

NATIONAL SPORTS LAW

NEGOTIATION COMPETITION 2023

ROUND TWO

“2-Pac Unsure”¹

GENERAL FACTS FOR BOTH TEAMS

It is not every day that a 108-year-old entity falls. Yet that is just what happened on a raucous day in college sports on August 4, 2023, when the Pac-12 Conference (Pac-12)—a National Collegiate Athletic Association (NCAA) athletic conference founded in 1908—became (unofficially) the Pac-4 Conference.

Needless to say, the demise of the Pac-12 did not happen overnight. An opening salvo against the integrity of the organization happened over a year earlier when on June 30, 2022, two of the Pac-12’s earliest members, the University of Southern California (USC) and the University of California, Los Angeles (UCLA), announced that they would be leaving the Pac-12 for the Big Ten Conference starting in 2024.

The move by these two schools to leave a conference with all of their rivals within a few states’ distance for one primarily located in the Midwest (with the closest counterpart in

¹ This fact pattern involves an ongoing, rapidly-changing real-life series of events. For the purposes of this negotiation problem, the fact pattern is considered a “semi-closed” universe under the NSLNC Rules. Competitor teams should be aware of two rule interpretations/clarifications (and one additional comment) specific to this negotiation round:

1. Some information in this negotiation problem may have been changed for academic purposes (or may have not been known to the author when this fact pattern was drafted). While competition teams are permitted and encouraged to look outside of the fact pattern for additional *background* information, any outside information must not change any material fact within the fact pattern. ***Per NSLNC Rule 3(b), should there be any direct conflict between information contained in this fact pattern and any outside information, the fact pattern will always control and supersede any conflicting real-life information—regardless of whether the information is background or material in nature.***
2. The fact pattern is considered a closed universe as of the fact pattern release date: September 21, 2023. Any reference to any events that occur after this date (or any information that comes to light after this date) shall be considered a *per se* ethical violation and will subject the offending team to penalties, including up to immediate disqualification from the competition with no refunds.
3. On September 19, news broke that the real-life parties are considering a unique promotion/relegation structure for a combined conference. Despite this event’s occurrence prior to the fact pattern’s release, please consider this proposal to not be part of the fact pattern closed universe and thus out of bounds for this round.

Nebraska—one state east of their former closest counterpart in Colorado) drew immediate questions of travel logistics and whether the Big Ten would look to add any more members from the Pac-12 to ease the travel burdens for USC and UCLA athletes. Further, many industry sources questioned whether the Pac-12—now down their two biggest brands—would be able to adjust to new media rights valuations of the significantly weakened conference with the conference’s current media rights deal with ESPN and Fox set to expire at the end of the 2023-24 athletic season.

All of these questions were answered on a fateful August 4, 2023. The morning started off with plans for Pac-12 commissioner George Kliavkoff to present their best media rights offer to conference members—a deal with AppleTV that reportedly would have paid each school \$23 million with additional incentives for a certain number of subscriptions to the streaming service. About ten minutes before this meeting, however, the University of Oregon (Oregon) and University of Washington (Washington) announced that rather than signing the AppleTV grant-of-rights agreement, they would be joining UCLA and USC in the Big Ten starting in 2024. A few hours later, the University of Arizona (UA), Arizona State University (ASU), and the University of Utah (Utah) announced that they would be leaving as well for the Big 12 Conference—joining the University of Colorado (Colorado), who had announced their own impending departure for the Big 12 a week earlier.

These defections temporarily left the Pac-12 with just four members left starting in 2024: Oregon State University (OSU), Washington State University (WSU), Stanford University (Stanford), and the University of California, Berkeley (Cal). But after about a month of hard negotiating, on September 1, 2023, Stanford and Cal were able to broker a deal to join the Atlantic Coast Conference (ACC). This left OSU and WSU alone in fighting to either keep the conference alive or to find a new suitable home for the near future—or at least until they get a turn in the realignment game of musical chairs.

As NCAA rules require all Football Bowl Subdivision (FBS) athletic conferences to carry a minimum of eight schools² to remain in that vital classification, OSU and WSU are left searching for answers as to how to proceed. These two schools are not without options, though none of the options would, at this time, firmly allow them to stay in a Power Five conference.³ The remaining

² See NCAA Bylaw 20.02.9. There is a two-year grace period before a conference would be moved down in classification. See NCAA Bylaw 20.02.9.2.

³ “Power Five” (also known as “Autonomy Five”) conferences—the Southeastern Conference (SEC), Big Ten Conference, Big 12 Conference, Atlantic Coast Conference, and the Pac-12—are given significant rulemaking

Power Five conferences—including the Big Ten, Big 12, and ACC—have all publicly stated that they are not looking to expand further at this time, though it is difficult to say from the outside what machinations are in play behind the scenes. Moreover, rebuilding the Pac-12 by backfilling from other conferences would be a challenge due to exit fees, the Pac-12’s lack of stability in the form of an existing media rights deal, and the fact that without many of their most influential member schools, the Pac-12 is likely to lose its Power Five status in the near future.

Perhaps the best remaining option for OSU and WSU involves the Mountain West Conference (MWC), an NCAA Division I FBS conference at the “Group of Five” level—one level below “Power Five” status. The MWC had reached out to all four Pac-12 remnants early, seeking to discuss whether there might be interest in some sort of arrangement where the MWC absorbs some or all of the four remaining Pac-12 schools, either through schools officially joining the MWC or through some sort of merger with the residual Pac-12 enterprise and brand. The MWC clearly makes a lot of logistical sense for OSU and WSU given that their footprint is largely the same Pacific Northwest region that OSU and WSU reside.

Of course, of the four remaining Pac-12 schools, however, only two of them—OSU and WSU—were even mildly receptive to the MWC’s overtures. Stanford and Cal’s defection to the ACC showed how much geographic proximity is valued to some in the current college sports space, and OSU and WSU have been clear that they are looking for their best overall home—regardless of geography.

With renewed effort in light of Cal and Stanford’s defection, these two schools have collectively sent representatives⁴ to meet with representatives from the MWC to discuss options and to see whether they can come to a mutually agreeable arrangement. 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.

autonomy by the NCAA and preferential treatment within the NCAA’s governance structure. *See, e.g.*, Bill McGill, Leeland Zeller, Greg Sankey, Ross Bjork & Marc Edelman, *Game Change: The NCAA’s New Autonomy Structure*, 5 *MISS. SPORTS L. REV.* 283 (2016).

⁴ Please note that these representatives are intended to be representatives from the OSU and WSU, *not* from the Pac-12 Conference itself. The Pac-12 Conference itself is unrepresented in this negotiation and may have interests divergent from the four remaining schools. Moreover, the team representing OSU and WSU is *not* required to split their team, i.e., have one team member represent Oregon State and one team member represent Washington State. For the purposes of this competition, the two schools’ interests will be aligned.

CONFIDENTIAL FACTS FOR OSU AND WSU

Leadership at OSU and WSU is at a loss as to how any of this came to pass. At one moment over the summer, the Pac-12 seemed stronger than ever—set to agree to an innovative (and potentially lucrative) new media rights deal and bring aboard valuable new members San Diego State (SDSU) and Southern Methodist to replace outgoing USC and UCLA. Losing Colorado in the middle of the summer hurt, but not nearly enough to make much of a difference in OSU and WSU's faith in the ongoing viability of the Pac-12. They certainly did not see Colorado's departure as an omen of things to come, and the morning of August 4, 2023, was something of a blur. At one moment the Pac-12 was stronger than ever, and just a few hours later the conference was left with just four members.

Over the next month, OSU and WSU tried desperately to keep the conference together. Leaders at the two schools had more conversations with leaders at Stanford and Cal than they could count, but Stanford and Cal were just too stubborn about preserving their reputation as top-tier academic institutions at all costs. Sure, OSU and WSU had similar interests and worked endlessly behind the scenes to try to join their departing conference colleagues in the Big Ten or Big 12, but they never would have thought about the ACC as a possibility until they saw headlines about Stanford and Cal's possible move into that conference. OSU and WSU just see the travel between the west coast and east coast as too onerous—especially if the ACC would not be willing to grant the schools a full share of its media revenue right off the bat—and the cost/benefit analysis just did not make sense. Of course, such calculations were merely academic, as the ACC never showed any interest in OSU and WSU anyway, and the two schools were left alone and out in the cold when Stanford and Cal left without them in early September.

Other potential conference landing spots have since faded. This includes the American Athletic Conference (AAC), which despite showing initial interest in OSU and WSU made clear from the start that they were only interested in OSU, WSU, Stanford, and Cal as a four-team package deal; their travel concerns were outweighed by Stanford and Cal's sterling academic reputation, and having all four teams together would make travel much easier. The AAC's press release disclaiming interest in OSU and WSU coming hours after Stanford and Cal's announced move to the ACC was not a coincidence, and the AAC would later tell OSU and WSU that they would likely not be interested in pairing them with two MWC schools (e.g., some combination of

San Diego State, Boise State, UNLV, etc.) even if the conference could find some way to convince those MWC schools to shell out the \$34 million each needed to leave the MWC without one year's notice.

With these events past them, OSU and WSU have decided that the time is ripe to jump full force into talks with the MWC. An arrangement between the Pac-12 remnants and MWC makes some basic sense given the MWC's advantageous location, as all of its schools are within the western states (as the name implies). Additionally, the MWC's membership includes several schools that would be strong partners for the OSU and WSU—including SDSU, a school that has already been well-vetted by OSU and WSU from when SDSU was set to join the Pac-12. But the indecision among the leadership at the two schools comes from how exactly to approach moving forward—and how the MWC schools would be involved.

The most straightforward path forward is for OSU and WSU to simply join the MWC as presently constructed. The two schools would become MWC members—including undergoing the expensive and time-consuming process of changing all of the Pac-12 branding on campus to MWC branding—and sign the MWC's current grant-of-rights agreement granting media rights to current MWC partners Fox and CBS.

However, this is the least favorable option in the minds of most decisionmakers at the two schools for several reasons. First, the schools would suffer from a massive loss in prestige from having to drop from a Power Five conference to a Group of Five conference. Even if it is inevitable that the Pac-12 will no longer be a Power Five conference, a visible drop to a clearcut Group of Five conference is unprecedented in college sports and would be just another hit to OSU and WSU's reputation across the college sports industry. Leadership at the two schools is well aware that there is no major practical difference between joining the MWC and some of the other options (aside from changing branding), but it is still an outcome leadership would prefer to avoid.

A second, more complicated option is for OSU and WSU to hold strong as the stewards of the Pac-12 and not enter into any formal partnership with the MWC at all. OSU and WSU—assuming the Washington state court gives them the full control over the Pac-12 as they expect—could reshape the Pac-12 as they wish, recruiting the schools they want to recruit from the MWC (when their grant-of-rights expire in 2026 and their exit fees are no longer a problem), AAC, and other conferences. This option would require some patience and perhaps some charisma and luck,

but it is the dream option of many within the two schools—a conference of the best of the Group of Five conferences would be a powerful one indeed.

But while NCAA rules giving a two-year grace period gives OSU and WSU the legal cover to be able to try this gambit, leadership does know that this path would be both expensive and risky: the schools would have to weather 2024 and 2025 on their own, likely without a television deal (unless they can convince a network to give two schools a holdover two-year deal), while having to schedule significantly more non-conference games than normal to avoid OSU and WSU simply playing each other a dozen or so times each year in every sport. Such practical concerns could be mitigated by finding a temporary conference to call home for the next two years for every non-football sport and/or by finding some schools willing to jump into the Pac-12 conference early to reduce the number of non-conference games to schedule, but both potential alleviations seem unlikely given the uncertainty swirling around the Pac-12.

This leaves the final and perhaps most likely option: a “reverse merger.” This path would require some degree of cooperation from the MWC schools, as it would involve at least nine of the 12 MWC schools voting to dissolve the MWC and join the Pac-12, thus merging the two conferences under the label and governance of the Pac-12. Dissolving the MWC would allow the pesky exit fees of the MWC grant-of-rights agreement to no longer be a problem and would even allow OSU, WSU, and the MWC schools to cut some of the MWC schools that do not add much value to a conference designed to contain all of the best schools at the Group of Five levels. OSU and WSU can certainly think several current MWC schools that fall into this category—San Jose State, Hawaii, New Mexico, and Nevada-Reno immediately come to mind to varying degrees—and presumably a newly reformed Pac-12 would only need nine current MWC schools to be invited to come aboard for a vote to dissolve the MWC to work as intended.

A reverse merger would also allow the new Pac-12 to bring in new schools to add to OSU, WSU, and the MWC schools. Of course, this would also be option for the MWC itself if OSU and WSU were to join on their own, but OSU and WSU imagine that the allure for other schools would be stronger in a reverse merger scenario than otherwise for the same reason OSU and WSU suspect that the MWC schools might be interested in a reverse merger: the Pac-12 brand is just so much stronger than the MWC brand. For schools like UTSA, UTEP, Memphis, and maybe even some Big 12 schools like BYU, an invitation to join the Pac-12—even without its strongest historical members—is much more compelling than an invitation to join even a strengthened MWC. In fact,

OSU and WSU feel that they may be able to bring over some of the more powerful WCC brands like Gonzaga and St. Mary's if the MWC is willing to entertain that as a possibility; even if they cannot bring anything to the table in football, their sterling record in basketball and broader academic reputation would add a ton of prestige to a reformed Pac-12.

A reverse merger also would allow OSU and WSU to hold on to the remaining Pac-12 assets and ongoing revenue streams. Those assets not only include the Pac-12's powerful trademarks (e.g., the "Conference of Champions" branding) but also include the Pac-12's emergency fund and the physical assets associated with the Pac-12 Network and the Pac-12's new headquarters in San Ramon, CA. These assets are worth a total of \$43 million according to a 2022 tax filing—a significant sum. Internal documents show that the Pac-12's emergency fund is only \$10 million of that \$43 million sum (which has not changed significantly since 2022)—not much for OSU and WSU to draw from if they wished to try and wait things out until the MWC's exit fees go away. Furthermore, while the Pac-12 Network is currently self-sustaining, the Network may operate at a loss when subsidies by the conference are taken out of revenues and will certainly operate at a loss under a new, presumably lower-value media rights deal, making keeping the emergency fund in place necessary to allow for any sort of transition.

Adding to that \$43 million in assets are the Pac-12's retained NCAA tournament units—worth \$65 million over the next 10 years. This money is assigned to the conference by the NCAA for games won during the NCAA men's basketball tournament and is not something that schools are normally permitted to bring with them if they change conferences—though the current Washington state court litigation will have a lot to say about that. This money—while not substantial in the face of rising media rights deal—still allows OSU and WSU a pretty decent cushion if they can retain it against the departing Pac-12 schools' illicit maneuvering. And if any sort of coupling is to happen, OSU and WSU insist on retaining all of these assets and revenue streams—they see the \$43 million as needed to keep the Pac-12 Network sustainable and the \$65 million as ongoing revenue that would ease their transition into a conference that would almost certainly afford them less annual revenue than what they had received in the old Pac-12.

OSU and WSU have fought hard to retain those assets and ensure that the departing Pac-12 members cannot use their sheer numbers to illegally (in OSU and WSU's minds) vote to dissolve the conference early and distribute those assets twelve-ways to purportedly "help with the transition costs" of leaving the Pac-12. OSU and WSU could vote to keep those assets even while

joining the MWC if they get the court order they want that allows them to control the fate of the Pac-12 on their own as a two-vote governing body, but that seems unlikely to happen anytime soon (if at all) given the current state of the litigation.

There is some significant uncertainty associated with going the reverse merger route. First, OSU and WSU will need a firm commitment from the MWC that some of their higher value schools—including SDSU, UNLV, Boise State, Colorado State, and Air Force—will not see a MWC vote to dissolve the conference as an opportunity to jump ship free from the burdensome exit fees that go away as soon as the conference is dissolved. Losing any of those brands—SDSU in particular—will make a coupling with the MWC much less attractive.

Second, OSU and WSU would like some clarity in regards to the continued status of the MWC's current Fox and CBS media rights deal in the case of a reverse merger. That deal is another reason why OSU and WSU want to avoid simply joining with the MWC if at all possible—a drop from the Pac-12's current media rights payout of about \$37 million per year to the MWC's payout of \$6.6 million would make balancing athletic department budgets extremely difficult if not impossible. OSU and WSU assume that the Fox and CBS media rights deal will go away if the MWC dissolves, but they are not sure if there is a clause in the media rights contract (or any other contractual claim) that would allow broadcast partners' contractual rights to follow a majority of the conference under what the networks might see as a sham move.

If the current Fox and CBS were to continue—either under the Pac-12 branding or if OSU and WSU were to simply join the MWC—OSU and WSU would insist on getting extra concessions from Fox, CBS, the MWC, or some combination of the three that would significantly raise schools' yearly payout beyond \$6.6 million—preferably above \$25 million per year when the \$65 million in NCAA tournament shares are included in OSU and WSU's yearly payout. If not (and preferably regardless), OSU and WSU would insist on a waiver of the MWC's burdensome exit fees to allow OSU and WSU to leave immediately without paying anything should a better opportunity arise. OSU and WSU know that MWC member Boise State receives an extra \$1.8 million per year from the conference as consideration for their not switching conferences back in the early 2010s, so the conference should have no problem with extending OSU and WSU a similar offer (if at a significantly higher cost).

Of course, none of this matters in a reverse merger scenario where the Fox and CBS deal ends—a scenario that OSU and WSU strongly prefers. While finding a new media rights partner

would be a challenge, OSU and WSU are confident that finding a partner for a newly-reformed Pac-12 with that stronger branding would allow for much higher per-school payouts than the MWC currently receives. In fact, OSU and WSU have kept up conversations with AppleTV, and while the \$23 million per school with subscriber-based incentives is no longer an option, a lower deal worth around \$15 million per school with similar incentives is still very much on the table. OSU and WSU see that the future of sports broadcasting is in the world of streaming, but they do understand their former conference members' concerns that a linear option allows for more exposure, making recruiting much easier. Selling the MWC schools on the AppleTV option may be difficult if they feel the same.

Finally, the parties will collectively need to decide on conference leadership moving forward—assuming that a reverse merger is the path the parties decided to take. OSU and WSU know that the MWC may feel that the safer route may be to retain George Kliavkoff as the Pac-12 commissioner; Kliavkoff just started his five-year, \$3.6 million per year contract in 2021, and it would cost the Pac-12 between \$11-13 million to terminate his contract without cause. However, OSU and WSU are furious with Kliavkoff, feeling that lack of leadership led to the conference's downfall and that his behind-the-scenes maneuvering favoring the departing members constituted a serious breach of faith. In fact, the schools see means to fire Kliavkoff with cause, feeling that his work to allow the departing members to raid the conference coffers before they leave constitutes a breach of his duty of loyalty to the actual continuing members of the conference, i.e., OSU and WSU specifically and exclusively. This theory may simply be based on their current anger towards Kliavkoff, but if the MWC schools agree with this determination they would be thrilled for the chance to move on with a new commissioner.

In fact, leadership at OSU and WSU have been thoroughly impressed with MWC commissioner Gloria Nevarez; her leadership of the conference when SDSU looked to leave the MWC for the Pac-12 earlier this summer stands as a direct contrast to Kliavkoff, and Nevarez had further chances to impress OSU and WSU leaders when pitching a merger with the MWC over the past few weeks. Leaders at OSU and WSU also had plenty of chances to be impressed with Nevarez during her eight-year tenure as associate commissioner with the Pac-12, and her intimate knowledge of Pac-12 organizational cultures and branding will help ease the transition considerably. In short, OSU and WSU would be strongly in favor of simply sticking with Nevarez as their new commissioner if that is the direction that the MWC schools want as well.

CONFIDENTIAL FACTS FOR THE MOUNTAIN WEST CONFERENCE

The past several months have been a whirlwind from the perspective of the MWC. In the span of mere weeks, the conference went from a weeks-long standoff with SDSU where the school had done everything except formally withdrawing from the conference to leave for the Pac-12 (and, from the perspective of the MWC, SDSU *did* formally withdraw from the conference for the Pac-12) to now seeing that rival conference all but disappear. Members of the conference—aside from SDSU to a certain extent—feel a great sense of pride in how they have stuck together and give great credit to conference commissioner Gloria Nevarez for sticking to her guns and ensuring that the MWC’s leverage in these negotiations are as high as they can be.

A large part of that leverage comes, of course, from the MWC’s grant-of-rights exit fee structure. Under the terms of the MWC’s grant-of-rights agreement, a MWC school must pay the conference \$17 million to leave the conference, so long as notice is given at least one year in advance of their projected exit. Should a school seek to leave in less than one year from the notice date, the fee doubles to \$34 million. These numbers are firmly out of reach for any of the schools within the MWC, but it is certainly not unprecedented around college football for a negotiated agreement to happen where leaving schools can pay less in order to allow their old conference to begin the process of backfilling the conference more easily. That is exactly what SDSU attempted to do, and Nevarez’s strength in being entirely unwilling to ease SDSU’s exit to the Pac-12 allowed the conference to stick together despite the temptations offered by open spots within the Pac-12.

As a result, the MWC is now in a position where they can discuss assimilating Pac-12 members into their own ranks instead of the other way around. This is a huge opportunity for the MWC. Getting all four remaining members of the Pac-12 would have been an absolute coup; Cal and Stanford’s resources and academic prestige would have been a massive shot in the arm to the MWC, potentially boosting the conference’s reputation and relative power within the college football ranks above its closest Group of Five rival, the American Athletic Conference (AAC). And while Nevarez and the leadership of her MWC members are unanimous in their feeling that Cal and Stanford’s move to join the ACC—where their closest conference rival is their entry counterpart in SMU and their next closest rival is in Kentucky—is incredibly reckless, they ultimately understand the decision and know that it is Cal and Stanford’s mistake to make.

Still, however, OSU and WSU are both schools of impeccable academic and athletic reputation. Every member of the MWC is not only completely on board but is also tremendously excited about the potential of bringing them into the MWC structure, whatever form that structure may eventually take.

That structure will, of course, be an important topic of conversation. It is not every day that a conference like the MWC not only has the opportunity to bring in two higher-level schools like OSU and WSU but also has the opportunity to bring in a higher-level conference brand as well. While no members of the MWC suffer from the illusion that a new Pac-12 Conference consisting of Oregon State, Washington State, and the twelve MWC schools could be considered a Power Five conference, the Pac-12's "Conference of Champions" branding would still be of great value to the MWC, if it was something that OSU and WSU could (and would) offer as part of their assimilation with the MWC.

Additionally, the Pac-12 is owed about \$65 million over the next ten years in the form of NCAA men's basketball tournament units. The strong success of the Pac-12 as a basketball conference has allowed the conference to claim many of these units, which represent a share of revenue from the tournament. The Pac-12 also has a significant amount of assets—\$43 million, according to a 2022 fiscal year tax filing—in the form of emergency reserves and property related to the conference headquarters in San Ramon, CA, and the Pac-12 Network. Adding these assets and future revenue streams would be a major boon to the MWC members.

Of course, taking on the Pac-12 branding would come at a heavy price and with some serious risk. There is still some uncertainty as to how much control OSU and WSU have over the conference, as in mid-September they were forced to file a lawsuit against their conference to prevent a board meeting called by the departing Pac-12 members and Pac-12 commissioner George Kliavkoff—allegedly, according to OSU and WSU, to dissolve the conference and distribute the conference's assets among its membership. While OSU and WSU were successful in obtaining an injunction to prevent this board meeting from happening, they have yet to receive the broader relief they have sought: limiting voting ability to just the two of them considering the Pac-12 bylaws stating that departing members lose board voting privileges. It is possible—if perhaps unlikely—that the departing Pac-12 will still be able to vote to keep some or all of the assets and owed tournament shares and possibly even dissolve the conference, significantly reducing the benefit of a "reverse merger" to both the MWC members and OSU and WSU.

Furthermore, per the MWC bylaws, a reverse merger can only work in one way: for the MWC to vote (based on the vote of nine of twelve members) to dissolve its conference and have some or all of the MWC members join the Pac-12. Otherwise, the conference's exit fee provisions would apply. This creates two major risks for the future Pac-12. First, it is unknown what effect this reverse merger will have on the MWC's current television contracts with CBS and Fox.

While these contracts only last until 2026, the approximately \$6.6 million per year that they provide to each member school provides a stable foundation for the conference. Moreover, the CBS and Fox deals ensures that conference games remain on traditional linear television—a want for many schools made crystal clear by the events following the Pac-12's presentation of AppleTV's streaming service offer to its member schools. Dissolving the MWC could leave the new conference in the same position as the current Pac-12—without a television rights deal, as the AppleTV offer would almost certainly not survive the loss of key members—or it could lead to a breach of contract suit by CBS and Fox seeking to impute the MWC deal onto a new Pac-12 conference that is essentially the MWC with two new schools and a new name. The MWC feels even though the CBS and Fox contracts contains a termination clause that ends the deal if the conference is dissolved, the networks may litigate arguing that dissolving the conference is a sham and the new Pac-12 conference is still simply the MWC under a new name and structure.

A second risk comes from the fact that if the MWC dissolves, there would at least be a brief period where member schools are technically free agents. While the MWC would love to be able to guarantee that all member schools will stay together and join the new conference, there is a chance that other conferences may see an opportunity to poach some of the more valuable MWC members with the conference's \$17 million exit fee out of the picture. A variety of schools within the MWC could be potentially be desirable options for other conferences; for example, the AAC, despite passing on OSU and WSU alone due to travel concerns, could see a chance to pair the two with other attractive Pacific Northwest schools like Boise State, Colorado State, and Air Force—schools they made an unsuccessful run at luring from the MWC back in 2021. The Big Ten could even see pairing UCLA and USC with the nearby markets of SDSU and UNLV as an attractive option, though that outcome is seen as much less likely than others.

A significantly easier path to assimilation would be for OSU and WSU to simply join the Mountain West as presently constructed while allowing the Pac-12 Conference corporate apparatus to fall into bankruptcy. This option would take the ten departing Pac-12 schools out of

the equation, avoiding any legal issues should a court find later that they retain voting rights in conference governance or if the court simply orders itself that the conference be dissolved and splits its assets evenly among both retained and departing members. But MWC leadership feels that it is likely that OSU and WSU will resist joining a conference with the MWC brand, and regardless a straight merger would be less attractive to several of the top MWC schools—each of whom have long sought to join a conference with the Pac-12’s brand reputation.

Regardless of which path is taken, there will be several issues to sort out to ease OSU and WSU’s assimilation with the MWC. First, the two sides will have to determine what to do about television rights. If the conference stays as the MWC this choice is obvious—the CBS and Fox deals will stay put. But even if that is the case, OSU and WSU will likely want additional consideration to make up for a projected drop from the approximately \$37 million they each received under the expiring Pac-12 deal. Giving schools like OSU and WSU an extra media revenue carveout is not unprecedented in the MWC, as Boise State receives an extra \$1.8 million per year under the CBS and Fox deals as compensation for returning to the MWC after nearly leaving for the Big East in 2012. However, Boise State’s carveout is deeply unpopular with the rest of the conference—especially after Boise State sued the conference in 2020 to retain it—and conference members would likely be upset if two more members were given extra money. This resentment may even include Boise State if the two new schools receive more additional revenue than the \$1.8 million that Boise State receives. Such resentment could lead to schools looking for greener pastures when the CBS and Fox deal expires in 2026. Moreover, if OSU and WSU receive more than a reasonable amount in extra media rights consideration, both the MWC schools and CBS and Fox will insist on OSU and WSU being covered under the MWC’s grant-of-rights contract, including being held to the \$17 million exit fee (\$34 million without one year’s notice).

Of course, CBS and Fox would have to agree to giving OSU and WSU a carveout. MWC commissioner Nevarez has approached CBS and Fox informally to see whether they can offer OSU and WSU an additional incentive to join the MWC and whether they would be willing to discuss an extension to the media rights deal to survive past 2026. Unfortunately, the two networks each stated that they preferred to see more clarity in how the schools would proceed before making any official offers. Further, both networks’ hands are tied by the current WGA and SAG-AFRA strikes on the entertainment side of their businesses; upper management needs better clarity as to how those eventual resolutions will affect the cost of business moving forward before approving

any significant expenditures outside of their most critical operations—especially an extension to the current contract. The MWC (or Pac-12) are unfortunately not much of a priority for them; the fact that Fox is willing to spend to shape the Big Ten and Big 12 but urges more caution with the Pac-12 is immensely frustrating to Nevarez and the rest of the MWC leadership team.

Executives at both networks did say that if they were inclined to give the two schools any extra money to join the conference, the sweetener would be modest—more than Boise State’s \$1.8 million, but less than \$5 million per school (on top of the standard \$6.6 million). But any such agreement would obviously only happen if the conference does not attempt to ditch the CBS and Fox media deals in a reverse merger; forcing the networks to litigate to retain their rights to MWC games would (understandably) make them less receptive to giving additional money.

Along these lines, the negotiating parties will have to decide what to do about media rights generally if the MWC does go for the reverse merger route. Convincing CBS and Fox to extend the MWC deal to a newly formed Pac-12 is certainly a possibility, but it would likely be at a similar payout per school as the current MWC deal. The newly reformed conference could also seek to get out of the CBS and Fox deal and negotiate with different networks, but this path could lead to litigation. And the new Pac-12 may not be successful in getting a better deal—as evinced by the Pac-12’s struggles over the past two years. The \$23 million per school AppleTV offer that the Pac-12 presented as the conference’s best offer is almost certainly no longer on the table, and most members of the MWC feel similarly to the Pac-12 members who wanted nothing to do with a streaming service as the conference’s primary media rights outlet unless they have no other choice.

A decision will also need to be made on what to do with the Pac-12’s assets and ongoing revenue streams. The MWC schools would very much like to get their hands on the \$43 million in conference assets and the \$65 million over ten years that the Pac-12 will receive in NCAA tournament units. However, some or all of that money could also be used to ease OSU and WSU into the conference. It is unknown to the MWC what percentage of the \$43 million in assets is attributed to the physical assets and what portion is the Pac-12’s emergency fund. Regardless of whether the move is a reverse merger or if the Pac-12 is dissolved, the MWC leadership feels it would be best for the Pac-12 to retain their emergency fund to help pay off any unforeseen liabilities—including paying off the likely immense legal fees needed to facilitate whatever move is made. The NCAA tournament shares, on the other hand, can, if necessary, be given to OSU and WSU. Of course, all of this assumes that OSU and WSU will retain ownership over these assets.

In the case of a reverse merger (and perhaps even in the case of straight assimilation), the parties will also have to discuss who joins the new Pac-12. The MWC does not necessarily want to cut any schools out of the new conference, but some of MWC's lesser athletic brands—e.g., San Jose State, Nevada, and Utah State—may be deemed as dead weight by OSU and WSU. If this is the case, MWC leadership is confident that at least nine of the more prominent members of the MWC would agree. Football-only Hawaii is also a strong option to be cut, though some members like having Hawaii as an away game destination for recruiting purposes.

The conference has also reached out to prominent WCC schools Gonzaga and St. Mary's and WAC school Grand Canyon about their potential interest in joining a new Pac-12 as basketball-only (or all-but-football) schools, and all three schools (especially Grand Canyon) are receptive to the possibility. MWC leadership would even be happy to reach out to schools in other conferences—some AAC or Conference USA schools like Memphis, UTSA, or UTEP would be attractive options. Regardless, however, the MWC will need to retain at least nine current members if a reverse merger is to work without significant concessions to cut schools. And even if Fox and CBS are willing to bring OSU and WSU aboard at the same per-school payout terms (and perhaps a bit more), based on these conversations MWC leadership feels that convincing Fox and CBS to pay more than 14 schools would be unlikely, at least in the near future.

Finally, the parties will need to make a decision on conference leadership moving forward. The MWC schools have been thrilled with the leadership that Commissioner Gloria Nevarez has shown in her short tenure to date and strongly favor retaining her as the conference leader regardless of the name or structure of the conference. On the other hand, the MWC schools see switching to George Kliavkoff in a reverse merger as a worst-case scenario—they are unanimously entirely unimpressed with Kliavkoff's leadership of the Pac-12 over his two-year tenure to date.

MWC leadership feels that OSU and WSU will likely be on board with these preferences given that an unnamed Washington State source recently told college sports reporter John Canzano after a Nevarez presentation in Pullman that they wished Nevarez was their commissioner instead of Kliavkoff, and that the schools are currently embroiled in ugly litigation that has all but accused Kliavkoff of violating his duty of loyalty to the conference. However, OSU and WSU may know something that the MWC does not, including whether Kliavkoff's buyout or termination-for-cause clause is not worth the hassle of firing him in the case of a reverse merger. Of course, OSU and WSU may wish to go in a different direction for another reason unknown to the MWC members.