “or anyone else” presents an issue. There has admittedly not been much interest in the NWSL’s media rights beyond Apple; CBS and Twitch have expressed interest in signing an extension, but neither are interested in coming anywhere close to the \$250 million per year represented by the MLS deal with Apple. Another streaming service, the standalone entity FloSports, has expressed interest in adding the NWSL to its library of various smaller professional and college sports leagues across an assortment of different sports, but the NWSL is wary about a potential partnership with FloSports. Aligning itself with a platform whose best current offerings are grassroots NASCAR races, minor league hockey, and various college-level Olympic sports signals to other broadcasters that the NWSL is not a serious brand on par with MLS and other top-

end professional sports leagues. The NWSL is also aware of multiple complaints from fans of other sports of FloSports's lackluster stream quality for most events and knows that FloSports was recently sued by a group of fans over their pricing practices. Moreover, FloSports has only offered the NWSL \$75 million per year for a four-year term—a substantial upgrade from the NWSL's previous deal, but still well beyond where they believe they are valued. Efforts to reach out to other frequent competitors in the sports broadcasting streaming conversations like Amazon, ESPN, and Hulu have thus far been unsuccessful.

The NWSL feels that it may be able to bridge the gap between its valuation and what Apple is willing to provide through the term. The 10-year term in the Apple/MLS agreement is practically unheard of in the sports broadcasting world in terms of length. By contrast, the NWSL would jump at a shorter term if they can get a yearly figure approaching the \$250 million received by MLS in exchange. While the NWSL would very much value the consistency that a ten-year term would provide, the NWSL sees two very good reasons to sign on a shorter-term basis. First, a higher dollar figure, shorter-term deal would give the NWSL a much better platform for an additional increase in later negotiations than the current \$5.5 million platform afforded to them by their previous deals with CBS and Twitch. Second, the league is still a little unsure about the value that Apple could bring to the league and their fans, and as such entering more of a trial relationship with Apple for a three- or perhaps five-year term might be better. At the same time, however, the risk that Apple will not feel like they are getting what they paid after that short term and look to leave or negotiate a lower per-year figure after that short term is real, and as such the NWSL would be willing to give something of a discount for a longer term.

One way to create additional value for the NWSL would be in what they provide Apple in terms of inventory. According to all verifiable reports, Apple's deal with MLS is, despite being pitched to the press as an exclusive deal, is decidedly not so; to the contrary, the deal contains a cutout that has allowed MLS to sell ESPN the rights to top MLS matches and the MLS Cup in alternating years. The NWSL has also heard rumors that MLS is also in similar negotiations with FOX and Univision for an additional cut of MLS's match inventory.

The NWSL would strongly prefer their next deal to be limited to one or two outlets if the money makes that possible. After all, their fans have complained endlessly over the past three years about the difficulty of finding games under the CBS/Twitch shared agreement, given that matches were split between CBS, CBS Sports Network, Paramount+, and Twitch—especially

since CBS Sports Network required a cable subscription and Paramount+ requires a separate subscription. Given how furious fans were about this arrangement, the NWSL felt that it significantly hurt their overall ratings and reputation. The NWSL would strongly prefer not to replicate this model in any way, particularly if Apple will require NWSL fans to pay on a subscription basis for NWSL games as the NWSL wants to sell a new deal as a way to allow fans to see all NWSL matches for one price. At the same time, the NWSL's best ratings came from exposure on CBS, and CBS has offered the NWSL \$50 million per year for one match per week (that CBS gets to choose) and the annual NWSL Championship Game. If a deal with Apple combined with that \$50 million can allow the league to reach a combined number approaching the MLS/Apple figure, that would be preferable to a lower figure that provides consistency, even despite the value that consistency would provide to the NWSL and their fans.

The NWSL is very interested in how Apple envisions the NWSL streaming platform working within the context of their broader AppleTV platform. One thing that the NWSL wants to be sure to avoid is their broadcast rights being seen as an “add-on” to the MLS rights Apple has already received. The NWSL wants to remain separated from MLS in all aspects, and agreeing with Apple so soon after MLS agreed to terms with them could create a perception that the two soccer leagues are linked or are going to be pitched together to fans. According to rumors, the MLS deal affords MLS fans a separate, standalone streaming service within the AppleTV+ ecosystem and that is exactly what the NWSL wants too, but they do not want a streaming service that includes the NWSL and MLS in the same environment.

Of final concern is local blackouts. It is obvious that the NWSL has an attendance issue; despite its better peak ratings than MLS, the league's attendance falls far below the numbers set by the men's league. In 2022, MLS drew a little over 20,000 fans per game while the NWSL only mustered a little over 6,000 fans per game. The NWSL feels that this lackluster attendance creates a worse product and may be a reason why they are not receiving much serious interest for their broadcast rights beyond Apple. For this reason, the league is intrigued by the idea of local blackouts as a means to encourage fans to attend matches in person rather than watch them from home. Such a blackout arrangement could simply be limited and conditional on attendance remaining below a certain number if necessary. Ultimately, however, the league feels that the backlash from fans that local broadcasts would almost certainly create might not be worth the benefits that such an arrangement would provide.

CONFIDENTIAL FACTS FOR APPLE

Apple sees tremendous value in picking up the broadcast rights to the NWSL, both for the product itself and for its own brand as a sports broadcaster. Ten years ago, it might have been crazy to think of Apple—an electronics brand known for computers and phones—to also operate in the sports broadcasting space. But Apple sees sports broadcasting as a way to pick up subscribers for its AppleTV streaming service. Apple has invested billions into original AppleTV programming and wants to make sure that investment pays off. While early returns have been promising—as propelled by immensely popular original shows like *Ted Lasso* and its Best Picture Oscar for *CODA*—Apple still lags significantly behind competitors like Netflix, Hulu, and HBO Max in market share, boasting just six percent of the market compared to Netflix’s 21 percent, Amazon Prime’s 20 percent, HBO Max’s 15 percent, and Hulu and Disney+’s combined 24 percent (14 percent Disney+, 10 percent Hulu).

Apple sees sports broadcasting as a way to draw eyeballs, advertise its original shows, and, ultimately, draw subscription and advertising revenue. Unfortunately, other services seem to have the same idea. AppleTV’s quest for what it sees as the holy grail of sports broadcasting streaming packages—NFL’s Sunday Ticket package—has been met fiercely step-by-step by Amazon, who hopes to pick up more NFL games for its Amazon Prime Video service beyond its current stake in Thursday Night Football. Apple has faced similar competition from a wide variety of entities for college sports broadcasting rights, and while early negotiations for rights to the Pac-12 Conference have been promising, the prestige and value provided by that conference’s media rights pale in comparison to the media rights for more popular college sports conferences, all of which Apple bid for but lost out on by a wide margin.

In negotiations with MLS, Apple found a welcome circumstance—very little competition from other brands. Given MLS’s recent struggles drawing viewers and its status in the United States as a secondary brand to the much more popular European leagues, MLS admitted to finding few truly interested takers for its media rights package beyond Apple. MLS was ultimately still able to nearly triple the value of its previous media rights deal—from \$90 million per year to \$250 million per year in its new AppleTV package. Apple was still thrilled with the value it received, especially in light of the skyrocketing prices of sports broadcast rights generally (represented by the recently signed deals for the Big Ten conference worth a combination of \$1 billion per year).

The same is hopefully true for the NWSL. Apple feels that it might be the first to happen upon a diamond-in-the rough with the NWSL, given the NWSL's ratings over the past few years. Many of Apple's media analysts were somewhat surprised to see that NWSL ratings in 2021 were, at their peak, even higher than MLS ratings—525,000 viewers for the NWSL championship game compared to 475,000 for MLS's top performing match—a particularly exciting regular season match between Charlotte FC and the LA Galaxy. Indeed, when comparing United States ratings between all soccer leagues—the NWSL, MLS, and its European competitors—the NWSL has consistently been the only league between itself and MLS to be able to compete on a weekly basis with the European leagues. Apple sees the reason for that as simple: the NWSL is able to boast some of the biggest names in women's soccer, unlike MLS, as the biggest names on the U.S. Men's National Team tend to play overseas when not in World Cup or Olympic matches, while the biggest names on the U.S. Women's National Team—a significantly more popular brand than the men's team anyway—tend to stay in the United States on the NWSL.

Still, however, Apple sees MLS media rights as ultimately more valuable. Apple's media rights analysts see MLS rights as a product that has been grossly underutilized and undermarketed by its previous broadcasters, while they see the NWSL rights as mostly tapped to their potential. The analysts point to attendance numbers as supporting this contention; despite NWSL broadcasts being slightly more popular, MLS attendance numbers lap NWSL attendance numbers by a wide margin, with MLS drawing a little over 20,000 fans per game in 2022 while the NWSL only mustered a little over 6,000 fans per game. This discrepancy led Apple's analysts to a conclusion that MLS's on-field product is not the problem leading to its low ratings, and that the problem lies instead the way that its previous broadcast partner FOX utilized the rights. Apple is confident that it can draw out MLS's potential but is less confident that the NWSL has much more potential left to draw.

As such, Apple is not terribly interested in giving the NWSL an overall rights package at the level of the \$2.5 billion paid to MLS. While Apple is more than happy to help the NWSL make history with the first women's sports league television package worth over \$1 billion, anything much more than that would be a significant overpay. While Apple is sure that the NWSL will not be happy with the optics of drawing so much of a lesser sum than what MLS received for worse ratings, Apple feels that a way to make the optics look better is through a shorter term. A ten-year term is a substantial commitment to a league with such low ratings, Apple felt like with a

longer term it can better justify a larger commitment; with time to truly work towards drawing out MLS's potential, Apple feels like it can better live up to the overall value of the deal.

With the NWSL, by contrast, that potential is likely much lower, and as such an unconventionally long commitment is neither necessary nor wise. This is particularly true since, while the NWSL has a lot to offer in strong ratings and a briskly growing brand, the league has also been subject to quite a few nasty scandals

To this end, Apple feels that working with the NWSL on more of a trial basis—with a deal of three or perhaps five years—would better allow Apple to explore just how much more potential can be brought out of the league while ensuring that the league is indeed now scandal free: especially if the price for the NWSL rights is at or above \$150 million per year. Still, however, Apple does fear that giving the NWSL more money over a shorter-term basis could set a bad precedent that would make extension negotiations much more difficult (and expensive) should the NWSL rights pan out, so it would be happy with a longer deal—even one at or beyond ten years—should it be able to lock in a rate of \$100 million or less per year.

What Apple can offer the NWSL in return for this commitment is consistency. Apple feels that the NWSL was harmed significantly over the longer term by the jumble of CBS's various platforms and Twitch that made up the NWSL's previous media rights deal. Under that previous deal, while a few of the top NWSL matches were broadcast on the flagship CBS station (and, unsurprisingly, the NWSL's peak ratings came on that channel), for all other matches CBS was permitted to shift around all its other broadcasts between CBS Sports Network, the CBS Sports streaming app (which required fans to link to a cable subscription), and subscription-only Paramount+. Apple understands that fans complained throughout the life of the NWSL's contract with CBS about the difficulty in finding matches (and an uneasiness about paying for several different streaming and cable services to get all the matches), AppleTV can offer NWSL fans one consistent platform where all matches can be found easily in the same place.

Apple is happy to offer the NWSL exactly what it gave MLS: the development of a standalone streaming service within the AppleTV+ platform that would allow fans to choose which NWSL match they would want to watch on a given night. To this end, Apple sees its service as much more comparable to a service like MLB.TV than a traditional broadcaster and is confident that fans will love the opportunity for choice and the value that opportunity choices would provide. The prospect of broadcasting every single NWSL match is expensive, but Apple feels like fans

would be much more willing to pay for the subscription if they can pick which games they want to watch, making the deal ultimately more valuable for them despite the higher operations cost. Broadcasting every game rather than a few select games per week is not as much more expensive than one would think; shipping equipment on a regular basis adds costs, whereas having one set per stadium and keeping it in place over the long term helps to cover the costs added by having additional equipment and personnel in place at each stadium.

If the NWSL would prefer to stick with the featured games model, that is fine, but Apple does not feel like the value of such a package would be as high as one where all games are available to subscribers. Conversely, the NWSL may wish to make Apple's deal nonexclusive while selling offer a sliver of games (e.g., one featured game per week) to a more traditional broadcaster like CBS. Apple is not opposed to such a deal—after all, it afforded MLS the same opportunity, and MLS used that opportunity to reach a separate deal with ESPN, and Apple hears that further negotiations are ongoing with FOX and Univision, but a nonexclusive deal would obviously be much less valuable to Apple. One area of keen interest to Apple should the deal be nonexclusive is how the NWSL Championship Game is treated: with MLS, Apple shares rights to the championship game with ESPN where Apple and ESPN alternate which network broadcasts the MLS Cup each year. At a minimum, Apple would insist on a similar deal with the NWSL, though retaining all rights to the NWSL Championship Game would obviously be vastly preferable.

As a final key term, Apple is insistent that no term allowing for local blackouts be included in the media rights agreement. While Apple knows that the NWSL's biggest problem right now is attendance and that blackout out games for local fans may drive them to the stadiums, Apple feels that local blackouts ultimately hurt the product long-term and, more importantly, vastly harm its own stake in the agreement. After all, it stands to reason that the best viewing audience for matches will come from the local television market. If the NWSL insists on including some term allowing local blackouts—even on a conditional or election basis—Apple will be much less willing to spend any significant amount for the rights. Even as low of a sum as \$25 million per year would be seen as an overpay if local blackouts were on the table.