

**Before the
Federal Communications Commission
Washington, D.C. 20554**

FCC 15M-1

In the Matter of)	MB Docket No. 12-122
)	
Game Show Network, LLC,)	File No. CSR-8529-P
Complainant,)	
)	
v.)	
)	
Cablevision Systems Corp.,)	
Defendant)	
)	
Program Carriage Complaint)	

ORDER

Issued: January 5, 2015

Released: January 6, 2015

On December 4, 2014, Game Show Network, LLC (“GSN”) filed a Motion to Compel Date Certain for the Deposition of Josh Sapan (“Motion”). Mr. Sapan is CEO of AMC Networks Inc. (“AMC”). AMC, formerly known as Rainbow Media Holding, LLC (“Rainbow”), was a division of Cablevision Systems Corp. (“Cablevision”) at the time that Cablevision repositioned GSN to Cablevision’s more narrowly distributed sports tier.¹ GSN asserts that Mr. Sapan has “first-hand knowledge of Cablevision’s programming and distribution costs and decisions,”² particularly with regard to the acknowledged relationship between Cablevision’s content and programming businesses.³ GSN argues that this knowledge informs the tests formulated by the D.C. Circuit for proving unlawful discrimination on the basis of affiliation.⁴

This argument is persuasive. In *Comcast v. FCC*, the D.C. Circuit found that unlawful discrimination by a multichannel video programming distributor (“MVPD”) against an unaffiliated video programming vendor can be demonstrated with evidence that establishes that an MVPD had reason to believe that it would receive an “affirmative net benefit” from carrying an unaffiliated network.⁵ The D.C. Circuit also suggested that unlawful discrimination can be demonstrated with evidence that the incremental losses from carrying an unaffiliated network were the same or less than the incremental losses incurred from carrying an MVPD’s affiliated networks that were similarly situated and at the same level of distribution.⁶ In order to present the kinds of evidence discussed by the D.C. Circuit, GSN must be permitted discovery on the costs associated with the carriage of Cablevision’s similarly situated affiliate networks, namely

¹ Motion at n.2.

² Motion at 3.

³ *Id.*

⁴ *Id.*

⁵ *Comcast Cable Communications v. FCC*, 717 F. 3d 982, 985-86 (D.C. Cir. 2013).

⁶ *Id.* at 986.

WE tv and Wedding Central. As President and CEO of AMC, current owner of WE tv, and its predecessor Rainbow, former owner of WE tv and Wedding Central, Mr. Sapan has been involved in programming and distribution decisions and has direct knowledge of the costs to Cablevision of carrying WE tv and Wedding Central. The circumstances of Mr. Sapan's knowledge place him within reach of the *penumbra* of Section 1.311 of the Commission's discovery rules, which broadly defines discovery relevance.

Cablevision argues that Mr. Sapan has "nothing new to say," as GSN has already obtained ample evidence on these topics.⁷ It is a tall order to insist that the knowledge possessed by Mr. Sapan is cumulative when no deposition has taken place to determine the breadth and depth of that knowledge. To block discovery of the potentially relevant testimony of Mr. Sapan before learning the level of knowledge he holds would be unfair to GSN and would risk the creation of an incomplete record.

Accordingly, **IT IS ORDERED** that the deposition of Josh Sapan shall be taken at a reasonable date, time and place that is convenient to Mr. Sapan, but as soon as is practicable.

FEDERAL COMMUNICATIONS COMMISSION⁸

A handwritten signature in black ink, appearing to read "Richard L. Sippel". The signature is fluid and cursive, with a large initial "R" and "S".

Richard L. Sippel
Chief Administrative Law Judge

⁷ Defendant Cablevision Systems Corp.'s Opposition to Motion of Game Show Network, LLC to Compel Date Certain for the Deposition of Josh Sapan at 6.

⁸ Courtesy copies sent to counsel *via* e-mail on date of issuance.