

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

NEWSMAX BROADCASTING, LLC

Plaintiff,

v.

FOX CORPORATION and
FOX NEWS NETWORK, LLC

Defendants.

Case No. 25-cv-770

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Newsmax Broadcasting, LLC brings this action against Fox Corporation and Fox News Network, LLC for violation of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1, 2; and the Wisconsin Antitrust Act, Wis. Stat. §§ 133.03(1)-(2). Plaintiff states and alleges as follows.

INTRODUCTION

1. Fox Corporation has long engaged in an exclusionary scheme to increase and maintain its dominance in the market for U.S. right-leaning pay TV news, resulting in suppression of competition in that market that harms consumers, competition, and Newsmax Broadcasting, LLC (“Newsmax” or “Plaintiff”).

2. Fox Corporation owns Fox News Network, LLC (collectively, “Fox” or “Defendants”). Fox News Network, LLC operates the Fox News Channel – the cable news network with the highest viewership in the United States. Fox’s control over this must-have news channel gives it significant market power and leverage to impose onerous demands on

distributors of its content. Fox leverages this market power to coerce distributors into not carrying or into marginalizing other right-leaning news channels, including Newsmax.

3. Fox employs at least three anticompetitive means to exclude competing providers of right-leaning video content from the market. *First*, Fox imposes explicit or tacit “no-carry” provisions on distributors, conditioning access to its commercially critical content on distributors’ concession not to carry right-leaning news channels like Newsmax and others. *Second*, it imposes financial penalties on distributors if they carry Newsmax or others by requiring the distributors to carry and pay high fees for Fox’s little-watched channels like Fox Business. *Third*, Fox inserts a suite of other contractual barriers into its carriage agreements intended to prevent Newsmax and others from competing. These tactics constitute unlawful restraints of trade and flow directly from Fox’s unlawful monopolization of the Right-leaning Pay TV News Market.

4. But for Fox’s anticompetitive behavior, Newsmax would have achieved greater pay TV distribution, seen its audience and ratings grow sooner, gained earlier “critical mass” for major advertisers and become, overall, a more valuable media property. Fox’s campaign to stunt Newsmax’s business has delayed, for almost a decade, Newsmax’s growth in pay TV distribution, especially in the critical virtual Multichannel Video Programming Distributor (“vMVPD”) arena, and has resulted in significant damages to Newsmax, including in the form of lost business, missed advertising and marketing revenues, and lower cable license fees, all while increasing overall company costs. Newsmax is far from the only victim. Defendants’ anticompetitive conduct impedes competition in the entire Right-leaning Pay TV News Market, deprives consumers of genuine choice, and increases the cost consumers must bear to access

right-leaning news. Fox’s longstanding and ongoing practices have harmed and will further harm, competition and consumers in the United States.

PARTIES

A. Plaintiff

5. Plaintiff Newsmax Broadcasting, LLC (“Newsmax”) is a Florida limited liability company, with its principal place of business at 750 Park of Commerce Drive, Suite 100, Boca Raton, Florida 33487.

6. Newsmax content is broadcast in Wisconsin, including the Western District of Wisconsin, via national and local carriage agreements. Carriage in Wisconsin includes agreements with Celect Comm., LaValle Tel. Co-op, Marquette-Adams Comm., Richland-Grant Tel. Co-op, and Vernon Comm. Carriage in the Western District includes agreements with Amherst Telephone Company, Reedsburg Utility Commission, and Restech Services, Inc. Newsmax is also carried on national, pay TV systems available to consumers in Wisconsin, including DirecTV, DISH, Hulu+, and YouTube TV.

B. Defendants

7. Defendant Fox Corporation (“Fox Corp.”) is a public company, incorporated in Delaware with its principal place of business in New York, New York.

8. Defendant Fox News Network, LLC (“Fox News”) is a limited liability company incorporated in Delaware with its principal place of business in New York. Fox Corp. wholly owns Fox News.

JURISDICTION AND VENUE

9. This action arises, in part, under Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2; and Section 4 of the Clayton Act, 15 U.S.C. § 15.

10. This Court has subject matter jurisdiction over the claims under 28 U.S.C. §§ 1331 and 1337(a), as well as through Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26.

11. In addition to pleading violations of federal antitrust law, Newsmax alleges violations of state law. All claims under federal and state law are based upon a common nucleus of operative facts, and the entire action commenced by this Complaint constitutes a single case that ordinarily would be tried in one judicial proceeding. This Court therefore has supplemental jurisdiction over the state-law claims under 28 U.S.C. § 1367(a). Exercising jurisdiction over the state-law claims will avoid unnecessary duplication of actions and supports the interests of judicial economy, convenience, and fairness.

12. Venue in this District is proper under Sections 4, 12, and 16 of the Clayton Act, 15 U.S.C. §§ 15, 22, and 26, and under 28 U.S.C. § 1391(b) and (c). Defendants reside, transact business, are found, or have agents in this District.

13. The Court has personal jurisdiction over the Defendants under Sections 4, 12, and 16 of the Clayton Act, 15 U.S.C. §§ 15, 22, and 26 and under Wis. Stat. §§ 801.05(1)(d) and (4) because the Defendants reside, transact business, or may be found in this District.

14. Fox Corp. maintains continuous business operations in this District. Fox News licenses the Fox News Channel to Multichannel Video Programming Distributors (“MVPDs”) and virtual Multichannel Video Programming Distributors (“vMVPDs”) serving households in the Western District of Wisconsin. Fox also has affiliation agreements with local stations, including WLAX (La Crosse), WEUX (Chippewa Falls), WMSN-TV (Madison), and WZAW-LD (Wausau). Fox owns and operates Fox6 News Milwaukee, WITI-TV (“WITI”). Upon

information and belief, Fox owns WITI's offices and studios at 9001 N. Green Bay Road in Brown Deer, WI and an additional parcel at 1100 E. Capitol Drive in Shorewood, WI.

15. Fox transacts business in this District by licensing Fox News and related channels for distribution to MVPD and vMVPD subscribers located in Wisconsin, including, on information and belief, hundreds of thousands of subscribers in the Western District.

16. Fox derives substantial revenue from consumers in the Western District that subscribe to Fox programming, including Fox News, Fox Business, and Fox Sports.

17. Fox engages in interstate trade and commerce throughout the United States.

18. Fox's conduct substantially affects interstate trade and commerce by harming competition, increasing prices, and restricting output, to the detriment of Newsmax and consumers nationwide.

19. As a result of Fox's conduct, consumers in the Western District face supracompetitive prices, reduced output, and diminished choice in right-leaning pay TV news.

FACTS

I. THE RIGHT-LEANING PAY TV NEWS ECOSYSTEM

20. When an American viewer turns on the television or a streaming service to watch right-leaning political news, there is a chain of content creation, packaging, and distribution behind the scenes. This system can be referred to generally as the Right-leaning Pay TV News ecosystem. Understanding its components is essential to understanding Fox's anticompetitive conduct.

21. With respect to right-leaning news programming, the ecosystem involves two distinct activities – creating and distributing content.

22. As relates to creation of content, programmers develop, produce, or acquire political and cultural content tailored to right-leaning viewers. For example, Fox creates the

conservative news shows *Hannity*, *The Ingraham Angle*, and *Fox & Friends*. Programmers hire and cultivate on-air talent, create editorial policy, and generate the live or pre-recorded news segments. Some of these networks have built nationwide brand recognition and devote substantial resources to covering political events with a right-leaning viewpoint.

23. As relates to distribution, programmers that operate right-leaning news channels license or sell that programming to distributors – whether traditional cable providers or internet-based “virtual” distributors – that deliver the programming to end users. Distributors for traditional pay TV are called Multichannel Video Programming Distributors (“MVPDs”). MVPDs have a consistent business model: package programmers’ content (channels) into television bundles (or channel lineups) and market those bundles to consumers. Historically, MVPDs are dominated by cable operators, such as Comcast and Spectrum, and satellite distributors, like DirecTV and DISH. In recent years, telco-based providers, like Verizon Fios, have entered the MVPD fold.

24. In the streaming era, new distributors have emerged, including virtual MVPDs (“vMVPDs”). The vMVPD market is dominated by a handful of players including YouTube TV, Hulu+, DirecTV Stream, Sling TV, and Fubo. The vMVPDs all deliver channels over broadband internet. While the traditional MVPD market of cable and satellite systems has declined measurably – from 101 million subscribers over a decade ago to about 50 million U.S. homes today – the number of vMVPD subscribers has soared – from zero in 2014 when Newsmax TV began – to over 20 million subscribers today. These virtual pay TV systems control close to 30% of the total pay TV ecosystem, making their distribution critical for any programmer, including Newsmax.

25. Regardless of the specific technology, these distributors typically negotiate similar carriage agreements with the programmers, determining which channels to offer and the terms of carriage, including pricing and placement in various “tiers.” Tiers are bundles of channels, packaged together by content and offered to subscribers at different price points. A “basic” tier usually includes essential and widely demanded channels; it is typically the cheapest package and acts as the “entry-level” offering. Subscribers can pay more for expanded or “premium” tiers, which might include channels such as HBO, Showtime, Food Network, or Bravo, or for niche add-ons, such as sports or international packages.

26. The parties in this dispute are programmers that create and license content in the right-leaning pay TV news ecosystem. Fox has long leveraged its popular news and commentary to command outsized carriage terms from distributors for its major channels like Fox News and Fox Sports, and its affiliated channels including Fox Business Network, Fox Sports 2, Fox Deportes, Big Ten Network, and Fox Weather. Newsmax is a smaller but growing competitor that likewise tries to license its channel to all or almost all of the same distributors.

II. THE RISE OF RIGHT-LEANING PAY TV NEWS IN THE UNITED STATES

27. The Right-leaning Pay TV News Market, as we know it today, arose in response to an absence of right-leaning news content among cable news channels. CNN, founded by Ted Turner in 1980, was the original creator of the first 24-hour news cable news channel. For more than 15 years CNN dominated cable news as the only significant offering. In 1996, media mogul Rupert Murdoch, then chairman and CEO of News Corporation, launched Fox News to compete with CNN, but with a twist. His upstart channel would seek out and target right-of-center

viewers¹ – which Murdoch argued were dissatisfied with the center-left coverage CNN provided. Murdoch tapped a longtime Republican political strategist and television guru named Roger Ailes to head the new network. As Fox News quickly gained market share, Ailes famously said in effect: my brilliant insight was to start a network to serve the half of America the rest of the media ignored.²

28. Since 1996, right-leaning pay TV news has been a cornerstone of American television, drawing tens of millions of viewers who identify with, or prefer, right-leaning perspectives on politics, current events, and cultural debates. From coverage of elections and legislative battles to daily panel discussions and prime-time commentary, right-leaning news programming has become a fixture in many households.

29. A large segment of consumers of political news and media seeks news, commentary, and analysis that aligns with or speaks to their political viewpoints. These right-leaning viewers treat other right-leaning news channels as their next best substitute – and do not consider left-leaning news outlets as adequate substitutes for right-leaning news channels. Further, many right-leaning news networks feature well-known media personalities whose style and viewpoints uniquely resonate with a right-leaning audience. Even those viewers who do watch channels with alternative political leanings generally (such as CNN) understand that those channels produce programming that differs politically from right-leaning news channels and often watch those channels to obtain political perspectives that are diverse from those on right-leaning news channels such as Fox News and Newsmax. In other words, even viewers

¹ John Gramlich, *5 facts about Fox News in 2020*, Pew Rsch. Ctr. (Apr. 8, 2020), <https://www.pewresearch.org/short-reads/2020/04/08/five-facts-about-fox-news/>.

² See MJ Lee, *Murdoch, Ailes mark 15 years of Fox*, Politico (Oct. 7, 2011), <https://www.politico.com/story/2011/10/murdoch-ailes-mark-15-years-of-fox-065414>.

who watch both right-leaning news channels and other news channels do not view those other news channels as substitutes for right-leaning news channels.

30. Accordingly, the Right-leaning Pay TV News Market is distinct from general news markets due to substantial differences in consumer behavior and preferences. Right-leaning audiences do not regard left-leaning news channels (*e.g.*, CNN, MSNBC) as substitutes. Due to deeply held political affiliations, consumers who desire right-leaning commentary are much more likely to switch to a channel that shares their ideological perspective than one with a different viewpoint. Right-leaning viewers demonstrate minimal switching to non-right-leaning news outlets like CNN or MSNBC. Empirical data indicates that right-leaning pay TV news viewers remain firmly attached to both right-leaning viewpoints and video media, confirming that consumers do not treat general news channels or right-leaning print news sources as adequate substitutes. Indeed, “[t]here is little overlap in the [video news] sources that Democrats and Republicans find most trustworthy – other than the Weather Channel.”³ Consequently, the core product in this market is right-leaning coverage of politics, current events, and cultural issues on cable television.

31. Other forms of right-leaning media, such as conservative internet websites, do not serve as substitutes for right-leaning pay TV news. Only 5% of Americans get news from foxnews.com.⁴ Americans average 90 seconds per day getting news online, and even “the heaviest online news users spent only about four minutes a day on that activity.”⁵

³ Taylor Orth & Carl Bialik, *Trust in Media 2024: Which news sources Americans trust – and which they think lean left or right*, YouGov (May 30, 2024), <https://today.yougov.com/politics/articles/49552-trust-in-media-2024-which-news-outlets-americans-trust> [hereinafter Orth & Bialik, *Trust in Media 2024*].

⁴ Mark Jurkowitz & Amy Mitchell, *How Americans Get TV News at Home*, Pew Rsch. Ctr. (Oct. 11, 2013), <https://www.pewresearch.org/journalism/2013/10/11/how-americans-get-tv-news-at-home/>.

⁵ *Id.*

32. Conservative-leaning Americans are the largest group among self-identified voters. A 2025 Gallup poll on ideology shows that 37% of Americans identify as “conservative” or “very conservative,” while only 25% identify as “liberal” or “very liberal.”⁶ Because a large share of political and current-events coverage viewers identify as right-leaning, any cable or satellite package that omits a meaningful right-leaning news option risks losing that portion of its customer base. As a result, cable and virtual MVPDs all carry at least one right-leaning channel – most commonly Fox News – in order to remain competitive and avoid subscriber churn. This entrenched, intense demand is a key driver of the leverage that Fox enjoys – and abuses – in its carriage agreements. Most distributors agree to Fox’s onerous carriage restrictions and pay its high carriage fees because Fox gives them no other option. These fees typically take the form of a monthly charge per subscriber.

33. Distributors that fail to carry right-leaning news coverage – again, most commonly Fox – also risk losing substantial advertising revenue. Live and breaking news broadcasts attract the largest audience and therefore constitute the most desirable and expensive commercial slots. Fox wields extraordinary power in this arena. For instance, Fox News’s live coverage of the 2024 U.S. presidential election attracted 13.6 million viewers.⁷ In the first quarter of 2025, Fox News averaged 2.2 million total day viewers on weekdays, and averaged 1.9 million total viewers, double the viewership of ESPN.⁸ Through its exclusion of other

⁶ Megan Brenan, *U.S. Political Parties Historically Polarized Ideologically*, Gallup (Jan 16, 2025), <https://news.gallup.com/poll/655190/political-parties-historically-polarized-ideologically.aspx>.

⁷ Press Release, *Fox News Channel Finishes 2024 with Highest Audience Share in Nearly a Decade As It Marks Nine Years as Cable’s Most-Watched Network*, Fox News Media (Dec. 31, 2024), <https://press.foxnews.com/2024/12/fox-news-channel-finishes-2024-with-highest-audience-share-in-nearly-a-decade-as-it-marks-nine-years-as-cables-most-watched-network> [hereinafter Press Release, Fox News Media (Dec. 31, 2024)].

⁸ Brian Flood, *Fox News Channel makes history with highest-rated quarter in history among weekday views*, Fox News Channel (Apr. 1, 2025), <https://www.foxnews.com/media/fox-news-channel-makes->

right-leaning channels, Fox ensures that distributors must turn to its news programming to secure the advertising revenue that flows from live and breaking news broadcasts.

34. Right-leaning pay TV news is distributed to consumers throughout the United States. Over-the-air networks, which are broadcast on both MVPDs and vMVPDs, are regulated under federal law and tailored to the laws of the United States.

35. Both MVPDs and vMVPDs cater to United States customers, providing content predominantly in English and featuring news relating to events in the United States.

Advertisements on pay television services likewise are tailored to United States consumers.

36. vMVPDs market their services nationwide. They provide content over broadband internet connections that are available throughout the United States. Moreover, vMVPDs enforce geo-location restrictions that limit consumers to watching those services within the United States.

III. FOX'S DOMINANCE IN THE RIGHT-LEANING PAY TV NEWS MARKET

37. Fox Corp. is a media conglomerate founded by Rupert Murdoch and currently headed by his son Lachlan Murdoch. Its current market capitalization is approximately \$24 billion at present, making it one of the largest media companies in the U.S. and the world.

38. Fox Corp. deals primarily in television, news, and sports broadcasting. Its noteworthy assets include Fox Sports, Fox Business, and Fox Television Stations, but Fox Corp.'s marquee offering is Fox News. As of 2023, Fox News generates nearly 70% of its parent company's pre-tax profit.

history-highest-rated-quarter-history-among-weekday-viewers [hereinafter Flood, *Fox News Channel* (Apr. 1, 2025)].

39. For decades, Fox News has been the highest-rated cable news channel in the United States, controlling a majority of advertising revenue. In the Right-leaning Pay TV News Market, Fox News is unrivaled because it has kept out, or restricted, competitors including but not limited to Newsmax and One America News Network (“OAN”). Meanwhile, the center-left TV news market has numerous, powerful competitors, including CNN, CNN Headline News, MSNBC, NBC, ABC, CBS and others. Because Fox News is the only significant outlet for right-leaning TV news, numerous media reports have recognized that market participants “treat [Fox News] as a must-have offering.”⁹

40. Dating back to its launch in 1996, Fox News has deliberately and successfully marketed itself as the go-to platform for right-leaning opinion, political commentary, and coverage of national events from a right-leaning viewpoint, for individuals across the right-leaning political spectrum.¹⁰ In 2023, Fox News averaged over 2.3 million viewers in prime time, about 90% of the Right-leaning Pay TV News Market. This commanding lead has solidified Fox News’s status as the dominant voice in right-leaning television news. Fox itself recently explained: “Nowhere is FOX’s leadership more evident than Fox News, where once again the FOX News channel finished the quarter as the most-watched cable network.”¹¹

41. Because a significant number of consumers consider Fox News “must have,” Fox News is carried on the most widely distributed and penetrated programming tiers of nearly all major MVPDs and virtual MVPDs. From satellite providers like DirecTV, to cable giants such

⁹ Michael Hiltzik, *Hate Fox News? Too bad – you still have to pay for it*, LA Times (Apr. 17, 2023), <https://www.latimes.com/business/story/2023-04-17/hate-fox-news-too-bad-you-still-have-to-pay-for-it>.

¹⁰ See, e.g., Amy Mitchell, *Large Majorities of Newsmax and OAN News Consumers Also Go to Fox News*, Pew Rsch. Ctr. (Mar. 23, 2021), <https://www.pewresearch.org/journalism/2021/03/23/large-majorities-of-newsmax-and-oan-news-consumers-also-go-to-fox-news/>.

¹¹ Fox Corp., FY2025 Q3 Earnings Call (May 12, 2025).

as Comcast, to internet-based services like YouTube TV, most distributors consider Fox News a “must-carry” channel for their basic package to satisfy subscriber demand. Indeed, Fox News ranks among the top five most expensive non-sports channels on cable, reflecting its recognized market power in carriage negotiations.

42. Fox News’s “must carry” status gives Fox exceptional negotiating leverage over cable and satellite distributors. Fox News commands significantly higher carriage fees than any other cable news channel, earning roughly \$2.18 per subscriber per month, nearly double CNN’s fees and almost six times those of MSNBC.¹² One media observer noted that Fox’s exorbitant carriage fees “prop up the entire Fox operation and allow them to be as destructive as they are because they don’t have to respond to market forces.”¹³ Fox News earns so much from carriage fees that even if it received no advertising revenue, it would still enjoy a profit margin of over 35%.¹⁴ Fox recently noted plans to increase its fees to \$3 per subscriber even in the face of declining numbers of Pay TV subscribers; Fox’s ability to increase its prices while output is declining is more direct evidence of market power.¹⁵

43. While other news networks with right-leaning editorial stances exist, Fox is much larger and stronger than any of them. Fox News wields durable market power in the market for right-leaning pay TV news. Fox captures 65% of the total-day cable news audience and 66% in primetime¹⁶ – figures that understate its share within the right-leaning market because these

¹² See Isabella Simonetti, *Tucker Carlson’s Fox Exit Helps Boost Newsmax Ratings*, WSJ (July 24, 2023), <https://www.wsj.com/articles/tucker-carlsons-fox-exit-helps-boost-newsmax-ratings-8aed0b57>.

¹³ Dan Froomkin, *Opening the next front in the battle against Fox News*, Press Watch (May 2, 2022), <https://presswatchers.org/2022/05/opening-the-next-front-in-the-battle-against-fox-news/>.

¹⁴ *Id.*

¹⁵ *Fox News Reportedly Wants Major Bump in Carriage Fee*, Barrett Media (Apr. 26, 2023), <https://barrettmedia.com/2023/04/26/fox-news-reportedly-wants-major-bump-in-carriage-fee/>.

¹⁶ See, e.g., Mark Mwachiro, *Here’s the 1st Quarter of 2025 Cable News Ratings*, Adweek (Apr. 2, 2025), <https://www.adweek.com/tvnewser/first-quarter-2025-cable-news-ratings/> [hereinafter

percentages reflect all viewers, not just the right-leaning audience where Fox performs even more strongly. Since the 2024 presidential election, Fox itself touts that “Fox News captured 72% of the [entire] cable news audience in primetime.”¹⁷ One recent report noted that Fox News “aired all 500 of the most watched cable news shows since November 5 election.”¹⁸ As of Q1 2025, “Fox News has now marked 93 consecutive quarters as the most-watched cable news network in primetime.”¹⁹ With limited viable substitutes, Fox News dominates the Right-leaning Pay TV News Market.

IV. NEWSMAX

44. Founded in 1998 as a digital media company by journalist Christopher Ruddy, Newsmax initially made its mark as a popular right-leaning news website. *Newsmax.com* gained traction as an alternative source of political news, commentary, and lifestyle content, highlighting stories that resonated with right-leaning audiences but were overlooked by larger outlets. Over time, Newsmax expanded its influence through its digital media properties including magazines, email newsletters, and subscription-based newsletters, all while featuring commentary from high-profile right-leaning figures. Responding to the consumer demand for more online video and right-leaning content other than that offered by Fox, Newsmax launched

Mwachiro, *Here’s the 1st Quarter* (Apr. 2, 2025)]; Brian Flood, *Americans continue to choose Fox News Channel as network dominates May, tops ABC during weekday primetime*, Fox News Channel (May 28, 2025), <https://www.foxnews.com/media/americans-continue-choose-fox-news-channel-network-dominates-may-tops-abc-during-weekday-primetime> [hereinafter Flood, *Americans continue to choose Fox News Channel* (May 28, 2025)].

¹⁷ Press Release, Fox News Media (Dec. 31, 2024).

¹⁸ Ariel Zilber, *Fox News aired all 500 of the most watched cable news shows since Nov. 5 election*, New York Post (Jan. 20, 2025), <https://nypost.com/2025/01/20/media/fox-news-aired-all-500-of-the-most-watched-cable-news-shows-since-election/>.

¹⁹ Flood, *Fox News Channel* (Apr. 1, 2025).

Newsmax TV as a pay TV channel in 2014, introducing a new voice in cable news specifically aimed at right-leaning audiences and in an attempt to compete with Fox News.

45. Consumer demand for a right-leaning pay TV news alternative to Fox’s establishment platform became increasingly apparent in the lead-up to and aftermath of the 2020 presidential election. Disillusioned by – and questioning the reliability of – Fox News’s coverage of the 2020 presidential race, right-leaning viewers sought a different point of view. Before and after the election, Newsmax’s rating grew because it offered viewers fresh and different right-leaning news, complete with new talent and new opinions. In the wake of the 2020 election, the second impeachment of President Trump, the hasty withdrawal from Afghanistan, the war in Ukraine, the firing of Tucker Carlson, and other major news events, Newsmax ratings increased significantly.

V. FOX ABUSES ITS MONOPOLY POWER TO FORECLOSE COMPETITION IN THE RIGHT-LEANING PAY TV NEWS MARKET

46. Fox has sought to protect and expand its monopoly power in the Right-leaning Pay TV News Market by engaging in a suite of anticompetitive behaviors. In particular, Fox uses the leverage created by its control of “must have” conservative news content on Fox News to coerce distributors into unfair terms that either prevent those distributors from carrying competitors of Fox News, including Newsmax, or impose financial penalties on them for doing so, ultimately increasing prices for consumers.

47. Fox has a long history of exploiting its market power over must-have television content to extract favorable terms from distributors in carriage negotiations for Fox News.²⁰ In

²⁰ Katie Thornton, *How Fox Uses the World Cup and Masked Singer to Keep Fox News on Air*, The Guardian (Aug. 15, 2023), <https://www.theguardian.com/media/2023/aug/15/fox-news-cable-carriage-fees-tv-world-cup-nfl> [hereinafter Thornton, *Guardian* article].

2019, Fox pulled its channels from DISH just before the start of a new season of *Thursday Night Football*. In 2020, a dispute with Roku occurred days before Fox Sports was scheduled to stream the Super Bowl. In 2022, during negotiations with DirecTV, Fox threatened to blackout much of its sports programming one day before broadcasting the U.S.-Netherlands World Cup match. Fox has threatened to pull access to Fox Sports from Optimum viewers just as the Yankees entered the 2022 playoffs. In each of these instances, Fox was engaged in negotiations with these entities, and each time it used the same deliberate strategy: by timing threats and blackouts around highly anticipated games, Fox mobilized its loyal and passionate sports audience as a pressure campaign against distributors.

48. Fox's tactics drew public condemnation, including from the NAACP, which wrote to NFL commissioner Roger Goodell, stating, "Fox must not be permitted to exert unfair leverage to extort increased carriage fees for Fox News, by threatening to impede carrier access to Fox Sports, and more particularly coveted carriage of the National Football League."²¹ Similarly, advocacy groups and consumers of cable news have organized against Fox's practices.²² Cable companies have also criticized Fox for its history of employing "bad faith negotiating tactics," including "threatening and enacting blackouts and directly telling consumers to switch providers."²³

49. Fox has used a similar playbook against Newsmax, leveraging its control of must-have content – and in particular Fox News – to prevent distributors from carrying Newsmax.

²¹ Mike Freeman, *NAACP to NFL: Don't 'fund Fox News' hatred, bigotry, lies, and racism*, USA Today (Mar. 18, 2021), <https://www.usatoday.com/in-depth/sports/columnist/mike-freeman/2021/03/18/naacp-nfl-dont-fund-fox-news-hatred-bigotry-lies-and-racism/4743485001/>.

²² See, e.g., *Tell Your Cable Provider: Don't Let Fox Raise My Bill*, No Fox Fee (last visited June 18, 2025), <https://www.nofoxfree.com/>; *No Fox Fee*, Common Cause (last visited June 18, 2025), <https://www.commoncause.org/work/no-fox-fee/>.

²³ Thornton, *Guardian* article.

50. Publicly available internal Fox communications reveal that Fox views Newsmax as a significant competitive threat. In the wake of the 2020 election, as Newsmax's ratings grew, Fox executives and talent traded a flurry of emails, texts, and memoranda that speak for themselves:

- Tucker Carlson wrote to his then-producer at Fox News, “[A]n alternative like Newsmax could be devastating to us.”
- In a text to Fox News's chief executive, Suzanne Scott, President Jay Wallace called the surge “troubling” and something that “can’t be ignored.” He bluntly stated that he was “[t]rying to get everyone to comprehend we are on war footing.”
- An employee of Fox News, Raj Shah, stated, that Fox was “not concerned with losing market share to CNN or MSNBC right now. Our concern is Newsmax and One America News Network.”
- Rupert Murdoch told Suzanne Scott that Newsmax “should be watched” in response to a Wall Street Journal article regarding Newsmax.
- SVP of Primetime Programming and Analytics Ron Mitchell flagged that Fox viewers were watching less Fox News in favor of Newsmax and began tracking the guests booked and topics covered on Newsmax.
- Kyle Goodwin of Fox News emailed Raj Shah that if Newsmax takes 5-10% of Fox News's audience, it could “drastically change the landscape.”
- Fox News “had a proactive plan of attack to deal with the Newsmax issue that would avoid Fox News appearing concerned and overreacting.”

51. Acting on this concern, Fox has pursued a coordinated, behind-the-scenes campaign to suppress Newsmax (and other emerging right-leaning competitors, such as OAN) in the market for right-leaning pay TV news content. These exclusionary practices, supported by Fox's monopoly power, have harmed competition, restricted consumer choice, and led to supracompetitive prices for consumers.

52. In particular, Fox exploits its market power in the Right-leaning Pay TV News Market by conditioning carriage agreements on the distributor's agreement not to carry any

right-leaning news channel, including Newsmax, that directly competes with Fox News.²⁴

Carriage agreements may also include restrictions that block channels (based on content, audience size, or other characteristics) from being carried on a distributor's most widely watched tier.

53. Fox insists that its carriage agreements be treated as confidential and not disclosed publicly. On information and belief, one way that Fox implements these restrictions is through "drag-down" provisions in its carriage agreements. To understand how these anticompetitive provisions work, it is first important to understand the structure of a typical carriage agreement. Most distributors offer multiple packages of channels, some more widely viewed than others. In a typical carriage agreement, a distributor will agree to include a programmer's most widely watched channels in its most-viewed tier (often called the "basic" tier). For example, distributors that partner with Fox generally agree to carry Fox's most in-demand channels (like Fox News) in their most widely viewed "basic" tier, while including lesser-watched channels (like Fox Business and Fox Sports 2) in lesser-viewed specialty tiers. This makes economic sense: because Fox Business and Fox Sports 2 have less viewers, including them in a basic tier would force many consumers who never watch those channels to nevertheless pay for them.

54. Fox's drag-down provisions modify this arrangement. In essence, they provide that if a distributor decides to include certain channels in its basic tier, then it *must* carry certain specific Fox channels in that same basic tier. As relevant here, Fox's drag-down provisions provide that if a distributor carries Newsmax in its basic tier, then that distributor *must* include Fox's low-demand channels, such as Fox Business and Fox Sports 2, in that same basic tier. And because distributors must pay Fox a fee for every subscriber who receives a given Fox

²⁴ Thornton, *Guardian* article.

channel, a distributor who chooses to carry Newsmax in its basic tier must not only include Fox's low-demand channels in that tier, but also must pay Fox a fee for every subscriber that receives those channels.

55. Thus, Fox's drag-down provisions effectively create a direct financial penalty for any distributor who wishes to carry Newsmax in its basic tier: if a distributor wants to place Newsmax into the basic tier at little or even at no cost, the distributor would be subject to potentially tens of millions in additional license fees paid to Fox for the low-demand channels that are subject to the drag-down provisions.

56. Fox successfully blocks competitors like Newsmax by coercing pay TV operators, threatening steep financial penalties if they dare add Newsmax to their basic tier. In effect, Fox at times refuses to license its indispensable news channel unless the distributor either excludes rival right-leaning news networks entirely, restricts their distribution by placing them in little-watched tiers, or otherwise agrees to put them at a competitive disadvantage.

57. In or about June 2025, during renewal negotiations with vMVPD Fubo, Newsmax was informed that Fubo's new Sports/News Package, which Fubo plans to heavily market, would not include Newsmax. On information and belief, Fox used its leverage to secure inclusion of Fox News in that Sports/News Package and exclude Newsmax.

58. Many other distributors have complained privately about Fox's restrictive agreements that target other right-leaning channels. On information and belief, Newsmax was delayed from being carried on Sling TV. Previously, the DISH network had expressed a strong desire to carry Newsmax on its vMVPD, Sling TV, but could not do so without triggering Fox's requirement that it move little-watched channels, like Fox Business, up into the basic tier. If DISH had moved Newsmax to Sling TV's most popular package, it would have been forced to

pay Fox what amount to financial penalties totaling tens of millions of dollars. For example, Kagan reports that Fox Business costs distributors \$4.92 a year per subscriber, with Fox Sports 2 costing about the same. So, if Sling TV had accepted Newsmax for its basic tier and then had to move Fox Business and Fox Sports 2 to its basic package, it would have cost Sling TV around \$20 million annually. Even today, Newsmax is not included on either of Sling TV's two base plans. To access Newsmax, Sling TV users must first purchase one of the base plans and then separately add-on the "News Extra" package at an additional cost, or they must purchase Newsmax as a stand-alone channel alongside Sling TV's "Freestream" offering.²⁵ Sling TV described Fox's agreements as "outrageous," referring on information and belief, to the incentives to carry only Fox channels and discriminate against other right-leaning programming. Similarly, Hulu+ announced it would carry Newsmax on its virtual MVPD beginning in July 2025. This came after a decade of Hulu+ expressing a strong desire to carry Newsmax, but being prohibited from doing so due to restrictive tiering agreements dictated by Fox.

59. Fox News's dominance in right-leaning pay TV news became so pronounced that AT&T took steps to attempt to introduce competition by helping launch OAN in 2013. As OAN's founder stated, "[AT&T] told us they wanted a conservative network," as "[t]hey only had one, which was Fox News, and they had seven others on the other [left-wing] side."²⁶ Shortly after its inception, AT&T served as a crucial source of funds, channeling tens of millions of dollars into the network.

²⁵ Mark Schiff, *How to Watch Newsmax With Sling TV and Sling Freestream*, Sling (Feb. 20, 2024), <https://www.sling.com/whatson/entertainment/documentary-and-news/watch-newsmax-on-sling>.

²⁶ John Shiffman, *How AT&T Helped Build Far-Right One America News*, Reuters (Oct. 6, 2021), <https://www.reuters.com/investigates/special-report/usa-oneamerica-att/>.

60. In response, Fox again exploited its dominance to hobble OAN's growth. On information and belief, Fox News engaged in verbal "gentleman's agreements" with cable systems that prevented carriage of OAN, in contractual agreements that prevented OAN from being considered by major cable systems, and in agreements that prevented OAN from being carried on more than one major cable system.

61. For example, on information and belief, Fox insisted on restrictive features when dealing with Mediacom Communications Corporation ("Mediacom"), a cable operator that primarily serves smaller cities and towns across the United States. Fox required Mediacom to agree to a "me too" clause: if Mediacom gave a competing right-leaning cable news channel 85% market penetration (such as by placing it on a broadly penetrated tier), Mediacom would have to move Fox News and other Fox channels onto that same tier and pay the associated per-subscriber fees. Thus, any decision to carry a rival right-leaning news channel at scale would trigger material additional payments to Fox, deterring Mediacom from giving Fox rivals meaningful distribution. This policy delayed Mediacom's carriage of Newsmax and has precluded other right-leaning news channels from being carried on Mediacom.

62. Fox's conduct is neither economically nor structurally necessary for Fox's business. It impedes competition by raising barriers to entry and/or increasing distributors' cost to offer competing right-leaning programming, and damages consumers by reducing consumer choice and increasing prices.

63. Coercing distributors into exclusionary and restrictive agreements is not the only way Fox News throws its weight around. Fox has a history of using hardball and potentially illegal tactics against competitors and critics. Since the inception of Newsmax's cable channel, Newsmax has faced threats and smear intimidation tactics to hurt or undermine the company and

its executives. Such tactics included Fox hiring, by itself or through cutout corporations or law firms, private detective firms to investigate Newsmax executives.

64. Fox has run this play before. In 2016, Andrea Tantaros, a Fox News host, filed a lawsuit against Fox alleging sexual harassment and surveillance. In her suit, Tantaros claimed that Fox directly or indirectly hired a social media agency called Disruptor to defame and discredit her. According to Tantaros's amended complaint against Fox News, she was the target of vicious social media campaigns organized by Fox's infamous "Black Room," alleged to be run by Fox's P.R. chief Irena Briganti and used for illicit operations against those who dare criticize, or compete with, Fox. According to the complaint, Fox used Disruptor to create thousands of fake social media accounts, or "sock puppets," which, at Briganti's behest, spread smears and posted negative comments about Tantaros.²⁷

65. Furthermore, the Tantaros complaint alleged: "In Spring of 2014 [CEO of Disruptor and paid Fox commentator Peter] Snyder disclosed to Tantaros that Fox News, specifically Ailes, was concerned about Newsmax's growth and that it was a threat to the network."²⁸ According to the complaint, after sending via email an article titled, "The next Ailes: Newsmax's Chris Ruddy Preps TV Rival," Snyder asked [Bill] Shine, "Got a sec?"²⁹ Following Snyder's email, "there was a huge uptick in negative tweets on social media platforms, such as Twitter and Facebook, about Newsmax CEO Ruddy. Upon information and belief, these social media accounts were operated by Snyder."³⁰

²⁷ Complaint, *Tantaros v. Fox News Network, LLC*, No. 157054/2016, NYSCEF Doc. No. 2, at 4 (N.Y. Sup. Ct. Aug. 22, 2016).

²⁸ *Id.*

²⁹ Am. Complaint, *Tantaros v. Fox News Network, LLC*, No. 1:17-cv-02958, ECF No. 124-2, at 24 (S.D.N.Y. Jan. 29, 2018).

³⁰ *Id.*

66. Noteworthy is that after Newsmax's boost in viewers after the 2020 elections, the company noted another high volume of sock puppet attacks on Newsmax and Ruddy, using similar messaging as had been used in the Fox-backed efforts with Disruptor. Despite maintaining at least five times the rating of Newsmax at any given time of day, Fox News so feared Newsmax as a competitor that it resorted to exclusionary tactics. Fox took other steps to stop Newsmax's progress. For example, Fox pressured its guests who also appeared on Newsmax to stop doing so.³¹ Fox News producers were told to avoid booking guests who continued to appear on Newsmax after they had been "encouraged" to stop. When Newsmax confronted Fox regarding this anticompetitive conduct, Fox News responded, "Welcome to the big leagues."³²

67. Fox's ownership of Tubi, a virtual distributor, extends its exclusionary playbook into downstream distribution. In 2024, Tubi surpassed 97 million monthly active users who collectively streamed over 10 billion hours.³³ Fox refuses to allow Tubi to carry Newsmax and other programs that could compete with Fox-owned right-leaning news channels.

RELEVANT PRODUCT MARKET AND MARKET POWER

68. The relevant product market is the market for the distribution of right-leaning pay TV news to consumers (the "Right-leaning Pay TV News Market"). The distributors in this market include cable, satellite, and internet-based distributors that provide channels and channel

³¹ See, e.g., Azmi Haroun, *A battle over right-wing media bookings is playing out as Fox News reportedly tells guests to not appear on Newsmax*, Bus. Insider (Nov. 26, 2020), <https://www.businessinsider.com/fox-pressure-guests-stay-off-newsmax-cnn-2020-11>.

³² See Brian Stelter, *Fox News staffers thought Newsmax was a joke. But they're not laughing anymore*, CNN (Nov. 25, 2020), <https://www.cnn.com/2020/11/25/media/fox-news-newsmax>.

³³ *Tubi Surpasses 97 Million Monthly Active Users and 10 Billion Streaming Hours in 2024*, Tubi (Jan. 6, 2025), <https://corporate.tubitv.com/press/tubi-surpasses-97-million-monthly-active-users-and-10-billion-streaming-hours-in-2024>.

bundles to end users. The programmers in this market include Fox, Newsmax and OAN. The end users are those viewers who prefer and seek out right-leaning news channels.

69. The Right-leaning Pay TV News Market is distinct from general news markets due to substantial differences in consumer behavior and preferences. Right-leaning audiences generally do not regard left-leaning news channels (*e.g.*, CNN, MSNBC) as substitutes. Right-leaning viewers demonstrate minimal switching to non-right-leaning news outlets like CNN or MSNBC. Empirical data indicates that right-leaning pay TV news viewers remain highly attached to both right-leaning viewpoints and video media, confirming that consumers do not treat general news channels or right-leaning print news sources as adequate substitutes. Indeed, “[t]here is little overlap in the [video news] sources that Democrats and Republicans find most trustworthy – other than the Weather Channel.”³⁴ Consequently, the core product in this market is right-leaning coverage of politics, current events, and cultural issues on cable television.

70. There is direct evidence that Fox possesses monopoly power in the Right-leaning Pay TV News Market. First, Fox’s market power allows it to reduce output in the Right-leaning Pay TV News Market. For example, in the past, Fox had successfully prevented Sling TV from adding Newsmax (and potentially other similarly situated competitors), which left Sling TV’s viewers without any choice in the relevant market other than Fox News. Similarly, Fox’s drag-down provisions effectively prevent right-leaning pay TV carriers from adding Newsmax and similarly situated competitors to their basic cable package, which reduces consumer choice in the Right-leaning Pay TV News Market and further reduces output.

71. Additionally, Fox has been able to increase its carriage fees significantly because pay TV carriers are unwilling to drop Fox News from their basic package. As a result, Fox

³⁴ Orth & Bialik, *Trust in Media 2024*.

is able to charge pay TV carriers supracompetitive prices, which are passed on to all pay TV consumers.

72. Fox News's dominance is further evidenced by its consistently overwhelming share of viewership relative to other right-leaning pay TV news outlets such as Newsmax and OAN. In 2020, 43% of all U.S. adults received political news from Fox News.³⁵ Fox News reached approximately 62% of Republicans, compared to approximately 21% for Newsmax and 14% for OAN. As noted above, Fox captures 65% of the total-day cable news audience and 66% in primetime³⁶ – figures that understate its share within the right-leaning market because these percentages reflect all viewers, not just the right-leaning audience where Fox performs even more strongly. According to News Corporation COO Chase Carey, Fox News “is right up there with ESPN in terms of being as important a channel that exists out there.”³⁷

73. Fox News's financial strength and profitability further underscore its market dominance. Fox News generated approximately \$3.3 billion in revenue in 2022, exceeding the combined revenues of its closest rivals CNN and MSNBC.³⁸ Its profitability is extraordinary, with annual operating profits around \$1.78 billion, reflecting profit margins of approximately

³⁵ Amy Mitchell, *Large Majorities of Newsmax and OAN News Consumers Also Go to Fox News*, Pew Rsch. Ctr. (Mar. 23, 2021), <https://www.pewresearch.org/journalism/2021/03/23/large-majorities-of-newsmax-and-oan-news-consumers-also-go-to-fox-news/>.

³⁶ See, e.g., Mwachiro, *Here's the 1st Quarter* (Apr. 2, 2025); Flood, *Americans continue to choose Fox News Channel* (May 28, 2025).

³⁷ Alex, *As Fox News Channel Enters New Round of Carriage Negotiations, It Sets Its Sights On . . . ESPN?*, Adweek (Dec. 8, 2010), <https://www.adweek.com/tvnewser/as-fox-news-channel-enters-new-round-of-carriage-negotiations-it-sets-its-sights-on-espn/>.

³⁸ *Cable News Fact Sheet*, Pew Rsch. Ctr. (Sept. 14, 2023), <https://www.pewresearch.org/journalism/fact-sheet/cable-news/>.

50-55%, significantly outperforming smaller right-leaning competitors.³⁹ By contrast, Newsmax generated \$135 million in revenue during the same period.⁴⁰

74. A monopolist of the Right-leaning Pay TV News Market could profitably impose a significant, nontransitory price increase or quality reduction without losing substantial viewers to left-leaning or centrist channels.

RELEVANT GEOGRAPHIC MARKET

75. The relevant geographic market is the United States.

76. Right-leaning pay TV news is distributed to consumers throughout the United States. Over-the-air networks, which are broadcast on both MVPDs and vMVPDs, are regulated under federal law and tailored to the laws of the United States.

77. Pay TV caters to United States customers, providing content predominantly in English and featuring news relating to events in the United States. Advertisements on pay television services likewise are tailored to United States consumers.

78. vMVPDs market their services nationwide. They provide content over broadband internet connections that are available throughout the United States. Moreover, vMVPDs enforce geo-location restrictions that limit consumers to watching those services within the United States.

VI. FOX'S ANTICOMPETITIVE CONDUCT HAS CAUSED AND WILL CONTINUE TO CAUSE NEWSMAX ANTITRUST INJURY

79. As described above and in the following paragraphs, Fox's conduct has caused competitive injury to Newsmax in several ways, including, but not limited to, stifling

³⁹ *Id.*

⁴⁰ See Newsmax Inc., Offering Circular Dated March 7, 2025, at 59, https://www.sec.gov/Archives/edgar/data/2026478/000121390025021989/ea0233655-253g1_newsmax.htm.

Newsmax's pay TV distribution, obstructing its audience and ratings growth, preventing Newsmax from reaching "critical mass" for major advertising and marketing revenues, all while increasing overall company costs.

80. Fox's anticompetitive conduct has harmed not just Newsmax and other competitors. It has harmed consumers and competition itself. Fox's conduct has raised the prices consumers pay to access right-leaning cable news, has degraded the quality of right-leaning pay TV news, and has restricted consumer choice. If Fox is permitted to continue imposing exclusionary agreements on distributors, the injury to competition will continue and even increase.

FOX'S ONGOING AND CONTINUING VIOLATIONS

81. Fox's anticompetitive conduct is ongoing and continuing. Since at least 2019, and on multiple occasions within the four years preceding the filing of this action, including as recently as Newsmax's renewal negotiations in or about June 2025 with vMVPD Fubo, Fox has negotiated and renewed exclusionary carriage agreements that remain in force today, timed blackout threats around marquee events such as the 2022 U.S.-Netherlands World Cup match, and continued to refuse carriage of Newsmax on Fox-owned Tubi. Newsmax continues to suffer new and accumulating injury, including lost carriage fees, diminished brand exposure, and foregone advertising sales, each time Fox enforces or extends its exclusionary terms or abuses its monopoly power to foreclose competition in the Right-leaning Pay TV News Market.

FOX'S FRAUDULENT CONCEALMENT

82. In addition, the statute of limitations is tolled under the doctrine of fraudulent concealment. Fox knowingly and actively concealed its unlawful restraints by, for example, embedding them in carriage agreements that are subject to strict confidentiality and nondisclosure provisions and by using oral "gentlemen's agreements" to avoid leaving

discoverable paper trails. Fox kept the key exclusionary provisions from the public eye; they exist only in private, bilateral contracts between Fox and MVPDs/vMVPDs. They are treated as confidential trade information per industry practice and which counterparties are contractually prohibited from disclosing.

FIRST CAUSE OF ACTION

Unreasonable Restraint of Trade in Violation of the Sherman Act, 15 U.S.C. § 1

83. Newsmax realleges and incorporates by reference the factual allegations in paragraphs 1-82 as though fully set forth herein.

84. Section 1 of the Sherman Act provides: “Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.” 15 U.S.C. § 1.

85. Beginning no later than 2019 and continuing through the present, Fox entered into and enforced a series of carriage agreements with major MVPDs and vMVPDs that penalize or prohibit those entities from carrying other right-leaning pay TV news channels like Newsmax. These carriage agreements include, for example, explicit or tacit “no-carry” provisions that prohibit the distributor from carrying right-leaning news channels that compete with Fox News, and “drag-down” provisions that require a distributor who places Newsmax in its basic tier to also carry low-demand Fox channels in that same tier. Fox has entered into such agreements with distributors including Fubo, Sling TV/DISH, Hulu+, and Mediacom.

86. These carriage agreements constitute concerted action within the meaning of Section 1 and are unreasonable vertical restraints on trade and commerce in the Right-leaning Pay TV News Market with actual anticompetitive effects. They enable Fox to foreclose or delay meaningful competition, raise rivals’ costs, and charge supracompetitive carriage fees.

87. Fox’s conduct substantially affects interstate trade and commerce. These agreements cover millions of subscribers nationwide, involve hundreds of millions of dollars in carriage fees, and impact interstate advertising markets.

88. Fox captures approximately 65% of all total-day cable-news viewers. Most distributors consider Fox News to be a “must-carry” channel for their basic package to satisfy subscriber demand. Fox News commands significantly higher carriage fees than any other cable news channel. Fox therefore has substantial market power in the Right-leaning Pay TV News Market, which is concentrated and has high barriers to entry and expansion.

89. Fox cannot show that any procompetitive benefits resulting from these restrictions will outweigh their anticompetitive effects.

90. As a result of Fox’s exclusionary agreements, Newsmax suffers injury and damage caused by Defendants’ anticompetitive agreements, including lost or delayed distribution, impaired brand exposure, and reduced advertising and carriage revenue. These injuries constitute antitrust injury because they flow directly from Fox’s exclusionary agreements, which reduced competition, raised rivals’ costs, reduced consumer choice in the Right-leaning Pay TV News Market, and increased the cost consumers must bear to access right-leaning news.

SECOND CAUSE OF ACTION

Maintaining Right-leaning Pay TV News Monopoly in Violation of the Sherman Act, 15 U.S.C. § 2

91. Newsmax realleges and incorporates by reference the factual allegations in paragraphs 1-82 as though fully set forth herein.

92. Section 2 of the Sherman Act provides: “Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize

any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony” 15 U.S.C. § 2.

93. Fox has monopolized, in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2, the market for right-leaning pay TV news.

94. Fox has monopoly power in the Right-leaning Pay TV News Market. Fox captures approximately 65% of all total-day cable-news viewers, a figure that understates its share within the right-leaning market. In 2023, Fox News captured about 90% of the Right-leaning Pay TV News Market in primetime viewership. Most distributors consider Fox News to be a “must-carry” channel for their basic package to satisfy subscriber demand. Fox News charges Right-leaning pay TV news carriers supracompetitive prices. Fox’s market power allows it to reduce output in the Right-leaning Pay TV News Market, such as when it successfully prevented Sling TV from adding Newsmax (and potentially other similarly situated competitors). Fox’s drag-down provisions have prevented and prevent right-leaning pay TV carriers from adding Newsmax and similarly situated competitors to their basic cable package. Fox News’s financial strength and profitability further underscore its market dominance.

95. Fox has abused and maintained its monopoly in the Right-leaning Pay TV News Market through an exclusionary course of conduct and anticompetitive acts described in the factual allegations in paragraphs 1-82, including, but not limited to, arrangements that condition access to other Fox programming on the carriage of Fox News, smear intimidation tactics against its competitors, Fox’s refusal to allow Tubi to carry Newsmax, and Fox’s threats to impede access to its other programming (e.g., Fox Sports) to extort increased carriage fees for Fox News. Each of Fox’s actions individually and collectively increased, maintained, or protected its monopoly in the Right-leaning Pay TV News Market. Fox’s dominance is therefore not the

result of superior product, business acumen, or historical accident, but of willful exclusionary conduct.

96. Fox's monopolistic conduct substantially affects interstate trade and commerce. Millions of consumers subscribe to MVPDs and vMVPDs, distributors pay hundreds of millions of dollars in carriage fees, and national advertising revenues are directly impacted.

97. Fox's exclusionary conduct lacks a procompetitive justification that offsets the harm caused by Fox's anticompetitive and unlawful conduct.

98. As a result of Fox's unlawful maintenance of its monopoly in the Right-leaning Pay TV News Market, Newsmax has suffered injury and damage, including lost or delayed distribution, impaired brand exposure, and reduced advertising and carriage revenue. These injuries constitute antitrust injury because they flow directly from Fox's monopolization, which reduced competition, raised rivals' costs, reduced consumer choice in the Right-leaning Pay TV News Market, and increased the cost consumers must bear to access right-leaning news.

THIRD CAUSE OF ACTION

Unlawful Block-Booking in Violation of Sherman Act, 15 U.S.C § 1

99. Newsmax realleges and incorporates by reference the factual allegations in paragraphs 1-82 as though fully set forth herein.

100. Section 1 of the Sherman Act provides: "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal." 15 U.S.C. § 1.

101. In its carriage agreements with major MVPDs and vMVPDs, Fox has conditioned the licensing of "must have" conservative news content on Fox News on distributors' agreements to include unfair "drag-down" provisions that require a distributor who places Newsmax in its

basic tier to also carry low-demand Fox channels in that same tier. Fox has entered into such agreements with distributors including Fubo, Sling TV/DISH, Hulu+, and Mediacom.

102. Fox's above-described conduct constitutes unlawful "block booking" in violation of Section 1 of the Sherman Act. As relevant here, block-booking is the practice of licensing one set of programming to a distributor on the condition that the distributor also license and distribute other programming from the programmer.

103. Fox has engaged in unlawful block-booking by requiring distributors who wish to license its must-have conservative news content to also license and distribute Fox's low-demand channels alongside Newsmax.

104. Fox's conduct substantially affects interstate trade and commerce. These agreements cover millions of subscribers nationwide, involve hundreds of millions of dollars in carriage fees, and impact interstate advertising markets.

105. Fox captures approximately 65% of all total-day cable-news viewers. Most distributors consider Fox News to be a "must-carry" channel for their basic package to satisfy subscriber demand. Fox News commands significantly higher carriage fees than any other cable news channel. Fox therefore has substantial market power in the Right-leaning Pay TV News Market, which is concentrated and has high barriers to entry and expansion.

106. Fox cannot show that any procompetitive benefits resulting from these restrictions will outweigh their anticompetitive effects.

107. Fox's block-booking has injured Newsmax by discouraging distributors from carrying Newsmax and hamstringing Newsmax's ability to compete with Fox. It has also injured distributors who are forced to carry unwanted channels (and prevented from carrying Newsmax), and it has injured consumers who must pay inflated costs for channels they do not watch and are

unable to watch channels they do want to watch (like Newsmax). Newsmax's injuries include lost or delayed distribution, impaired brand exposure, and reduced advertising and carriage revenue. These injuries constitute antitrust injury because they flow directly from Fox's block-booking conduct, which has reduced competition, raised rivals' costs, reduced consumer choice in the Right-leaning Pay TV News Market, and increased the cost consumers must bear to access right-leaning news.

FOURTH CAUSE OF ACTION

Unreasonable Restraint of Trade in Violation of the Wisconsin Antitrust Act, Wis. Stat. § 133.03(1)

108. Newsmax realleges and incorporates by reference the factual allegations in paragraphs 1-82 as though fully set forth herein.

109. The Wisconsin Antitrust Act provides: "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce is illegal." Wis. Stat. § 133.03(1).

110. Beginning no later than 2019 and continuing through the present, Fox entered into and enforced a series of carriage agreements with major MVPDs and vMVPDs that penalize or prohibit those entities from carrying other right-leaning pay TV news channels like Newsmax. These carriage agreements include, for example, explicit or tacit "no-carry" provisions that prohibit the distributor from carrying right-leaning news channels that compete with Fox News, and "drag-down" provisions that require a distributor who places Newsmax in its basic tier to also carry low-demand Fox channels in that same tier. Fox has entered into such agreements with distributors including Fubo, Sling TV/DISH, Hulu+, and Mediacom.

111. These carriage agreements constitute concerted action within the meaning of the Wisconsin Antitrust Act and are unreasonable vertical restraints on trade and commerce in the

Right-leaning Pay TV News market with actual anticompetitive effects. They enable Fox to foreclose or delay meaningful competition, raise rivals' costs, and charge supracompetitive carriage fees.

112. Fox's conduct substantially affects trade and commerce in Wisconsin, and specifically in the Western District of Wisconsin, where these agreements cover hundreds of thousands of subscribers, involve millions of dollars in carriage fees, and impact intrastate advertising markets.

113. Fox captures approximately 65% of all total-day cable-news viewers. Most distributors consider Fox News to be a "must-carry" channel for their basic package to satisfy subscriber demand. Fox News commands significantly higher carriage fees than any other cable news channel. Fox therefore has substantial market power in the Right-leaning Pay TV News Market.

114. The Right-leaning Pay TV News Market is concentrated and barriers to entry and expansion are high.

115. Fox cannot show that any procompetitive benefits resulting from these restrictions will outweigh their anticompetitive effects.

116. As a result of Fox's exclusionary agreements, Newsmax suffers injury and damage caused by Defendants' anticompetitive agreements, including lost or delayed distribution, impaired brand exposure, and reduced advertising and carriage revenue. These injuries constitute antitrust injury because they flow directly from Fox's exclusionary agreements, which reduced competition, raised rivals' costs, reduced consumer choice in the Right-leaning Pay TV News Market, and increased the cost consumers must bear to access right-leaning news.

FIFTH CAUSE OF ACTION

Maintaining Right-leaning Pay TV News Monopoly in Violation of the Wisconsin Antitrust Act, Wis. Stat. § 133.03(2)

117. Newsmax realleges and incorporates by reference the factual allegations in paragraphs 1-82 as though fully set forth herein.

118. The Wisconsin Antitrust Act makes it unlawful for any person to “monopolize[], or attempt[] to monopolize, or combine[] or conspire[] with any other person or persons to monopolize any part of trade or commerce.” Wis. Stat. § 133.03(2).

119. Fox has monopolized, in violation of the Wisconsin Antitrust Act, the market for right-leaning pay TV news.

120. Fox has monopoly power in the Right-leaning Pay TV News Market. Fox captures approximately 65% of all total-day cable-news viewers, a figure that understates its share within the right-leaning market. In 2023, Fox News captured about 90% of the Right-leaning Pay TV News Market in primetime viewership. Most distributors consider Fox News to be a “must-carry” channel for their basic package to satisfy subscriber demand. Fox News charges Right-leaning pay TV news carriers supracompetitive prices. Fox’s market power allows it to reduce output in the Right-leaning Pay TV News Market, such as when it successfully prevented Sling TV from adding Newsmax (and potentially other similarly situated competitors). Fox’s drag-down provisions have prevented and prevent right-leaning pay TV carriers from adding Newsmax and similarly situated competitors to their basic cable package. Fox News’s financial strength and profitability further underscore its market dominance.

121. Fox has abused and maintained its monopoly in the Right-leaning Pay TV News Market through an exclusionary course of conduct and anticompetitive acts described in the factual allegations in paragraphs 1-82, including, but not limited to, arrangements that condition

access to other Fox programming on the carriage of Fox News, smear intimidation tactics against its competitors, Fox's refusal to allow Tubi to carry Newsmax, and Fox's threats to impede access to its other programming (e.g., Fox Sports) to extort increased carriage fees for Fox News. Each of Fox's actions individually and collectively increased, maintained, or protected its monopoly in the Right-leaning Pay TV News Market.

122. Fox's conduct substantially affects trade and commerce in Wisconsin, and specifically the Western District of Wisconsin, where hundreds of thousands of consumers subscribe to MVPDs and vMVPDs, distributors pay millions of dollars in carriage fees, and intrastate advertising revenues are directly impacted.

123. Fox's exclusionary conduct lacks a procompetitive justification that offsets the harm caused by Fox's anticompetitive and unlawful conduct.

124. As a result of Fox's unlawful maintenance of its monopoly in the Right-leaning Pay TV News Market, Newsmax has suffered injury and damage, including lost or delayed distribution, impaired brand exposure, and reduced advertising and carriage revenue. These injuries constitute antitrust injury because they flow directly from Fox's monopolization, which reduced competition, raised rivals' costs, reduced consumer choice in the Right-leaning Pay TV News Market, and increased the cost consumers must bear to access right-leaning news.

125. By reason of the foregoing, Newsmax is entitled to seek all forms of relief, including injunctive relief pursuant to Wis. Stat. § 133.16 and declaratory judgment, actual damages, reasonable attorneys' fees and costs pursuant to Wis. Stat. § 133.18.

SIXTH CAUSE OF ACTION

**Unlawful Block-Booking in Violation of the
Wisconsin Antitrust Act, Wis. Stat. § 133.03(1)**

126. Newsmax realleges and incorporates by reference the factual allegations in paragraphs 1-82 as though fully set forth herein.

127. The Wisconsin Antitrust Act provides: “Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce is illegal.” Wis. Stat. § 133.03(1).

128. In its carriage agreements with major MVPDs and vMVPDs, Fox has conditioned the licensing of “must have” conservative news content on Fox News on distributors’ agreements to include unfair “drag-down” provisions that require a distributor who places Newsmax in its basic tier to also carry low-demand Fox channels in that same tier. Fox has entered into such agreements with distributors including Fubo, Sling TV/DISH, Hulu+, and Mediacom.

129. Fox’s above-described conduct constitutes unlawful “block booking” in violation of the Wisconsin Antitrust Act. As relevant here, block-booking is the practice of licensing one set of programming to a distributor on the condition that the distributor also license and distribute other programming from the programmer.

130. Fox has engaged in unlawful block-booking by requiring distributors who wish to license its must-have conservative news content to also license and distribute Fox’s low-demand channels alongside Newsmax.

131. Fox’s conduct substantially affects interstate trade and commerce. These agreements cover millions of subscribers nationwide, involve hundreds of millions of dollars in carriage fees, and impact interstate advertising markets.

132. Fox captures approximately 65% of all total-day cable-news viewers. Most distributors consider Fox News to be a “must-carry” channel for their basic package to satisfy subscriber demand. Fox News commands significantly higher carriage fees than any other cable news channel. Fox therefore has substantial market power in the Right-leaning Pay TV News Market, which is concentrated and has high barriers to entry and expansion.

133. Fox cannot show that any procompetitive benefits resulting from these restrictions will outweigh their anticompetitive effects.

134. Fox’s block-booking has injured Newsmax by discouraging distributors from carrying Newsmax and hamstringing Newsmax’s ability to compete with Fox. It has also injured distributors who are forced to carry unwanted channels (and prevented from carrying Newsmax), and it has injured consumers who must pay inflated costs for channels they do not watch and are unable to watch channels they do want to watch (like Newsmax). Newsmax’s injuries include lost or delayed distribution, impaired brand exposure, and reduced advertising and carriage revenue. These injuries constitute antitrust injury because they flow directly from Fox’s block-booking conduct, which has reduced competition, raised rivals’ costs, reduced consumer choice in the Right-leaning Pay TV News Market, and increased the cost consumers must bear to access right-leaning news.

PRAYER FOR RELIEF

WHEREFORE Plaintiff prays as follows:

- a. That Fox’s conduct specified in this Complaint be declared by the Court to violate Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1, 2, and the Wisconsin Antitrust Act, Wis. Stat. §§ 133.03(1)-(2).
- b. That judgment be entered for Plaintiff against Fox for three times the amount of damages sustained by Plaintiff as allowed by law, together with the costs of this action, including reasonable attorneys’ fees pursuant to Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26, and the Wisconsin Antitrust Act, Wis. Stat. § 133.18;

- c. That Plaintiff be awarded pre-judgment and post-judgment interest at the highest legal rate from and after the date of service of this Complaint to the extent provided by law;
- d. That the Court issue further equitable relief in the form of a permanent injunction prohibiting Fox's exclusionary agreements and other ongoing and future exclusionary conduct; and
- e. That Plaintiff receives such other, further, or different relief as the case may require and the Court deems just and proper under the circumstances.

DEMAND FOR JURY TRIAL

135. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Newsmax demands a jury trial of all issues so triable.

Dated: September 11, 2025

Respectfully submitted,

s/ Jennifer L. Gregor
Jennifer L. Gregor
GODFREY & KAHN, S.C.
One East Main Street, Suite 500
Madison, WI 53703
Phone: (608) 257-3911
jgregor@gklaw.com

Michael J. Guzman (*pro hac vice* forthcoming)
**KELLOGG, HANSEN, TODD,
FIGEL & FREDERICK, P.L.L.C.**
Sumner Square
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
Phone: (202) 326-7910
mguzman@kellogghansen.com

Attorneys for Plaintiff Newsmax

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Newsmax Broadcasting, LLC

(b) County of Residence of First Listed Plaintiff Palm Beach County (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Godfrey & Kahn, S.C., Jennifer L. Gregor, One East Main Street, Madison, WI 53703 (608) 257-3911

DEFENDANTS

Fox Corporation and Fox News Network, LLC

County of Residence of First Listed Defendant New York County (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2; and Section 4 of the Clayton Act, 15 U.S.C. § 15. Brief description of cause: Antitrust case against Defendants for foreclosing competition in the right-leaning pay TV news market by engaging in anticompetitive behaviors.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 9/11/2025 SIGNATURE OF ATTORNEY OF RECORD Jennifer L. Gregor

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Wisconsin

NEWSMAX BROADCASTING, LLC

Plaintiff(s)

v.

FOX CORPORATION and
FOX NEWS NETWORK, LLC

Defendant(s)

Civil Action No. 25-cv-770

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Fox Corporation
C/O Registered Agent
Incorporating Services, LTD.
3500 S Dupont Hwy.
Dover, DE 19901

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Jennifer L. Gregor
GODFREY & KAHN, S.C.
One East Main Street, Suite 500
Madison, WI 53703

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 25-cv-770

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Wisconsin

NEWSMAX BROADCASTING, LLC

Plaintiff(s)

v.

FOX CORPORATION and
FOX NEWS NETWORK, LLC

Defendant(s)

Civil Action No. 25-cv-770

SUMMONS IN A CIVIL ACTION

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Fox News Network, LLC
C/O Registered Agent
Incorporating Services, LTD.
3500 S Dupont Hwy.
Dover, DE 19901

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Jennifer L. Gregor
GODFREY & KAHN, S.C.
One East Main Street, Suite 500
Madison, WI 53703

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 25-cv-770

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: