

1 JUDGE CHACHKIN: No, I don't agree with you. I  
2 don't see any need, nor any relevance, and I will not permit  
3 any questions to be asked. If objections are made to  
4 discussions and negotiations with ESPN, I will rule that  
5 that's irrelevant to this proceeding. It has nothing to do  
6 with this proceeding. The fact that there were ongoing  
7 negotiations or discussions with ESPN, or anybody else, to  
8 sell themselves to has no bearing on whether Cablevision or  
9 one of its affiliates made a demand -- demanded as a  
10 condition of carriage, that they sell it to them. That's  
11 the issue in this case.

12 If no demand was made, no threat -- not a threat.  
13 No demand was made, then -- and all it was, it was just  
14 merely discussions, and that's all it was -- said, "We would  
15 like to buy it from you, are you willing to do so?" And  
16 Classic Sports said, "No, we don't feel like selling it to  
17 you, or whatever," that will be the end of it. Then they  
18 haven't proved the issue. They have to go beyond that.  
19 They have to show that there was a demand made, that either  
20 else. Either you give us, sell it to us, or give us  
21 exclusive rights or we won't carry you.

22 If they can't show that, then that's the end of  
23 the case. They have -- then the facts have not been proven.  
24 They understand that. Isn't that correct?

25 MR. HORTON: Correct, Your Honor. As I said, it's

1 the totality of the circumstances issue. It's like --

2 JUDGE CHACHKIN: I can understand that.

3 MR. HORTON: Like a trust conspiracy, where you  
4 don't expect to find, you know, articles of conspiracy  
5 somewhere in the files.

6 JUDGE CHACHKIN: You have to establish -- if you  
7 want to depose an individual, you have to show that it's  
8 going to lead to relevant evidence. Based on what you tell  
9 me, and what I see of the case, I don't see how it could  
10 possibly lead to relevant evidence, so I'm not going to  
11 permit you to take the deposition of anyone about ESPN. I  
12 haven't looked at the interrogatories, but if they deal with  
13 sales to other entities, I don't see how that's relevant.  
14 Let's deal with one case at a time. The issue is here.

15 MR. HORTON: Your Honor, I think when you get into  
16 the written discovery requests, that's what you're going to  
17 find. Most of their requests ask questions having to do  
18 with relations between the two parties in some sense or  
19 another. And there are cases where their interrogatories or  
20 document requests are designed to see if maybe we discussed  
21 them with some third party. They want to seek discovery to  
22 see if we made some admission to some third party. We're  
23 not going to object to providing information with respect to  
24 them.

25 MR. DAVIS: Why don't we just take up --

1 MR. HORTON: This is main line we're drawing.  
2 Beyond that, like any lawyer, I can tell you I will have  
3 other objections. I think most of them are -- you know, I  
4 think something is overbroad, I'll object to it. But I'll  
5 say, "But here's a body of documents that are an answer I'm  
6 prepared to give to you, which I think is going to be  
7 satisfactory to them." Our responses, again, are not due  
8 until tomorrow. Unlike the -- with respect to my request,  
9 we at least had an opportunity to have a meet and confer  
10 before.

11 If any of my other objections -- and frankly, if I  
12 had another specific one in mind right now, I'd tell it to  
13 you. I just don't recall. This was the big dividing line.  
14 He'll see them, we'll discuss them if we can't reach an  
15 agreement. I think we've established a precedent already  
16 here this morning that you're ready, willing and able to  
17 confer with us, and confer with us quickly. And we'll do  
18 it.

19 But right now, I can't think of another issue to  
20 bring up. This was the big concern that we had.

21 MR. DAVIS: I'm not sure I understand what Mr.  
22 Horton's saying, Your Honor. He's raised the ESPN issue,  
23 that's been ruled on, it's over.

24 JUDGE CHACHKIN: All right. Well, let's see --

25 MR. DAVIS: Let's move on to the other objections.

1 JUDGE CHACHKIN: Okay, let's basically see what  
2 your other document requests are. Do you have a copy of the  
3 document request?

4 MR. HORTON: I don't have it with me, Your Honor.  
5 I didn't think we were going to deal with it since our  
6 responses aren't due until tomorrow. I've got a -- it's  
7 long, the interrogatories are longer, they're still in the  
8 process of being finalized.

9 JUDGE CHACHKIN: Well, let me just go over  
10 basically -- and I don't know what your objections to --  
11 first request is all documents relating to communications  
12 from Cablevision to CSN. Now I assume you want to limit it  
13 in time, and I don't know what else you want to limit it to.

14 MR. HORTON: I don't think we have an objection to  
15 that.

16 JUDGE CHACHKIN: Oh, all right.

17 MR. HORTON: Once he gets our responses, he's  
18 going to see by and large that he asked a question wanting  
19 to know something that in some sense is going to touch on  
20 Cablevision, we're going to agree to tell you whatever it is  
21 that has to do with Cablevision. If it's something that has  
22 nothing to do, and that will include the Paragraph 11 stuff  
23 where it was an inquiry with another party, but Cablevision  
24 got pulled into the loop by the other party. And we're not  
25 going to object to producing whatever we have on that.

1           The line that I had in mind that I'd drawn was  
2 this ESPN or the XYZ Corp. That's a firm line that I can  
3 recall that we have drawn in our responses. Other than  
4 that, I --

5           MR. DAVIS: Well, Your Honor, let me suggest --

6           MR. HORTON: I suspect that we can work things  
7 out, but we'll be here for hours trying to go through these  
8 --

9           JUDGE CHACHKIN: Well, also I see I Disney is  
10 brought in, Capital Cities, ABC, all which, as far as I can  
11 see --

12          MR. HORTON: I draw the same line --

13          JUDGE CHACHKIN: -- have no bearing --

14          MR. DAVIS: The line that he's drawing is the same  
15 line I tried to draw unsuccessfully, Your Honor, when it was  
16 ruled earlier, for example, that we were required to turn  
17 over pricing material for other sports programming. The  
18 price that we pay for carrying other sports services. So,  
19 for example, they make a claim about exclusivity. Well, we  
20 want to know whether they granted exclusivity to others.

21          JUDGE CHACHKIN: What difference does it make?

22          MR. DAVIS: Because if they've granted it to  
23 others, then what are they complaining about negotiating  
24 with it in this one?

25          JUDGE CHACHKIN: Well, I don't understand what you

1 mean. They have a right to grant authority to anybody they  
2 want. That doesn't give you the right to demand as a  
3 condition of carriage that you grant them exclusivity.  
4 That's the issue here, whether you have --

5 MR. DAVIS: Well, Your Honor, don't you think it's  
6 relevant --

7 JUDGE CHACKIN: They could voluntarily agree to  
8 grant exclusivity or sell to anybody they want. That  
9 doesn't violate any law.

10 MR. DAVIS: That's absolutely true, Your Honor.  
11 But when we say in our defense that there was nothing at all  
12 unusual about discussions about exclusivity --

13 JUDGE CHACKIN: Fine.

14 MR. DAVIS: Then if they come up and say, as we  
15 think they will, that there was something quite unusual  
16 about the way it was handled, we want to be able to probe to  
17 see whether they granted the identical terms and conditions  
18 to the other persons to whom they've licensed the service.

19 JUDGE CHACKIN: We're going to try this case,  
20 basically, on the basis of the evidence that comes in as to  
21 what was involved in these discussions, and what was said  
22 and what was not said. And that's what we're going to have  
23 to decide, and I'm not going to try to compare this to any  
24 other conduct elsewhere which is not in violation of the  
25 law. So, it probably wouldn't do us any good to go over

1 these document requests, because my understanding is that  
2 anything that's relevant to the complaint is being turned  
3 over.

4 MR. HORTON: If it has anything to do with them --

5 JUDGE CHACKIN: Yes?

6 MR. HORTON: I'm pretty sure that I'm not  
7 objecting to anything like that. The line I'm drawing,  
8 again, is the XYZ Corp's point.

9 JUDGE CHACKIN: And I'm saying --

10 MR. HORTON: I cannot see the relevance of that,  
11 and I am objecting to that.

12 JUDGE CHACKIN: And I agree with you, and I'm not  
13 going to require you to turn over these documents, or answer  
14 any questions concerning relationships you may have with  
15 anyone else, unless in the course of that relationship there  
16 were discussions about Cablevision's programming.

17 MR. HORTON: And we will do that.

18 MR. DAVIS: Well, Your Honor, I think it's  
19 inappropriate at this point, until we see their objections,  
20 and we see the specific objection to a request or  
21 interrogatory, to gauge the relevance of any third party.  
22 So if I may, Your Honor, I think it's a little premature  
23 right today --

24 JUDGE CHACKIN: Well, I --

25 MR. DAVIS: And I hear where you're coming from on

1 this, and it may be that when we see their objection, we're  
2 not going to bring it back to your attention. But I don't  
3 want to -- is the order to be construed that anything  
4 having to do with anyone, any other third party, is as a  
5 matter of law, based on your order today, off the table?

6 JUDGE CHACHKIN: No, no, no. I said specifically  
7 unless in the course of the dealings with that third party,  
8 there was some discussion concerning Cablevision, and the  
9 carriage of Cablevision, of Classic Sports Network. To the  
10 extent that it would be relevant, obviously. To the extent  
11 that it dealt with the relationship solely between ESPN and  
12 Classic Sports, but did not involve any discussions or  
13 documents involving this dispute, it wouldn't be relevant.

14 MR. DAVIS: Your Honor, may I reserve the right to  
15 come back if there is a particular issue that's critical for  
16 a third party, just to indulge you to possibly take that up  
17 if it becomes necessary?

18 JUDGE CHACHKIN: Well, you've heard my general  
19 ruling is going to be. If you feel in some case that  
20 something is pertinent, and you could show me how it's  
21 pertinent --

22 MR. DAVIS: That's all I'm asking, yes.

23 JUDGE CHACHKIN: But what I want to do is I want  
24 to short-cut the motions for production -- you know, the  
25 motion to compel. Because that's going to take time and

1 we'll be in the midst of depositions, and I want to avoid  
2 that. So what I'm going to do is, you know, file your  
3 pleadings tomorrow, I guess.

4 MR. HORTON: Tomorrow.

5 JUDGE CHACHKIN: Answering the interrogatories and  
6 answering the production of documents.

7 MR. HORTON: That's correct, Your Honor.

8 JUDGE CHACHKIN: And I want a copy sent to me.  
9 And then if you can't work something out in the next two or  
10 three days, if there's still disagreement, knowing what my  
11 general framework is going to be, what type of ruling I'm  
12 going to make -- I mean, I've not ruled on anything  
13 specifically as overbroad or things like that. But at least  
14 the general areas I'm going to allow.

15 And if you feel, Mr. Davis, that you want to bring  
16 something up, then we'll schedule another conference for  
17 Monday or so, and deal with it.

18 MR. DAVIS: That's acceptable, Your Honor. And I  
19 assume we'll be getting the documents over the next week,  
20 the same as --

21 JUDGE CHACHKIN: The documents that they agreed to  
22 produce, they will start turning over.

23 MR. DAVIS: That's fine, Your Honor.

24 MR. HORTON: We'll do it as quickly as we can,  
25 Your Honor. The only caveat -- I think we can probably

1 agree to this -- is I believe -- I apologize, I can't  
2 remember specifics, because there's just too much in my mind  
3 -- if some interrogatory responses in which we would have  
4 withheld the response pending the entry of the protective  
5 order. Since we -- I think we're all -- it's not been  
6 reduced to writing, but I think we have an agreement on  
7 that. I would plan to go ahead and provide the information  
8 with the understanding that what we all think is -- I don't  
9 want to delay whatever time it may take to get the  
10 protective order.

11 JUDGE CHACHKIN: Well, okay.

12 MR. HORTON: And I'll try not to do that before I  
13 get the protective order. I'll be as fast as possible.

14 JUDGE CHACHKIN: Subject to what we agreed that  
15 would be contained in the protective order, yes.

16 MR. HORTON: So if I go ahead and turn something  
17 over that I withheld, then it -- we'll assume that the new  
18 order as we all understand it --

19 MR. DAVIS: Absolutely.

20 JUDGE CHACHKIN: That's right. And if you feel  
21 this is something you don't want turned over to a principal,  
22 it should be limited just to outside counsel, then you  
23 should -- same thing as --

24 MR. DAVIS: That's acceptable.

25 JUDGE CHACHKIN: Indicate to them and get back to

1 me. All right. That's probably the best way to handle it,  
2 rather than try to handle it at this time.

3 MR. DAVIS: Okay. That's fine, Your Honor. We  
4 tried.

5 JUDGE CHACHKIN: Now, aside from the matter of  
6 other entities, is there any other general area -- or is  
7 that the main area that you're objecting to? I mean, I  
8 don't want to -- I know it's --

9 MR. HORTON: I think that's it, Your Honor. I may  
10 embarrass myself, and Mr. Davis comes back with a complaint.  
11 What I will say is that I stand ready to talk to him first,  
12 and to get back to him very promptly, because I understand  
13 the time constraints. And we have to get back to you. If I  
14 had something else in mind, right now I've erased it. If it  
15 turns out there's something I forgot, I apologize.

16 JUDGE CHACHKIN: But that's the general, the main  
17 objection.

18 MR. HORTON: That's the biggest problem that I  
19 had.

20 JUDGE CHACHKIN: All right. Is there anything  
21 else to discuss today? If not, we'll be in recess.

22 (Whereupon, at 11:55 a.m., the proceeding was  
23 recessed.)

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**REPORTER'S CERTIFICATE**

FCC DOCKET NO.: CS 97-171  
CASE TITLE: Classic Sports Network  
HEARING DATE: November 6, 1997  
LOCATION: Washington, D. C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

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