

# **ATTACHMENT 2**

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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Federal Communications Commission  
Office of Secretary

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In the Matter of )  
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TCR Sports Broadcasting Holding, L.L.P., )  
 )  
Complainant, )  
 )  
v. )  
 )  
Comcast Corporation, )  
 )  
Defendant. )  
\_\_\_\_\_

File No. \_\_\_\_\_

**CARRIAGE AGREEMENT COMPLAINT**

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Dated: June 14, 2005

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**CARRIAGE AGREEMENT COMPLAINT**

TO: The Commission.

Complainant TCR Sports Broadcasting Holding, L.L.P. (“TCR”), doing business as Mid-Atlantic Sports Network, Inc. (“MASN”), for its Complaint against the defendant, Comcast Corporation (“Comcast”), alleges as follows:

1. This Complaint is brought pursuant to Section 616 of the Communications Act of 1934, 47 U.S.C. § 536, and its implementing regulations, 47 C.F.R. §§ 76.1300-76.1302.<sup>1</sup> Comcast has unreasonably restrained the ability of TCR to compete fairly by discriminating in video programming distribution on the basis of affiliation or nonaffiliation of vendors, in violation of § 76.1301(c); and has taken actions that have the effect of constituting a demand for a financial interest in a nonaffiliated video

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<sup>1</sup> Relevant statutes and regulations can be found in the Addendum attached to this Complaint.

programming vendor as a condition of carriage on Comcast's cable systems, in violation of § 76.1301(a).

### **PARTIES AND JURISDICTION**

2. TCR is a Maryland limited liability partnership with its principal place of business located at 333 West Camden Street, Baltimore, Maryland 21201. TCR's phone number is 410-547-6070. The general partner of TCR is Baltimore Orioles L.P. TCR is a regional sports network that owns the underlying rights to produce and exhibit Baltimore Orioles baseball games, although it has licensed certain of those rights to Comcast SportsNet Mid-Atlantic L.P. ("CSN") for pay television games through the 2006 season. In 2001, TCR began operating a regional sports network under the trade name, "Orioles Baseball Network" for the over-the-air broadcasts of Orioles games. Pursuant to an agreement between and among Major League Baseball ("MLB"), TCR, and the Baltimore Orioles that was entered into on March 28, 2005, TCR now also owns the right to produce and exhibit Washington Nationals games. Ex. 1 ("March 28 Settlement Agreement"). Pursuant to a registration with the State of Maryland, TCR does business as MASN. TCR is a "video programming vendor" within the meaning of 47 C.F.R. § 76.1300(e).

3. Comcast is a Pennsylvania corporation with its principal place of business at 1500 Market Street, Philadelphia, PA 19102-2148. Comcast's phone number is (215) 523-5853. Comcast is a "cable operator" and thus is a "multichannel video programming distributor" ("MVPD") within the meaning of 47 C.F.R. § 76.1300(d). Comcast is the parent of CSN, a Delaware limited liability partnership with its principal place of business in Bethesda, Maryland. CSN, which is one of a number of regional sports

networks that Comcast owns or controls, is a “video programming vendor” within the meaning of 47 C.F.R. § 76.1300(e).

4. On May 27, 2005, TCR provided Comcast, via facsimile and registered mail, with written notice of its intent to file a complaint with the Commission, as required by 47 C.F.R. § 76.1302(a). A true copy of that notice is attached hereto as Exhibit 2. Comcast responded to that notice on June 3, 2005. That response is attached hereto as Exhibit 3.

5. Attached hereto as Exhibit 4 is a declaration executed by Joe Foss, Vice Chairman and Chief Operating Officer of Baltimore Orioles L.P. or Limited Partnership, which is the general partner of TCR, as required by 47 C.F.R. § 76.1302(c)(2) (“Foss Decl.”).

### **INTRODUCTION**

6. This case involves a cable operator’s misuse of its dominant market position as a multichannel video programming distributor to discriminate in favor of its wholly-owned video programming vendor and to attempt to extract an equity interest in a rival programming vendor.

7. Comcast is the dominant cable provider in the Washington, D.C. metropolitan area. CSN is a regional sports network (“RSN”) that is wholly owned by Comcast. CSN, through a contract with TCR, holds the exclusive right to produce and exhibit certain Baltimore Orioles baseball games on pay television through the 2006 season. CSN competes directly with TCR, which does business as MASN. TCR owns the exclusive right to produce and exhibit Washington Nationals baseball games for over-

the-air and pay television. CSN and TCR compete directly with one another for revenues associated with televising sporting events.

8. Comcast originally sought to obtain from Major League Baseball the right to produce and exhibit the Washington Nationals baseball games through its own regional sports network (CSN). In the alternative, Comcast also made various proposals to obtain equity in whatever regional sports network was to televise Nationals games in exchange for distribution through its cable network. When Major League Baseball decided to award the right to produce and exhibit Nationals games to a competitive regional sports network (TCR), Comcast took retaliatory actions against TCR, the Orioles, and Major League Baseball. Having failed to obtain the concessions it sought, Comcast now refuses to carry TCR programming on its cable systems, thus preventing Washington-area viewers from watching Washington Nationals baseball games. *See* Ex. 5 (T. Heath, *MASN Makes Another Pitch to Comcast for Nats*, Washington Post, May 14, 2005, at D2). Indeed, Comcast has announced that it will not even negotiate with TCR over carriage until an unrelated, and wholly meritless, suit filed by CSN over certain of the rights to Baltimore Orioles baseball games starting in the 2007 season is resolved. *Id.* Through this transparent pretext – refusing to negotiate over carriage of TCR’s Nationals games until a completely separate suit over CSN’s right to certain of the Orioles’ games in 2007 is resolved – Comcast is both discriminating against TCR and unlawfully abusing its dominant market position to attempt to extract an ownership interest in TCR. The result is that Washington area fans of the Nationals have been denied the opportunity to view Nationals games in a substantial footprint in the Washington, D.C. metropolitan area. Furthermore, TCR has been subjected to severe financial harm due to its inability

to obtain carriage by Comcast. With each passing day, the baseball season is slipping away and the ability to televise these Nationals games is forever lost.

9. Comcast's discriminatory refusal to deal with a competitive regional sports network (TCR) to protect the commercial interests of Comcast's own regional sports network (CSN) and its efforts to extract an equity interest in TCR, violate 47 C.F.R. §§ 76.1301(a) and 76.1301(c). Because those actions by Comcast violate the Commission's rules and have the effect of denying viewers in the Washington, D.C. area the television viewing opportunities they deserve as the Nationals franchise gets established, the Commission should order Comcast to carry TCR under terms and conditions to be established by the Commission (or, in the Commission's discretion, by an order to the parties to submit to binding arbitration). The Commission should also order Comcast to desist from its efforts to obtain an equity interest in TCR. And the Commission should, in a separate proceeding, award substantial damages to TCR.

10. TCR is filing a separate request today for emergency relief, seeking an injunction requiring Comcast immediately to begin carrying TCR's programming (which presently consists principally of Nationals games) pending the resolution of this complaint proceeding. Ex. 6 (Emergency Petition For Temporary Injunctive Relief (FCC filed June 14, 2005)). The financial terms of that carriage can be worked out in due course either by the Commission or by an independent arbitrator appointed by the Commission. The critical point is that Washington Nationals fans should not be deprived in the interim of the opportunity to view their team on television by the unlawful pressure tactics being employed by Comcast.

## STATEMENT OF FACTS

### **Comcast and Its Market Dominance in the Washington, D.C. Metropolitan Area**

11. Comcast is the largest cable operator in the United States, with more than 21 million subscribers. Comcast also is the largest cable operator in the Washington, D.C. Designated Market Area (“DMA”). According to the most recent data filed with the Commission, Comcast’s network passes approximately 1.4 million households in the Washington DMA, including the District itself; Prince William County, VA; Arlington, VA; Alexandria, VA; Fairfax County, VA; Charles County, MD; Prince Georges County, MD; Montgomery County, MD; Frederick, MD; Washington, MD; Franklin, PA; and Fulton, PA.<sup>2</sup> Within these areas, Comcast has approximately 817,000 actual subscribers.<sup>3</sup> In the locations where Comcast provides service, RCN has approximately 35,000 subscribers,<sup>4</sup> and satellite providers (principally DirecTV and EchoStar) have approximately 354,000 subscribers.<sup>5</sup> Thus, Comcast has more than two thirds of MVPD subscribers within its local franchise areas in the Washington DMA.

12. Comcast has an ownership interest in many of the networks whose programming it carries, including E! Entertainment, Style Network, The Golf Channel, Outdoor Life Network, G4techTV, iN Demand, TV One, and at least eight regional sports networks (Bravevision (Atlanta), Comcast SportsNet Philadelphia, Comcast SportsNet Chicago, Comcast SportsNet Mid-Atlantic, Comcast SportsNet West,

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<sup>2</sup> Media Bureau, FCC, Form 325 (Reference Numbers 174426, 174434, 175279, 174879, 175762, 174587, 174444 and 175743) (Ex. 7).

<sup>3</sup> Media Business Corp., *Basic Cable and Digital Cable Subscribers by DMA – 1st Quarter 2005* (June 2005).

<sup>4</sup> Office of Cable Television and Telecommunications, Government of the District of Columbia, *Cable Television Annual Report 2004* at 2 (Sept. 30, 2004), available at [http://octt.dc.gov/news\\_room/2005/march/OCTT\\_annual\\_report\\_2004.pdf](http://octt.dc.gov/news_room/2005/march/OCTT_annual_report_2004.pdf); Media Bureau, FCC, Form 325 (Reference Number 171009) (Ex. 8).

<sup>5</sup> Media Business Corp., *DTH Satellite Subscribers by Zip Code (Washington, DC DMA)* (June 2005).

Comcast/Charter Sports Southeast, Cowboys TV (Dallas), and Falconvision (Atlanta)).<sup>6</sup> Comcast also has a majority interest in Comcast-Spectator, which owns the Philadelphia Flyers NHL hockey team, the Philadelphia 76ers NBA basketball team, and two large multipurpose arenas in Philadelphia.<sup>7</sup>

13. The Comcast regional sports network at issue in this complaint – CSN – currently has a license (through a contract with TCR) for the rights to produce and exhibit certain baseball games on pay television played by the Baltimore Orioles through the 2006 Major League Baseball (MLB) season. CSN separately owns the rights to produce and exhibit the Washington Wizards through the 2011 National Basketball Association (NBA) season, and the Washington Capitals through the 2016 National Hockey League (NHL) season.

14. CSN sells programming, such as Orioles games, to other multi-channel video programming distributors in the Washington, D.C. metropolitan area. Comcast does not directly compete with those MVPDs for distribution, because they are adjacent and not overlapping.

#### **Comcast's Prior Dealings with TCR**

15. In 1996, TCR entered into a ten-year license agreement with Home Team Sports, which was then owned by CBS, for Home Team Sports to produce and televise 85 Baltimore Orioles baseball games on cable television. Ex. 11 (1996 Letter Agreement between Mid-Atlantic Sports Network, L.L.C.; TCR Sports Broadcasting Holding, L.L.P., Westinghouse Elec. Co. and Baltimore Orioles (“1996 Letter Agreement”).

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<sup>6</sup> Eleventh Annual Report, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 04-227, FCC 05-13, at Tables C-3 & C-4 (rel. Feb. 4, 2005) (Ex. 9).

<sup>7</sup> Press Release, Comcast, Comcast Reports First Quarter 2005 Results (Apr. 28, 2005) (Ex. 10).

Home Team Sports also had a separate agreement with TCR to produce and broadcast 65 Orioles' games on over-the-air television, which expired at the end of the 2001 season.

16. After the 1996 Letter Agreement was entered into, Home Team Sports (HTS) was subsequently acquired by Comcast. HTS later changed its name to Comcast SportsNet (CSN), and throughout has held a license to produce and exhibit Orioles baseball games on pay television. Ex. 4 (Foss Dec. ¶¶ 4-6).

17. In early 2001, CSN sought to negotiate an extension of the 1996 Letter Agreement in the form of a 10-year contract with TCR that would include more cable games and fewer over-the-air games. Those negotiations took place over a period of more than 18 months, and involved the exchange of numerous term sheets and other conditions. After extensive and exclusive negotiations, however, the parties were unable to reach an agreement on the economic terms and conditions. As a result, the existing contract for 85 cable games remained in place, but the separate contract for 65 over-the-air games expired. *Id.* ¶ 5. In 2001, CSN contracted with TCR for the grant and license for one season (the 2001 MLB season) of the production and exhibition rights of a certain number of over-the-air telecasts of Orioles games, in addition to and separate from, the 1996 Letter Agreement for pay television rights to certain games. For the 2002 season, TCR (then doing business under the trade name "Orioles Baseball Network") began producing its own over-the-air games. Ex. 12 (Press Release, Baltimore Orioles, Orioles Establish Broadcast Television Network (Feb. 19, 2002)). Since those talks ended in 2002, CSN has made no effort to resume negotiations on an extension of this contract with the Orioles, which expires after the 2006 MLB season.

18. Once TCR began producing and exhibiting the Orioles over-the-air games, it became clear that TCR could operate as its own regional sports network in competition with CSN. TCR envisioned that the successful launch of its over-the-air production network would enable it to produce and exhibit all of the Orioles baseball games – over-the-air and cable – after expiration of the 1996 Letter Agreement following the 2006 season. TCR thus concluded that it would no longer license the rights to produce and exhibit Orioles games to any third party but rather would simply retain those rights itself after expiration of the 1996 Letter Agreement. In order to deliver those games to television viewers, TCR would deal directly with multichannel video programming distributors, including cable distribution networks such as the one operated by CSN’s parent, Comcast. Ex. 4 (Foss Decl. ¶ 9). TCR’s intent to allow the license agreement with CSN to lapse was known to CSN and Comcast by at least 2002, both in face-to-face meetings with Orioles’ officials and in news stories describing the formation of the Orioles’ network that were sent to Comcast officials. Ex. 13 (N. Kercheval, *Daily Rec.*, Feb. 20, 2002; B. Miller, *Orioles TV Network Ready for 24/7 Sports Coverage*, *Daily Rec.*, June 8, 2002); Ex. 4 (Foss Decl. ¶¶ 8-9).

19. Under the original 1996 Agreement, CSN has a right to exclusive negotiations with TCR through the end of the 2005 season for a renewal of its licensing agreement and, if those negotiations fail, a right to match any “bona fide written offer from a *third party* for the telecast rights for the [Orioles] games.” Ex. 11A ¶ 16 (1996 Letter Agreement) (emphasis added). But TCR has decided not to grant a licensing agreement or its vendor rights to CSN or to any third party. Instead, it has decided to retain for itself the rights to produce and exhibit Orioles games, by operating its own

regional sports network. Thus, the “Right to Match Third Party Offers” provision of the agreement and the exclusive negotiation provision are no longer applicable – Comcast already availed itself of its right to negotiate exclusively when the talks between it and TCR collapsed after 18 months of negotiations in 2001-02, and TCR has decided not to contract with *any* third party to produce and exhibit Orioles games after the CSN deal expires following the 2006 season.

### **The Relocation of the Montreal Expos to Washington, D.C.**

20. Throughout the 1990s, as the Montreal Expos’ franchise became less and less financially viable in Montreal, Canada, MLB considered a range of options for eliminating the franchise or relocating the franchise to another city.

21. Whenever talk turned to relocating the Expos franchise to the Washington, D.C. metropolitan area, the Orioles’ principal owner, Peter G. Angelos, expressed concern about the effect such a relocation would have on the Orioles, one of MLB’s most successful and storied franchises. Locating a second team so close to the Orioles would erode its fan base, reduce its television revenues, and make it much more difficult for the Orioles to cover the payroll needed to maintain a competitive franchise.

22. Nonetheless, on September 16, 2004, the Orioles were informed by MLB that a decision had been made to relocate the Expos to Washington, D.C. From the autumn of 2004 until late March 2005, the Orioles and MLB engaged in negotiations to provide a framework by which the Expos’ relocation could occur with a minimum of harm to the Orioles’ franchise. Those discussions covered a range of topics, from guaranteeing a minimum sale price for the Orioles to having a single television network

under the joint ownership of the Orioles and MLB produce and exhibit Nationals and Orioles games. Ex. 4 (Foss Decl. ¶ 17).

23. The Orioles were also aware that Comcast and CSN simultaneously were negotiating with MLB for the television rights to Nationals games. Upon information and belief, Comcast and CSN made oral and written proposals to MLB for the purpose of acquiring the rights to produce and exhibit Nationals games. Stephen Burke, Comcast's chief operating officer, was quoted by the Philadelphia Inquirer in March 2005 as saying, "Are we interested in buying the Washington baseball team? I think the answer is probably not." "But if the question is, are we interested in carrying the Washington baseball team on [CSN] in Baltimore and Washington, the answer is yes." Ex. 14 (D. Steinberg, *At Comcast, Sports Mania*, Phila. Inquirer, Mar. 7, 2005).

24. Upon information and belief, Comcast's proposals to MLB took two different forms. First, CSN offered to produce and exhibit Nationals games in the same manner and on similar terms as its current contract to produce and exhibit Orioles games through the 2006 season. Second, Comcast offered to create a new regional sports network with MLB (and the Nationals) in which Comcast or CSN would own a substantial equity position.

#### **Comcast's Demand for an Equity Interest In a Two-Team Network**

25. In the summer of 2004, before any final decision had been made by MLB to re-locate the Expos to Washington, D.C., representatives of the Orioles met with representatives of MLB to discuss the possibility of a second team in the Orioles' exclusive television region, which stretches from Harrisburg, Pennsylvania, to Charlotte, North Carolina, in the south. Ex. 4 (Foss Decl. ¶ 10).

26. In those discussions, proposals were made to the Orioles that contemplated a two-team arrangement to televise baseball games within the Orioles' exclusive television region. Those proposals were presented by Stephen D. Greenberg, an investment banker at Allen & Company, who purported to represent MLB.

27. Prior to joining Allen & Company as a Managing Director in January 2002, Greenberg had been the President of Classic Sports Network, Inc. ("Classic Sports"), a video programming vendor focusing on classic sporting events and sports personalities that Greenberg co-founded in 1993 with Brian Bedol. Prior to launching Classic Sports, Greenberg had been Deputy Commissioner and Chief Operating Officer of Major League Baseball. In that capacity, he oversaw the day-to-day operations of the Commissioner's office, including broadcasting, finance, legal, baseball operations, special events, and the league's properties licensing operation.

28. The son of Detroit Tigers' baseball legend Hank Greenberg, Steve Greenberg is well known in baseball circles and was introduced to the Orioles as extremely knowledgeable about television deals and negotiations among and between MLB teams, cable companies, and television networks.

29. As president of Classic Sports, Greenberg had authorized the filing of a complaint before this Commission, in which Cablevision was alleged to have refused to air Classic Sports programming unless Cablevision was given an equity interest in Classic Sports. *See In re Classic Sports Network, Inc.*, CSR Docket No. 97-171, (FCC filed Mar. 10, 1997) ("Classic Sports Complaint") (attached here as Ex. 15). Accordingly, Greenberg was familiar with the Commission's restrictions on efforts by cable providers to extract an equity interest in programming as a condition of carriage.

*See id.* (Affidavit of Stephen Greenberg attached to Classic Sports Complaint (“Greenberg Aff.”)).

30. At least as of 2003, Comcast became a client of Greenberg’s firm, Allen & Company. Ex. 16 (T. Arango, *Comcast Closer – Roberts Brings on Herb Allen for Vivendi Bid*, N.Y. Post, Aug. 11, 2003; A. Parker, *Comcast Weighs Bid As Vivendi Deadline Nears*, Phila. Inquirer, Aug. 13, 2003; G. Szalai, *Comcast Unplugs Buyout Bid for Vivendi Universal*, hollywoodreporter.com, Aug. 14, 2003; S. Hofmeister, *Comcast Won’t Bid for Vivendi Assets*, L.A. Times, Aug. 15, 2003.) Allen & Company also was involved in a major acquisition by Comcast from Adelphia that would significantly expand Comcast’s cable network. That relationship lasted at least through April 26, 2005, when Comcast filed a Form 8-K with the United States Securities and Exchange Commission, identifying Allen & Company as an adviser in that transaction. Ex. 17 (Comcast Corp. – CMSA, Form 8-K for period: April 20, 2005 (SEC filed April 26, 2005)). Thus, Comcast was a client of Allen & Company or involved in transactions for the benefit of Comcast during the entire period in which Greenberg made presentations to the Orioles about Comcast’s potential carriage of baseball games – and its demand for equity. Greenberg did not disclose his firm’s relationship with Comcast to any Orioles representative. Rather, he presented himself as someone who would be helpful to the Orioles, and who ostensibly came to these meetings on behalf of MLB. Upon information and belief, Greenberg was in fact acting as an agent for Comcast.

31. In September 2004, Orioles Vice Chairman and Chief Operating Officer Joseph E. Foss met with Greenberg and others to discuss proposals that Greenberg had put together. Those proposals presented a hypothetical four-team regional sports network

that included the Orioles, Capitals, Wizards, and another baseball team. Each of the scenarios in the written proposal offered by Greenberg contemplated that Comcast would have a substantial equity interest in the new network, ranging from 50-67 percent. Ex. 4 (Foss Decl. ¶¶ 11, 13).

32. The written proposal sheets offered to Orioles representatives made overt comparisons to other regional sports networks in which Greenberg had been directly involved. One of those comparisons involved a regional sports network in Chicago, in which Comcast received a 30 percent equity interest, with the remaining equity divided among Chicago's professional sports teams, the White Sox, Cubs, Bulls, and Blackhawks. Greenberg was known to have facilitated the creation of that regional sports network as an investment banker with Allen & Company. *Id.* ¶ 18.

33. Greenberg had also helped to put together a regional sports network in New York, which included the Mets baseball franchise and which divided up the equity between the Mets and two cable operators, Comcast and Time Warner. In that deal, the Mets retained a two-thirds equity interest in the new network and the cable companies divided the remaining one-third interest.

34. On September 16, 2004, the Orioles learned that Major League Baseball was relocating the Montreal Expos to Washington, D.C. The team was to be re-named the Nationals. On September 23, Angelos and Foss flew to Milwaukee for a meeting of the MLB Executive Council. Angelos is a member of the Council, and Foss was invited to the meeting to hear the presentation of the relocation committee. *Id.* ¶ 12. Greenberg was present at the meeting and provided the Council with a six-page document entitled, "Major League Baseball Executive Council: Discussion Materials." (Attached here as

Ex. 18). Page 5 of that document described possible structures for a regional sports network that would include both Orioles and Nationals games and would be carried by Comcast. The bottom of the page showed the value created for MLB entities as a function of the percentage of the network that Comcast owned. The options that were presented involved Comcast owning 50%, 60%, or 67% of the network. The economic value to MLB entities declined as Comcast's ownership percentage increased. During this presentation Greenberg again failed to disclose his firm's business dealings with Comcast.

35. At the meeting, the Orioles' representatives questioned why Comcast had to be given an equity interest. Greenberg stated that the "Orioles would be lucky" if Comcast agreed to accept as little as a 50 percent equity interest in that new regional sports network as a condition for carrying the baseball games. Ex. 4 (Foss Decl. ¶ 14). Thus, 50 percent was the smallest possible Comcast interest reflected in Greenberg's models. Greenberg stated that, because Comcast possessed the infrastructure of an existing regional sports network, it would expect to be the dominant partner in any new network, even though the Orioles and Nationals would contribute and have the capacity to produce the bulk of the programming. It was apparent to the Orioles that Greenberg was acting as the agent of Comcast, because the information he provided appeared to be internal data available only to Comcast and the manner in which he relayed Comcast's position suggested that he had been in direct contact with Comcast officials.

36. Although TCR and the Orioles did not negotiate directly with Comcast or CSN between the announcement of the Expos' relocation and the Orioles' 2005 Agreement with MLB, TCR and the Orioles nonetheless understood that Greenberg

spoke for Comcast when he stated that Comcast would accept nothing less than a 50 percent equity interest in any regional sports network that would include Orioles and Nationals games. Greenberg also told Orioles General Counsel H. Russell Smouse that TCR had no choice but to do business with Comcast, that Comcast might want an equity interest as high as 65 percent, and that TCR could not back away from granting Comcast an equity interest. Greenberg did not advise Smouse of any federal statute or regulation prohibiting a demand for equity in exchange for distributing programming.

37. In a later conference call with Smouse and Foss, Greenberg again insisted on an equity position in TCR for Comcast, arguing that Comcast had a 30 percent interest in the Chicago regional sports network, and a 35 percent interest in the Philadelphia network.<sup>8</sup> Greenberg reiterated that Comcast would not do a deal with the Orioles without a substantial equity interest. Smouse asked why Comcast was demanding a 50 percent equity interest from the Orioles, rather than the lesser amount demanded from other regional sports networks, but he never received a satisfactory answer. Greenberg continued to state that Comcast required at least a 50 percent equity interest despite the Orioles' representations that they viewed that demand as inappropriate because the Orioles would be contributing the bulk of the programming.

### **The Orioles' 2005 Agreement with Major League Baseball**

38. After Major League Baseball announced the relocation of the Expos, the Orioles began discussions with MLB officials over how to ensure the future financial viability of their franchise in light of the anticipated impact of the relocation on the Orioles.

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<sup>8</sup> FCC data indicates that Comcast holds a 78.34 percent interest in the Philadelphia RSN. Ex. 9 (Eleventh Annual Report at Table C-4). Greenberg may simply have been unaware that Comcast's interest was that large.

39. MLB and the Orioles decided to address the issue of television rights, and the reduction of value in the Orioles' rights that would result from the relocation of the Expos, by having TCR produce and exhibit the two teams together in a single regional sports network. Under MLB rules, the Orioles have exclusive television rights to telecast games in the following "television home territory": the States of Maryland, Virginia, and Delaware, the District of Columbia, seven counties in West Virginia, thirteen counties in central Pennsylvania, and parts of eastern North Carolina including Winston-Salem, Greensboro, and Charlotte. *See* Ex. 1 (March 28 Settlement Agreement, Ex. A); Ex. 4 (Foss Decl. ¶ 9). Pursuant to that right, which is a critical asset of the Orioles' franchise, the Orioles control the "television home territory" in which the Nationals would be playing baseball games.

40. On March 28, 2005, an agreement was reached by and among the Office of the Commissioner of Baseball d/b/a Major League Baseball, TCR Sports Broadcasting Holding, L.L.P., Baseball Expos, L.P., d/b/a Washington Nationals Baseball Club, and the Baltimore Orioles Limited Partnership. A redacted version of the agreement is set forth as Ex. 1 (March 28 Settlement Agreement).

41. Section 2 of the March 28 Settlement Agreement provided for a "Regional Sports Network." Section 2.A noted that "TCR, through O's TV, currently serves as the foundation for the Orioles regional sports network. TCR will be the basis for the regional sports network that will have the sole and exclusive right to present any and all of the Nationals' and the Orioles' baseball games not otherwise retained or reserved by Major League Baseball's national rights agreements. . . ." § 2.A.

42. Section 2 further provided that TCR would be “renamed,” and that “[t]he Orioles agree that TCR will take appropriate steps to register the name Mid-Atlantic Sports Network (‘MASN’) as the d/b/a name of the RSN [Regional Sports Network], or such other name as may be selected, as soon as practicable. TCR, however, will remain as the entity, for all legal purposes, through which the Orioles’ and the Nationals’ games will be telecast.” § 2.B. The agreement further provided that “TCR shall have the sole and exclusive right and the obligation to telecast, using commercially reasonable efforts, all Available Games of the Orioles and the Nationals and all ancillary programming related to the Orioles and the Nationals throughout the Television Territory through the medium of the RSN as described in this Agreement.” § 2.D. The Orioles thus agreed, in effect, to “share” their home television territory with the Nationals. As a compromise for that concession, however, the two teams would operate in the same regional sports network – TCR – that controlled production and exhibition of Orioles games.

43. The agreement directed that both the Orioles and the Nationals “shall grant and license the right and the obligation to the telecast of their Available Games to the RSN.” § 2.D. The two teams “shall cooperate with the RSN in the sale, promotion and distribution of their games for telecast by the RSN, including providing all customary promotional and marketing materials and tools necessary for the generation of revenue for the RSN.” § 2.E.

44. Under the agreement, TCR is obligated to pay the Nationals significant rights fees in 2005 and 2006. The agreement further provides: “During 2005 and 2006, only, for the telecast of its games on over-the-air television, or otherwise permitted as a reservation of rights in the Orioles’ third party cable contract, the Orioles shall be paid” a

modest rights fee for each telecast in 2005 and 2006. § 2.G. Beginning in the 2007 season, the Orioles and Nationals would be paid the same rights fees going forward.

§ 2.G.

45. Under the terms of the agreement among MLB, the Orioles, the Nationals, and TCR, TCR would be the regional sports network that would have the exclusive right to produce and exhibit Nationals games beginning with the 2005 season and would continue to hold all rights to Orioles games after its license agreement with CSN expired following the 2006 season. TCR would do business as MASN, and profits in that enterprise would be divided between the Orioles and MLB (or its assignee). Specifically, the agreement provides that MLB would initially receive a “10% partnership profits interest in TCR,” § 2.N. That ownership share would increase over time to a 33% ownership interest.

46. MLB was allowed, in its discretion, to sell all or part of its interest in TCR as part of the sale of the Nationals (or in its discretion at a later time). Ex. 1 (March 28 Settlement Agreement). The ability of TCR to produce and exhibit Nationals games, as well as Orioles games, was a crucial component of the agreement between MLB and the Orioles that facilitated the relocation of the Expos to Washington while helping to preserve the Orioles franchise. Ex. 4 (Foss Decl. ¶ 17).

#### **TCR’s Efforts to Reach Affiliation Agreements to Televisе Nationals Games**

47. Throughout the period of negotiations between the Orioles and MLB over an agreement to preserve the financial viability of the Orioles franchise after the relocation of the Expos to Washington, D.C., Comcast and CSN were attempting to obtain the baseball television rights for the Nationals. According to CSN’s own

statements, CSN “engaged in numerous meetings with MLB, making clear CSN’s desire to produce and televise Nationals games in a manner that would ensure distribution to the largest possible fan base and the enhancement of the Nationals’ television rights throughout the Washington-Baltimore region. This was to include a significant rights fee to the Nationals and aggressive marketing of the team and its pay television product.”

Ex. 19 (First Amended Complaint, *Comcast SportsNet Mid-Atlantic, L.P. v. Baltimore Orioles L.P., et al.*, No. 260751-V, at ¶ 50 (Md. Cir. Ct. filed May 24, 2005), (“FAC”).

According to CSN, “[t]he negotiations for a long-term agreement between MLB and CSN for the Nationals’ local pay television rights were advancing toward final conclusion when MLB abruptly withdrew from the negotiations.” *Id.* ¶ 51.

48. In light of the agreement from MLB to confer exclusive rights on TCR for the production and exhibition of Nationals games, TCR has every incentive to get Nationals games on television as quickly as possible. To that end, it has contacted multi-channel video programming distributors throughout the Washington area to obtain non-exclusive distribution agreements so that as many fans as possible can watch Nationals games on television.

49. Since the signing of the Settlement Agreement in March 2005, TCR has vigorously attempted to obtain affiliation agreements for the distribution of Nationals games on pay television. TCR and its agents have contacted every multichannel video program distributor in the Washington metropolitan area on numerous occasions, sent term sheets to those distributors, and followed up with telephone calls and face-to-face meetings. Ex. 20 (Declaration of David Gluck (June 3, 2005) (“Gluck Decl.”)). To date, TCR has formalized affiliation agreements for the distribution of Nationals games with

Starpower Communications/RCN and DirecTV. Thus, within Comcast's franchise area, approximately one-third of the subscribers to an MVPD service now have access to televised Nationals games on pay television. Two-thirds of all MVPD subscribers in Comcast's franchise area – *i.e.*, those who subscribe to Comcast – do not.

50. On April 14, 2005, TCR presented Comcast with a proposal for carriage of its newly renamed regional sports network, MASN. TCR offered Comcast a non-exclusive deal to distribute Nationals games for 2005 and 2006, and Orioles' games beginning from 2007 onward after expiration of the CSN contract. Under the proposal, Comcast would pay a fee for carriage of MASN but would not own any part of it and its subsidiary CSN would not be involved in producing or exhibiting those games. Ex. 21 (Mid-Atlantic Sports Network Affiliate Term Sheet for Comcast). The proposal tracked terms and conditions TCR offered on a non-exclusive basis to other MVPDs, several of which expressed immediate interest in distributing Nationals games.

51. Instead of responding to TCR's proposal, Comcast and CSN engaged in numerous acts that were designed to harm TCR. Those acts included: filing a baseless lawsuit against TCR in Maryland state court, Ex. 22<sup>9</sup>; sending letters to other multichannel video programming distributors falsely claiming that TCR and the Orioles were violating the terms of contracts with CSN; and sending letters to members of Congress falsely accusing TCR and the Orioles of being responsible for the Nationals not being on television in the Washington, D.C. metropolitan area. *See* Letters attached hereto as Exs. 23-25 respectively (Letters dated April 21, 2005 from J. Williams, President & CEO, Comcast SportsNet, to various MVPDs; Letter dated April 21, 2005

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<sup>9</sup> Complaint, *Comcast SportsNet Mid-Atlantic, L.P. v. Baltimore Orioles L.P., et al.*, No. 260751-V (Md. Cir. Ct. filed Apr. 21, 2005) ("CSN Compl.").

from D. Cohen, Executive Vice President, Comcast, to Members of Congress; Letter dated May 9, 2005, from J. Williams, Comcast SportsNet, to M. Thornton, Sr. Vice President, DirecTV).

### **CSN's Lawsuit Against TCR**

52. On April 21, 2005, CSN filed suit against TCR, alleging that CSN had the right to negotiate exclusively with TCR for an extension of the 1996 agreement in which the Orioles had granted to CSN the right to produce and exhibit Orioles games on cable television through the 2006 season. *See* Ex. 22 (CSN Compl.); Ex. 26 (Letter dated May 13, 2005 from W. Murphy to J. Quinn and R. Barnett ("Murphy Letter")); Ex. 27 (Letter dated May 19, 2005 from R. Burnett to W. Murphy); Ex. 19 (FAC). CSN's suit also named MASN, the Orioles, and MLB as defendants. *See* Ex. 36 (Motion to Dismiss Complaint and Memorandum in Support, *Comcast SportsNet Mid-Atlantic, L.P. v. Baltimore Orioles L.P., et al.*, No. 260751-V (Md. Cir. Ct. filed June 13, 2005)); Ex. 37 (Motion to Dismiss Amended Complaint as to Mid-Atlantic Sports Network for Lack of Personal Jurisdiction and Memorandum in Support, *Comcast SportsNet Mid-Atlantic, L.P. v. Baltimore Orioles L.P., et al.*, No. 260751-V (Md. Cir. Ct. filed June 13, 2005)).

53. Even though the lawsuit has nothing to do with telecast rights for Nationals games, Comcast has used the pendency of this meritless suit as an excuse for refusing to discuss carriage of the Nationals baseball games over its cable systems. Yet there can be and is no dispute that CSN's lawsuit does not affect the television production and exhibition rights of Nationals games at all. Thus, Comcast is using the pendency of the suit as a pretext in an attempt to punish TCR for competing with its wholly owned subsidiary, CSN, and for TCR's refusal to grant an equity interest to Comcast.

54. On May 13, 2005, TCR sent a second proposal to Comcast asking the cable company to enter into a contract for the distribution of Washington Nationals games to Comcast's cable subscribers throughout the Baltimore-Washington region. Ex. 28 (Term Sheet For Carriage of Mid-Atlantic Sports Network ("MASN") between TCR Sports Broadcasting Holding, L.L.P., dba MASN and Comcast Corporation ("Comcast")). In that proposal, TCR explicitly noted that the rights to Orioles games were the subject of litigation launched by CSN that was pending in Maryland state court. The proposal offered to Comcast a non-exclusive distribution agreement on the same terms and conditions given to other MVPDs for Orioles games for the 2007 season and beyond in the event the Orioles, MLB, and TCR prevailed in that lawsuit. For the 2005 and 2006 seasons, the agreement would cover only the distribution of Nationals games. Thus, TCR's proposal explicitly requested that Comcast televise TCR's programming of Nationals games regardless of how the dispute between TCR and Comcast over Orioles games was resolved. *Id.*

55. Comcast responded to that proposal only to the extent of acknowledging receipt. Comcast issued a press statement announcing that TCR's new proposal would not change Comcast's position. "The revised proposal does not acknowledge or compensate [CSN] for the clear breach of our legal rights," Comcast Executive Vice President David Cohen was reported to have said. "Major League Baseball and the Baltimore Orioles need to deal with that fundamental reality." Ex. 5 (T. Heath, *MASN Makes Another Pitch, supra*). That public statement expressly linked the alleged contract dispute between Comcast and TCR regarding the Orioles, with Comcast's refusal to consider distributing Nationals games. Comcast maintains that position notwithstanding

that *nothing in the disputed contract between CSN and TCR has anything to do with the Nationals*. The Nationals are not a party to that contract, and did not even exist when that contract was formed. The Nationals are being held hostage by Comcast in retaliation for the fact that Comcast was neither awarded the right to produce and exhibit the Nationals games through its own regional sports network (*i.e.*, CSN), nor given an equity interest in the regional sports network that would produce and exhibit the Nationals games (*i.e.*, TCR doing business as MASN). This is a clear and egregious misuse of monopoly power.

56. In addition to directing its subsidiary to file a meritless lawsuit against TCR, Comcast has discriminated against TCR in favor of Comcast's own regional sports network (CSN), in direct violation of this Commission's rules. While Comcast continues to carry CSN on its Washington metropolitan area cable systems, Comcast has refused to carry TCR's programming. Despite Comcast's disingenuous statements about its desire to distribute Nationals games "to the largest possible fan base," Ex. 22 (CSN Compl. ¶ 36); Ex. 19 (FAC ¶ 50), Comcast is currently preventing millions of viewers in the D.C. metropolitan area from seeing those games on its dominant cable television distribution network. It is doing so for reasons that flout this Commission's rules. Having lost out on obtaining for its subsidiary CSN the production and exhibition rights to pay television for Nationals games, Comcast is clearly attempting to extract the best deal (including an equity interest) in exchange for carrying Nationals and Orioles games. Alternatively, Comcast holds out hope that its discriminatory actions against TCR will undo the contract among MLB, the Orioles, and TCR that conferred on TCR the exclusive rights to produce and exhibit Nationals games. By denying TCR a foothold in the Washington

market that Comcast dominates, Comcast has taken actions that seek to suppress viewer loyalty to a video programming vendor that it does not control (TCR) for the benefit of one that it does control (CSN).

### **Comcast's Attempts to Intimidate Other Distributors**

57. CSN provides video programming to other MVPDs, most of which do not compete directly with Comcast. CSN telecasts of Orioles' games, for example, are carried on Starpower and other cable services. CSN programming is also carried on DirecTV and other satellite services. *See* Ex. 29 (Comcast SportsNet Frequently Asked Questions, *available at* <http://midatlantic.comcastsportsnet.com/contact.asp>; DirecTV Washington – Washington – Lineup (June 8, 2005); RCN Cable Starpower – Washington – Lineup (June 8, 2005)).

58. On April 21, 2005, the same day that Comcast directed CSN to file its baseless lawsuit in Maryland state court, it also directed CSN to write a letter to other multi-channel video distributors in the Washington metropolitan area. The letter, copies of which are attached as Exhibit 23, contained injurious falsehoods, by alleging that TCR had improperly represented to multi-channel video distributors that TCR controlled the rights to exhibit Orioles games beginning in 2007.

59. Because TCR had approached distributors with a package of games – Nationals games beginning immediately and Orioles games beginning in the 2007 season, after expiration of TCR's licensing agreement with CSN deal in 2006 – the intent of CSN's letter was to thwart TCR's efforts to televise Nationals games. TCR reached a distribution agreement with DirecTV to distribute Nationals games immediately and Orioles games beginning in 2007 subject to the outcome of the litigation between CSN

and TCR. Gluck Decl. ¶¶ 4-5. On May 9, 2005, CSN President and Chief Executive Officer Jack Williams wrote a letter to DirecTV telling DirecTV that it had been advised on April 21 of CSN's lawsuit, and threatened DirecTV with legal action if, in CSN's view, its relationship with TCR constituted interference with CSN's contract with the Orioles. Ex. 25.

60. Such intimidation in the marketplace – with letters and threats to other multichannel video programming distributors that serve franchise territories adjacent to or overlapping those of Comcast – is in direct violation of this Commission's rules. Those MVPDs *are* interested in televising Nationals games, but they are being pressured to refrain from doing so to enable Comcast to obtain an equity interest in TCR or to favor CSN over TCR. Nationals fans and the Nationals' franchise have suffered from those tactics. TCR has also suffered extensive damages.

#### **Comcast's Mischaracterizations to Members of Congress**

61. On April 21, 2005, the same day Comcast's subsidiary filed its lawsuit and barraged local multichannel video distributors with threatening letters, Comcast also sent a letter to Members of Congress. That letter, a copy of which is attached hereto as Exhibit 24 (and redacted to withhold the name of the Member of Congress), also contained deliberately false statements intended to harm TCR.

62. First, Comcast claimed that the agreement between MLB and the Orioles to combine the television rights for two teams under one entity somehow "has disadvantaged the Nationals, their fans, DC area taxpayers, and Comcast and our customers." *Id.* Nothing could be further from the truth. If Comcast immediately distributed Nationals games under TCR's proposal, the Nationals and their fans would

benefit from being able to watch those games and build loyalty to the team, which would also benefit D.C. area taxpayers by increasing the team's value. Comcast would benefit, in one respect, by televising popular programming. But the reason Comcast refuses to televise Nationals games is to protect its wholly-owned subsidiary, CSN, from the competition for viewers in the Washington, D.C. area.

63. Second, Comcast made its discriminatory intent clear in the second paragraph of its letter to Members of Congress by asserting that any other regional sports network was “unnecessary.” *Id.* Comcast takes that position because it evidently rejects competition among video programming vendors. Competition is always “unnecessary” in the eyes of a monopolist.

64. Third, in an attachment to its letter to Members of Congress, Comcast falsely described MASN as a “newly created local sports network named Mid-Atlantic Sports Network (MASN).” *Id.* Comcast was at best irresponsible in making that assertion. A simple, two-minute search of the State of Maryland on-line database for MASN would have revealed that MASN is simply a trade name of TCR, and not a “third party” that could have created a breach of the 1996 Letter Agreement. *See* Ex. 26 (Murphy Letter).

65. Finally, Comcast made no effort in its letter to Congress to justify its refusal to televise Nationals games in 2005 because of its dispute with TCR over the televising of Orioles games for the 2007 season and beyond. *See* Ex. 24. Whatever the outcome of its lawsuit with TCR, the Orioles, and MLB, Comcast has no legitimate reason to withhold distribution of Nationals games produced and exhibited by TCR.

66. Comcast's goal in directing CSN to file suit and in refusing to carry Nationals games is to stifle TCR as a potential competitor for the benefit of its own CSN. As Comcast Executive Vice President David Cohen stated in a letter to Members of Congress, Comcast believes that another regional sports network in the Mid-Atlantic region – *e.g.*, TCR's – is "unnecessary." That statement reflects Comcast's apparent position that, because CSN already serves that region, no other regional sports network should be permitted to produce and exhibit exciting programming such as Nationals games.

**COUNT ONE**  
**VIOLATION OF 47 C.F.R. § 76.1301(c)**

67. The allegations in paragraphs 1 – 66 above are repeated here.

68. Comcast's refusal to televise Nationals games during the pendency of its lawsuit with the Orioles constitutes discrimination against an unaffiliated video programmer in violation of the Cable Act and the Commission's implementing regulations.

69. Section 12 of the Cable Television Consumer Protection and Competition Act of 1992, 47 U.S.C. § 536, provides in pertinent part that the FCC "shall establish regulations governing program carriage agreements and related practices between cable operators or other multichannel video programming distributors and video programming vendors." In particular, Congress directed that the regulations shall:

(3) contain provisions designed to prevent a multichannel video programming distributor from engaging in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or nonaffiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors.

47 U.S.C. § 536(a)(3).

70. In 1993, pursuant to Congress' instructions, the Commission adopted rules to implement that provision. The relevant regulation is now codified at 47 C.F.R. § 76.1301(c), which states: "No multichannel video programming distributor shall engage in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or non-affiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors."

71. Comcast is a cable operator that falls within the definition of a "multichannel video programming distributor." *See* 47 C.F.R. § 76.1300(d) ("The term 'multichannel video programming distributor' means an entity engaged in the business of making available for purchase, by subscribers or customers, multiple channels of video programming. Such entities include, but are not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, a television receive-only satellite program distributor, and a satellite master antenna television system operator, as well as buying groups or agents of all such entities.").

72. TCR, doing business as MASN, falls within the definition of a video programming vendor, because it is "a person engaged in the production, creation, or wholesale distribution of video programming for sale." 47 U.S.C. § 536(b); *accord* 47 C.F.R. § 76.1300(e).

73. CSN also is a video programming vendor, and it is "affiliated" with Comcast.

74. 47 C.F.R. § 76.1301(c) bars Comcast from discriminating against TCR on the basis of its non-affiliation with Comcast. Comcast has engaged in such discrimination by refusing to carry TCR on its Washington metro area cable systems, while continuing to carry CSN. Comcast has engaged in this discriminatory conduct in order to prevent TCR from competing against CSN. Comcast's refusal to carry TCR's network (MASN) cannot be defended on the grounds that Comcast's subscribers would not be interested in receiving that programming. As Comcast's Chief Operating Officer stated in March 2005, "[i]f the question is, are we interested in carrying the Washington baseball team on Comcast SportsNet in Baltimore and Washington, the answer is yes." Ex. 14. But if TCR produces those games, Comcast is prepared to engage in illegal discrimination by *not* carrying that programming. Having negotiated vigorously with MLB to televise the Nationals games through CSN, Comcast cannot credibly take the position now that it and its subscribers have no interest in those games as part of Comcast's cable service. Yet Comcast is refusing even to negotiate with TCR over the televising of Nationals games on Comcast. Comcast is thus engaging in a form of discrimination – using its clout as the dominant cable operator in the Washington, D.C. metropolitan area – to favor its own video programming vendor, CSN.

**COUNT TWO**  
**VIOLATION OF 47 C.F.R. § 76.1301(a)**

75. The allegations in paragraphs 1 – 74 are repeated here.

76. Although Comcast has attempted to cover its tracks by dealing through intermediaries, the consistent pattern of its negotiating efforts has been to extract an equity position in TCR, the regional sports network that produces and exhibits Nationals games, something flatly prohibited by statute and regulation. 47 U.S.C. § 536(a)(1)

prohibits “a cable operator or other multichannel video programming distributor from requiring a financial interest in a program service as a condition for carriage on one or more of such operator’s systems.” 47 C.F.R. § 76.1301(a) provides a similar prohibition by regulation: “No cable operator or other multichannel video programming distributor shall require a financial interest in any program service as a condition for carriage on one or more of such operator’s/provider’s systems.” Thus, Comcast is forbidden from requiring an equity interest in a program service (TCR) as a condition for carriage of TCR’s programming on Comcast’s systems.

77. The FCC has recognized that section 12 of the Cable Act is “intended to prevent cable systems . . . from taking undue advantage of programming vendors through various practices, including coercing vendors to grant ownership interests . . . in exchange for carriage on their systems.” Second Report and Order, *Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992*, 9 FCC Rcd 2642, 2643, ¶ 1 (1993). Examples of behavior that violates the statutory prohibition on the requirement of a financial interest include: “ultimatums, intimidation, conduct that amounts to the exertion of pressure beyond good faith negotiations, or behavior that is tantamount to an unreasonable refusal to deal with a vendor who refuses to grant financial interests . . . in exchange for carriage.” *Id.* at 2649, ¶ 17. Thus, while multichannel distributors such as Comcast may negotiate for a financial interest in the context of good-faith, arms-length discussions, they may not “insist upon” such an interest in exchange for carriage on their systems. *Id.* By refusing even to negotiate with TCR over the televising of Nationals games, Comcast is impermissibly linking programming that is not in dispute – the televising of Nationals

games – with a CSN contract for Orioles game that it alleges (incorrectly) is being breached. This is a transparent attempt by CSN to coerce TCR into granting Comcast an equity interest.

78. Throughout the autumn of 2004, when Comcast was engaging in negotiations with MLB over the televising of Nationals games, the discussion focused on a deal pursuant to which Comcast would have an equity interest in a network that would televise Nationals games. When MLB presented to the Orioles various scenarios for a two-team television deal, every one of those proposals (until the final settlement agreement between and among MLB, the Orioles, and TCR) included as a component a two-team network in which Comcast had a substantial equity interest. *See* Ex. 4 (Foss Decl. ¶¶ 11-14).

79. Comcast communicated its position through intermediaries, such as Greenberg, who misled the Orioles by claiming to be disinterested, but whose firm throughout this period of negotiations was, upon information and belief, representing Comcast's interests as a client of Allen & Company or in transactions of significant interest to Comcast. Greenberg never made a proposal that omitted Comcast from receiving an equity position, notwithstanding his knowledge of the statute and rules prohibiting Comcast's demands. No truly neutral advisor knowledgeable about this Commission's rules could therefore represent that the Orioles had "no choice" but to accede to Comcast's demands for equity in exchange for carriage.

80. The hard-fought negotiation that produced the March 28 Settlement Agreement resulted in Comcast being denied in its effort to extract equity in exchange for distribution. Rather than forming a network with the two teams and a cable operator

(Comcast) jointly owned by the three entities, MLB and the Orioles decided to use the Orioles' existing baseball network (for its over-the-air games) and expand that network to include over-the-air and cable telecasts of the Nationals games (and such Orioles games as are not covered by the Orioles' existing licensing agreement with CSN). MLB and the Orioles were well within their rights to act in this way.

81. Now Comcast refuses even to discuss televising Nationals games, notwithstanding the obvious profits to be made in doing so, Comcast's vigorous past efforts to obtain the production and exhibition rights for CSN, and its subscribers' interest in viewing Nationals games. That refusal even to consider distributing Nationals games reflects Comcast's anger at the March 28 Settlement Agreement, which does not give an equity interest to Comcast in the network that will televise Nationals games. Comcast's conduct thus falls squarely within the prohibitions of the Cable Act and its implementing regulations.

### **RELIEF SOUGHT**

Accordingly, TCR respectfully requests, pursuant to 47 C.F.R. § 76.1302(g), that the Commission:

(a) order Comcast to provide carriage on all Comcast systems under the same terms and conditions that TCR has received from other multichannel video programming distributors, or such other terms and conditions as the Commission shall deem just and reasonable, or such other terms and conditions as shall be established through binding independent arbitration;

(b) order that carriage on Comcast's systems of TCR's programming, which presently consists of Nationals games, be implemented without delay and without resolution of terms and conditions, which can be ordered or implemented at a later date;

(c) order that, if one or more such Comcast systems lacks capacity to add carriage of TCR's programming, such system delete a programming service owned or controlled by Comcast or its affiliates in order to accommodate immediate coverage of TCR's programming of Nationals games;

(d) grant TCR substantial damages that have resulted from Comcast's misconduct; and

(e) grant TCR such other and further relief as the Commission deems just and proper.

Respectfully submitted,

  
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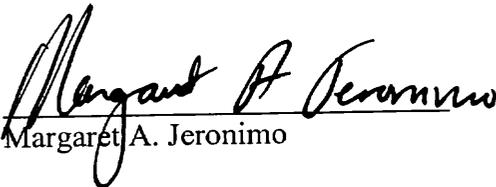
Dated: June 14, 2005

Attorneys for TCR Sports  
Broadcasting Holding, L.L.P.

## CERTIFICATE OF SERVICE

I hereby certify that, on this 14th day of June 2005, I caused copies of Complainant's Emergency Petition for Temporary Injunctive Relief; Complainant's Carriage Agreement Complaint; Complainant's Motion for Discovery; Complainant's First Request for the Production of Documents; and Complainant's First Request for Interrogatories to be served on the following party by UPS Next Day Air:

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Williams & Connolly, LLP  
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Washington, DC 20005  
(202) 434-5901

  
Margaret A. Jeronimo

# **ADDENDUM**

**Statute and Regulation Provisions**

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47 U.S.C.A. § 522

Effective: February 08, 1996

UNITED STATES CODE ANNOTATED  
TITLE 47. TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS  
CHAPTER 5--WIRE OR RADIO COMMUNICATION  
SUBCHAPTER V-A--CABLE COMMUNICATIONS  
PART I--GENERAL PROVISIONS  
→ § 522. Definitions

For purposes of this subchapter--

- (1) the term "activated channels" means those channels engineered at the headend of a cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided, including any channel designated for public, educational, or governmental use;
- (2) the term "affiliate", when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person;
- (3) the term "basic cable service" means any service tier which includes the retransmission of local television broadcast signals;
- (4) the term "cable channel" or "channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by the Commission by regulation);
- (5) the term "cable operator" means any person or group of persons (A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system;
- (6) the term "cable service" means--
  - (A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and
  - (B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service;
- (7) the term "cable system" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of 1 or more television broadcast stations; (B) a facility that serves subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of subchapter II of this chapter, except that such facility shall be considered a cable system (other than for purposes of [section 541\(c\)](#) of this title) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with [section 573](#) of this title; or (E) any facilities of any electric utility used solely for operating its electric utility system;
- (8) the term "Federal agency" means any agency of the United States, including the Commission;
- (9) the term "franchise" means an initial authorization, or renewal thereof (including a renewal of an

47 U.S.C.A. § 522

authorization which has been granted subject to section 546 of this title), issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system;

(10) the term "franchising authority" means any governmental entity empowered by Federal, State, or local law to grant a franchise;

(11) the term "grade B contour" means the field strength of a television broadcast station computed in accordance with regulations promulgated by the Commission;

(12) the term "interactive on-demand services" means a service providing video programming to subscribers over switched networks on an on-demand, point-to-point basis, but does not include services providing video programming prescheduled by the programming provider;

(13) the term "multichannel video programming distributor" means a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming;

(14) the term "other programming service" means information that a cable operator makes available to all subscribers generally;

(15) the term "person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity;

(16) the term "public, educational, or governmental access facilities" means--

(A) channel capacity designated for public, educational, or governmental use; and

(B) facilities and equipment for the use of such channel capacity;

(17) the term "service tier" means a category of cable service or other services provided by a cable operator and for which a separate rate is charged by the cable operator;

(18) the term "State" means any State, or political subdivision, or agency thereof;

(19) the term "usable activated channels" means activated channels of a cable system, except those channels whose use for the distribution of broadcast signals would conflict with technical and safety regulations as determined by the Commission; and

(20) the term "video programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

Current through P.L. 109-12, approved 05/05/05

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47 U.S.C.A. § 536

**Effective: [See Text Amendments]**

UNITED STATES CODE ANNOTATED  
TITLE 47. TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS  
**CHAPTER 5--WIRE OR RADIO COMMUNICATION**  
SUBCHAPTER V-A--CABLE COMMUNICATIONS  
PART II--USE OF CABLE CHANNELS AND CABLE OWNERSHIP RESTRICTIONS  
→ § 536. Regulation of carriage agreements

(a) Regulations

Within one year after October 5, 1992, the Commission shall establish regulations governing program carriage agreements and related practices between cable operators or other multichannel video programming distributors and video programming vendors. Such regulations shall--

- (1) include provisions designed to prevent a cable operator or other multichannel video programming distributor from requiring a financial interest in a program service as a condition for carriage on one or more of such operator's systems;
- (2) include provisions designed to prohibit a cable operator or other multichannel video programming distributor from coercing a video programming vendor to provide, and from retaliating against such a vendor for failing to provide, exclusive rights against other multichannel video programming distributors as a condition of carriage on a system;
- (3) contain provisions designed to prevent a multichannel video programming distributor from engaging in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or nonaffiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors;
- (4) provide for expedited review of any complaints made by a video programming vendor pursuant to this section;
- (5) provide for appropriate penalties and remedies for violations of this subsection, including carriage; and
- (6) provide penalties to be assessed against any person filing a frivolous complaint pursuant to this section.

(b) "Video programming vendor" defined

As used in this section, the term "video programming vendor" means a person engaged in the production, creation, or wholesale distribution of video programming for sale.

Current through P.L. 109-12, approved 05/05/05

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END OF DOCUMENT

## § 76.7

(4) The original of all pleadings and submissions by any party shall be signed by that party, or by the party's attorney. Complaints must be signed by the complainant. The signing party shall state his or her address and telephone number and the date on which the document was signed. Copies should be conformed to the original. Each submission must contain a written verification that the signatory has read the submission and to the best of his or her knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and that it is not interposed for any improper purpose. If any pleading or other submission is signed in violation of this provision, the Commission shall upon motion or upon its own initiative impose appropriate sanctions.

(5) Legal arguments must be supported by appropriate judicial, Commission, or statutory authority. Opposing authorities must be distinguished. Copies must be provided of all non-Commission authorities relied upon which are not routinely available in national reporting systems, such as unpublished decisions or slip opinions of courts or administrative agencies.

(6) Parties are responsible for the continuing accuracy and completeness of all information and supporting authority furnished in a pending complaint proceeding. Information submitted, as well as relevant legal authorities, must be current and updated as necessary and in a timely manner at any time before a decision is rendered on the merits of the complaint.

(b) *Copies to be Filed.* Unless otherwise directed by specific regulation or the Commission, an original and two (2) copies of all pleadings shall be filed in accordance with § 0.401(a) of this chapter, except that petitions requiring fees as set forth at part 1, subpart C of this chapter must be filed in accordance with § 0.401(b) of this chapter.

(c) *F frivolous pleadings.* It shall be unlawful for any party to file a frivolous pleading with the Commission. Any violation of this paragraph shall con-

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stitute an abuse of process subject to appropriate sanctions.

[64 FR 6569, Feb. 10, 1999]

### § 76.7 General special relief, waiver, enforcement, complaint, show cause, forfeiture, and declaratory ruling procedures.

(a) *Initiating pleadings.* In addition to the general pleading requirements, initiating pleadings must adhere to the following requirements:

(1) *Petitions.* On petition by any interested party, cable television system operator, a multichannel video programming distributor, local franchising authority, or an applicant, permittee, or licensee of a television broadcast or translator station, the Commission may waive any provision of this part 76, impose additional or different requirements, issue a ruling on a complaint or disputed question, issue a show cause order, revoke the certification of the local franchising authority, or initiate a forfeiture proceeding. Petitions may be submitted informally by letter.

(2) *Complaints.* Complaints shall conform to the relevant rule section under which the complaint is being filed.

(3) *Certificate of service.* Petitions and Complaints shall be accompanied by a certificate of service on any cable television system operator, franchising authority, station licensee, permittee, or applicant, or other interested person who is likely to be directly affected if the relief requested is granted.

(4) *Statement of relief requested.* (i) The petition or complaint shall state the relief requested. It shall state fully and precisely all pertinent facts and considerations relied on to demonstrate the need for the relief requested and to support a determination that a grant of such relief would serve the public interest.

(ii) The petition or complaint shall set forth all steps taken by the parties to resolve the problem, except where the only relief sought is a clarification or interpretation of the rules.

(iii) A petition or complaint may, on request of the filing party, be dismissed without prejudice as a matter of right prior to the adoption date of any final action taken by the Commission with respect to the petition or complaint. A

request for the return of an initiating document will be regarded as a request for dismissal.

(5) *Failure to prosecute.* Failure to prosecute petition or complaint, or failure to respond to official correspondence or request for additional information, will be cause for dismissal. Such dismissal will be without prejudice if it occurs prior to the adoption date of any final action taken by the Commission with respect to the initiating pleading.

(b) *Responsive pleadings.* In addition to the general pleading requirements, responsive pleadings must adhere to the following requirements:

(1) *Comments/oppositions to petitions.* Unless otherwise directed by the Commission, interested persons may submit comments or oppositions within twenty (20) days after the date of public notice of the filing of such petition. Comments or oppositions shall be served on the petitioner and on all persons listed in petitioner's certificate of service, and shall contain a detailed full showing, supported by affidavit, of any facts or considerations relied on.

(2) *Answers to complaints.* (i) Unless otherwise directed by the Commission, any party who is served with a complaint shall file an answer in accordance with the following, and the relevant rule section under which the complaint is being filed.

(ii) The answer shall be filed within 20 days of service of the complaint, unless another period is set forth in the relevant rule section.

(iii) The answer shall advise the parties and the Commission fully and completely of the nature of any and all defenses, and shall respond specifically to all material allegations of the complaint. Collateral or immaterial issues shall be avoided in answers and every effort should be made to narrow the issues. Any party against whom a complaint is filed failing to file and serve an answer within the time and in the manner prescribed by these rules may be deemed in default and an order may be entered against defendant in accordance with the allegations contained in the complaint.

(iv) The answer shall admit or deny the averments on which the adverse party relies. If the defendant is without

knowledge or information sufficient to form a belief as to the truth of an averment, the defendant shall so state and this has the effect of a denial. When a defendant intends in good faith to deny only part of an averment, the answer shall specify so much of it as is true and shall deny only the remainder. The defendant may make its denials as specific denials of designated averments or paragraphs, or may generally deny all the averments except such designated averments or paragraphs as the defendant expressly admits. When the defendant intends to controvert all averments, the defendant may do so by general denial.

(v) Averments in a complaint are deemed to be admitted when not denied in the answer.

(c) *Reply.* In addition to the general pleading requirements, reply comments and replies must adhere to the following requirements:

(1) The petitioner or complainant may file a reply to a responsive pleading which shall be served on all persons who have filed pleadings and shall also contain a detailed full showing, supported by affidavit, of any additional facts or considerations relied on. Unless expressly permitted by the Commission, reply comments and replies to an answer shall not contain new matters.

(2) Failure to reply will not be deemed an admission of any allegations contained in the responsive pleading, except with respect to any affirmative defense set forth therein.

(3) Unless otherwise directed by the Commission or the relevant rule section, comments and replies to answers must be filed within ten (10) days after submission of the responsive pleading.

(d) *Motions.* Except as provided in this section, or upon a showing of extraordinary circumstances, additional motions or pleadings by any party will not be accepted.

(e) *Additional procedures and written submissions.* (1) The Commission may specify other procedures, such as oral argument or evidentiary hearing directed to particular aspects, as it deems appropriate. In the event that an evidentiary hearing is required, the Commission will determine, on the basis of the pleadings and such other

procedures as it may specify, whether temporary relief should be afforded any party pending the hearing and the nature of any such temporary relief.

(2) The Commission may require the parties to submit any additional information it deems appropriate for a full, fair, and expeditious resolution of the proceeding, including copies of all contracts and documents reflecting arrangements and understandings alleged to violate the requirements set forth in the Communications Act and in this part, as well as affidavits and exhibits.

(3) The Commission may, in its discretion, require the parties to file briefs summarizing the facts and issues presented in the pleadings and other record evidence.

(i) These briefs shall contain the findings of fact and conclusions of law which that party is urging the Commission to adopt, with specific citations to the record, and supported by relevant authority and analysis.

(ii) Any briefs submitted shall be filed concurrently by both the complainant and defendant at such time as is designated by the staff. Such briefs shall not exceed fifty (50) pages.

(iii) Reply briefs may be submitted by either party within twenty (20) days from the date initial briefs are due. Reply briefs shall not exceed thirty (30) pages.

(f) *Discovery.* (1) The Commission staff may in its discretion order discovery limited to the issues specified by the Commission. Such discovery may include answers to written interrogatories, depositions or document production.

(2) The Commission staff may in its discretion direct the parties to submit discovery proposals, together with a memorandum in support of the discovery requested. Such discovery requests may include answers to written interrogatories, document production or depositions. The Commission staff may hold a status conference with the parties, pursuant to § 76.8 of this part, to determine the scope of discovery, or direct the parties regarding the scope of discovery. If the Commission staff determines that extensive discovery is required or that depositions are warranted, the staff may advise the parties that the proceeding will be referred to

an administrative law judge in accordance with paragraph (g) of this section.

(g) *Referral to administrative law judge.*

(1) After reviewing the pleadings, and at any stage of the proceeding thereafter, the Commission staff may, in its discretion, designate any proceeding or discrete issues arising out of any proceeding for an adjudicatory hearing before an administrative law judge.

(2) Before designation for hearing, the staff shall notify, either orally or in writing, the parties to the proceeding of its intent to so designate, and the parties shall be given a period of ten (10) days to elect to resolve the dispute through alternative dispute resolution procedures, or to proceed with an adjudicatory hearing. Such election shall be submitted in writing to the Commission.

(3) Unless otherwise directed by the Commission, or upon motion by the Media Bureau Chief, the Media Bureau Chief shall not be deemed to be a party to a proceeding designated for a hearing before an administrative law judge pursuant to this paragraph (g).

(h) *System community units outside the Contiguous States.* On a finding that the public interest so requires, the Commission may determine that a system community unit operating or proposing to operate in a community located outside of the 48 contiguous states shall comply with provisions of subparts D, F, and G of this part in addition to the provisions thereof otherwise applicable.

(i) *Commission ruling.* The Commission, after consideration of the pleadings, may determine whether the public interest would be served by the grant, in whole or in part, or denial of the request, or may issue a ruling on the complaint or dispute, issue an order to show cause, or initiate a forfeiture proceeding.

NOTE 1 TO § 76.7: After issuance of an order to show cause pursuant to this section, the rules of procedure in Title 47, part 1, subpart A, §§ 1.91-1.95 of this chapter shall apply.

NOTE 2 TO § 76.7: Nothing in this section is intended to prevent the Commission from initiating show cause or forfeiture proceedings on its own motion; Provided, however, that show cause proceedings and forfeiture proceedings pursuant to § 1.80(g) of this chapter will not be initiated by such motion until the affected parties are given

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an opportunity to respond to the Commission's charges.

NOTE 3 TO § 76.7: Forfeiture proceedings are generally nonhearing matters conducted pursuant to the provisions of § 1.80(f) of this chapter (Notice of Apparent Liability). Petitioners who contend that the alternative hearing procedures of § 1.80(g) of this chapter should be followed in a particular case must support this contention with a specific showing of the facts and considerations relied on.

NOTE 4 TO § 76.7: To the extent a conflict is perceived between the general pleading requirements of this section, and the procedural requirements of a specific section, the procedural requirements of the specific section should be followed.

[64 FR 6569, Feb. 10, 1999, as amended at 67 FR 13234, Mar. 21, 2002]

### § 76.8 Status conference.

(a) In any proceeding subject to the part 76 rules, the Commission staff may in its discretion direct the attorneys and/or the parties to appear for a conference to consider:

(1) Simplification or narrowing of the issues;

(2) The necessity for or desirability of amendments to the pleadings, additional pleadings, or other evidentiary submissions;

(3) Obtaining admissions of fact or stipulations between the parties as to any or all of the matters in controversy;

(4) Settlement of the matters in controversy by agreement of the parties;

(5) The necessity for and extent of discovery, including objections to interrogatories or requests for written documents;

(6) The need and schedule for filing briefs, and the date for any further conferences; and

(7) Such other matters that may aid in the disposition of the proceeding.

(b) Any party may request that a conference be held at any time after an initiating document has been filed.

(c) Conferences will be scheduled by the Commission at such time and place as it may designate, to be conducted in person or by telephone conference call.

(d) The failure of any attorney or party, following advance notice with an opportunity to be present, to appear at a scheduled conference will be deemed a waiver and will not preclude the Commission from conferring with those parties or counsel present.

(e) During a status conference, the Commission staff may issue oral rulings pertaining to a variety of matters relevant to the conduct of the proceeding including, *inter alia*, procedural matters, discovery, and the submission of briefs or other evidentiary materials. These rulings will be promptly memorialized in writing and served on the parties. When such rulings require a party to take affirmative action not subject to deadlines established by another provision of this subpart, such action will be required within ten (10) days from the date of the written memorialization unless otherwise directed by the staff.

[64 FR 6571, Feb. 10, 1999]

### § 76.9 Confidentiality of proprietary information.

(a) Any materials filed in the course of a proceeding under this provision may be designated as proprietary by that party if the party believes in good faith that the materials fall within an exemption to disclosure contained in the Freedom of Information Act (FOIA), 5 U.S.C. 552(b). Any party asserting confidentiality for such materials shall so indicate by clearly marking each page, or portion thereof, for which a proprietary designation is claimed. If a proprietary designation is challenged, the party claiming confidentiality will have the burden of demonstrating, by a preponderance of the evidence, that the material designated as proprietary falls under the standards for nondisclosure enunciated in FOIA.

(b) Submissions containing information claimed to be proprietary under this section shall be submitted to the Commission in confidence pursuant to the requirements of § 0.459 of this chapter and clearly marked "Not for Public Inspection." An edited version removing all proprietary data shall be filed with the Commission for inclusion in the public file within five (5) days from the date the unedited reply is submitted, and shall be served on the opposing parties.

(c) Except as provided in paragraph (d) of this section, materials marked as proprietary may be disclosed solely to the following persons, only for use in the proceeding, and only to the extent

**Subpart Q—Regulation of Carriage Agreements**

SOURCE: 58 FR 60395, Nov. 16, 1993, unless otherwise noted.

**§ 76.1300 Definitions.**

As used in this subpart:

(a) *Affiliated.* For purposes of this subpart, entities are affiliated if either entity has an attributable interest in the other or if a third party has an attributable interest in both entities.

(b) *Attributable interest.* The term "attributable interest" shall be defined by reference to the criteria set forth in Notes 1 through 5 to § 76.501 provided, however, that:

(1) The limited partner and LLC/LLP/RLLP insulation provisions of Note 2(f) shall not apply; and

(2) The provisions of Note 2(a) regarding five (5) percent interests shall include all voting or nonvoting stock or limited partnership equity interests of five (5) percent or more.

(c) *Buying groups.* The term "buying group" or "agent," for purposes of the definition of a multichannel video programming distributor set forth in paragraph (e) of this section, means an entity representing the interests of more than one entity distributing multichannel video programming that:

(1) Agrees to be financially liable for any fees due pursuant to a satellite cable programming, or satellite broadcast programming, contract which it signs as a contracting party as a representative of its members or whose members, as contracting parties, agree to joint and several liability; and

(2) Agrees to uniform billing and standardized contract provisions for individual members; and

(3) Agrees either collectively or individually on reasonable technical quality standards for the individual members of the group.

(d) *Multichannel video programming distributor.* The term "multichannel video programming distributor" means an entity engaged in the business of making available for purchase, by subscribers or customers, multiple channels of video programming. Such entities include, but are not limited to, a cable operator, a multichannel multipoint distribution service, a di-

rect broadcast satellite service, a television receive-only satellite program distributor, and a satellite master antenna television system operator, as well as buying groups or agents of all such entities.

(e) *Video programming vendor.* The term "video programming vendor" means a person engaged in the production, creation, or wholesale distribution of video programming for sale.

[58 FR 60395, Nov. 16, 1993, as amended at 64 FR 67197, Dec. 1, 1999]

**§ 76.1301 Prohibited practices.**

(a) *Financial interest.* No cable operator or other multichannel video programming distributor shall require a financial interest in any program service as a condition for carriage on one or more of such operator's/provider's systems.

(b) *Exclusive rights.* No cable operator or other multichannel video programming distributor shall coerce any video programming vendor to provide, or retaliate against such a vendor for failing to provide, exclusive rights against any other multichannel video programming distributor as a condition for carriage on a system.

(c) *Discrimination.* No multichannel video programming distributor shall engage in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or non-affiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors.

**§ 76.1302 Carriage agreement proceedings.**

(a) *Complaints.* Any video programming vendor or multichannel video programming distributor aggrieved by conduct that it believes constitute a violation of the regulations set forth in this subpart may commence an adjudicatory proceeding at the Commission to obtain enforcement of the rules through the filing of a complaint. The complaint shall be filed and responded to in accordance with the procedures specified in § 76.7 of this part with the following additions or changes:

(b) *Prefiling notice required.* Any aggrieved video programming vendor or multichannel video programming distributor intending to file a complaint under this section must first notify the potential defendant multichannel video programming distributor that it intends to file a complaint with the Commission based on actions alleged to violate one or more of the provisions contained in § 76.1301 of this part. The notice must be sufficiently detailed so that its recipient(s) can determine the specific nature of the potential complaint. The potential complainant must allow a minimum of ten (10) days for the potential defendant(s) to respond before filing a complaint with the Commission.

(c) *Contents of complaint.* In addition to the requirements of § 76.7 of this part, a carriage agreement complaint shall contain:

(1) The type of multichannel video programming distributor that describes complainant, the address and telephone number of the complainant, and the address and telephone number of each defendant;

(2) Evidence that supports complainant's belief that the defendant, where necessary, meets the attribution standards for application of the carriage agreement regulations;

(3) For complaints alleging a violation of § 76.1301(c) of this part, evidence that supports complainant's claim that the effect of the conduct complained of is to unreasonably restrain the ability of the complainant to compete fairly.

(4) The complaint must be accompanied by appropriate evidence demonstrating that the required notification pursuant to paragraph (b) of this section has been made.

(d) *Answer.* (1) Any multichannel video programming distributor upon which a carriage agreement complaint is served under this section shall answer within thirty (30) days of service of the complaint, unless otherwise directed by the Commission.

(2) The answer shall address the relief requested in the complaint, including legal and documentary support, for such response, and may include an alternative relief proposal without any prejudice to any denials or defenses raised.

(e) *Reply.* Within twenty (20) days after service of an answer, unless otherwise directed by the Commission, the complainant may file and serve a reply which shall be responsive to matters contained in the answer and shall not contain new matters.

(f) *Time limit on filing of complaints.* Any complaint filed pursuant to this subsection must be filed within one year of the date on which one of the following events occurs:

(1) The multichannel video programming distributor enters into a contract with a video programming distributor that a party alleges to violate one or more of the rules contained in this section; or

(2) The multichannel video programming distributor offers to carry the video programming vendor's programming pursuant to terms that a party alleges to violate one or more of the rules contained in this section, and such offer to carry programming is unrelated to any existing contract between the complainant and the multichannel video programming distributor; or

(3) A party has notified a multichannel video programming distributor that it intends to file a complaint with the Commission based on violations of one or more of the rules contained in this section.

(g) *Remedies for violations--(1) Remedies authorized.* Upon completion of such adjudicatory proceeding, the Commission shall order appropriate remedies, including, if necessary, mandatory carriage of a video programming vendor's programming on defendant's video distribution system, or the establishment of prices, terms, and conditions for the carriage of a video programming vendor's programming. Such order shall set forth a timetable for compliance, and shall become effective upon release, unless any order of mandatory carriage would require the defendant multichannel video programming distributor to delete existing programming from its system to accommodate carriage of a video programming vendor's programming. In such instances, if the defendant seeks review of the staff, or administrative law judge decision, the order for carriage of

a video programming vendor's programming will not become effective unless and until the decision of the staff or administrative law judge is upheld by the Commission. If the Commission upholds the remedy ordered by the staff or administrative law judge in its entirety, the defendant will be required to carry the video programming vendor's programming for an additional period equal to the time elapsed between the staff or administrative law judge decision and the Commission's ruling, on the terms and conditions approved by the Commission.

(2) *Additional sanctions.* The remedies provided in paragraph (g)(1) of this section are in addition to and not in lieu of the sanctions available under title V or any other provision of the Communications Act.

[64 FR 6574, Feb. 10, 1999]

§§ 76.1303-76.1305 [Reserved]

### Subpart R—Telecommunications Act Implementation

SOURCE: 61 FR 18980, Apr. 30, 1996, unless otherwise noted.

#### § 76.1400 Purpose.

The rules and regulations set forth in this subpart provide procedures for administering certain aspects of cable regulation. These rules and regulations provide guidance for operators, subscribers and franchise authorities with respect to matters that are subject to immediate implementation under governing statutes but require specific regulatory procedures or definitions.

#### § 76.1402 CPST rate complaints.

(a) A local franchise authority may file rate complaints with the Commission within 180 days of the effective date of a rate increase on the cable operator's cable programming services tier if within 90 days of that increase the local franchise authority receives more than one subscriber complaint concerning the increase.

(b) Before filing a rate complaint with the Commission, the local franchise authority must first give the cable operator written notice, including a draft FCC Form 329, of the local

franchise authority's intent to file the complaint. The local franchise authority must give an operator a minimum of 30 days to file with the local franchise authority the relevant FCC forms that must be filed to justify a rate increase or, where appropriate, certification that the operator is not subject to rate regulation. The operator must file a complete response with the local franchise authority within the time period specified by the local franchise authority. The local franchise authority shall file with the Commission the complaint and the operator's response to the Complaint. If the operator's response to the complaint asserts that the operator is exempt from rate regulation, the operator's response can be filed with the local franchise authority without filing specific FCC Forms.

#### § 76.1404 Use of cable facilities by local exchange carriers.

(a) For purposes of § 76.505(d)(2), the Commission will determine whether use of a cable operator's facilities by a local exchange carrier is reasonably limited in scope and duration according to the procedures in paragraph (b) of this section.

(b) Based on the record created by § 76.1617 of the rules, the Commission shall determine whether the local exchange carrier's use of that part of the transmission facilities of a cable system extending from the last multi-use terminal to the premises of the end user is reasonably limited in scope and duration. In making this determination, the Commission will evaluate whether the proposed joint use of cable facilities promotes competition in both services and facilities, and encourages long-term investment in telecommunications infrastructure.

[65 FR 53617, Sept. 5, 2000]

### Subpart S—Open Video Systems

SOURCE: 61 FR 28708, June 5, 1996, unless otherwise noted.

#### § 76.1500 Definitions.

(a) *Open video system.* A facility consisting of a set of transmission paths and associated signal generation, reception, and control equipment that is

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2.    May 27, 2005 TCR Notice of Intent to File Complaint sent to B. Roberts, Chairman & CEO, Comcast Corp. and S. Burke, COO, Comcast Corp.
3.    June 3, 2005 Response from J. Schmidlein, Williams & Connolly LLP
4.    Declaration of Joseph Foss In Support of the Carriage Agreement Complaint of TCR Sports Broadcasting Holding, L.L.P. (June 3, 2005)
5.    T. Heath, *MASN Makes Another Pitch to Comcast for Nats*, Washington Post, May 14, 2005
6.    Emergency Petition For Temporary Injunctive Relief (FCC filed June 14, 2005)
7.    Media Bureau, FCC, Form 325, filed by Comcast for the year 2003 (Reference Numbers 174426, 174434, 175279, 174879, 175762, 174444 and 175743)
8.    Office of Cable Television and Telecommunications, Government of the District of Columbia, *Cable Television Annual Report 2004* (Sept. 30, 2004), available at [http://octt.dc.gov/news\\_room/2005/march/OCTT\\_annual\\_report\\_2004.pdf](http://octt.dc.gov/news_room/2005/march/OCTT_annual_report_2004.pdf); Media Bureau, FCC, Form 325, filed by Starpower Communications LLC d/b/a RCN for the year 2003 (Reference Number 171009)
9.    Eleventh Annual Report, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 04-227, FCC 05-13 (rel. Feb. 4, 2005)
10.    Press Release, Comcast, Comcast Reports First Quarter 2005 Results (Apr. 28, 2005)
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  - A.    Letter Agreement dated July 19, 1996 Between Mid-Atlantic Sports Network, L.L.C., TCR Sports Broadcasting Holding, L.L.P., Fox, Inc. (as guarantor) and Baltimore Orioles Limited Partnership (as guarantor)
  - B.    Side Letter dated July 19, 1996 from J. Martin to P. Angelos
  - C.    Agreement Acknowledging Acceptance dated Oct. 8, 1996 between Home Team Sports, Westinghouse Elec. Co., Baltimore Orioles Limited Partnership and TCR Sports Broadcast Holding L.L.P

- D. Letter Agreement dated Oct. 9, 1996 between Home Team Sports, Westinghouse Elec. Co., Baltimore Orioles Limited Partnership and TCR Sports Broadcast Holding L.L.P, Accepting the Modifications to the July 19, 1996 Letter Agreement
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- F. Letter Agreement dated Dec. 4, 1996 between Home Team Sports, Westinghouse Elec. Co., Baltimore Orioles Limited Partnership
- 12. Press Release, Baltimore Orioles, Orioles Establish Broadcast Television Network (Feb. 19, 2002)
- 13. N. Kercheval, Daily Rec., Feb. 20, 2002; B. Miller, *Orioles TV Network Ready for 24/7 Sports Coverage*, Daily Rec., June 8, 2002.
- 14. D. Steinberg, *At Comcast, Sports Mania*, Philadelphia Inquirer, Mar. 7, 2005
- 15. Carriage Agreement Complaint, *In re Classic Sports Network, Inc.*, CSR Docket No. 97-171 (FCC filed Mar. 17, 1997)
- 16. T. Arango, *Comcast Closer – Roberts Brings on Herb Allen for Vivendi Bid*, N.Y. Post, Aug. 11, 2003; A. Parker, *Comcast Weighs Bid As Vivendi Deadline Nears*, Phila. Inquirer, Aug. 13, 2003; G. Szalai, *Comcast Unplugs Buyout Bid for Vivendi Universal*, hollywoodreporter.com, Aug. 14, 2003; S. Hofmeister, *Comcast Won't Bid for Vivendi Assets*, L.A. Times, Aug. 15, 2003
- 17. Comcast Corp – CMCSA Form 8K for period: April 20, 2005 (SEC filed Apr. 26, 2005)
- 18. Major League Baseball Executive Council: Discussion Materials presented by Allen & Company LLC, dated September 23, 2004
- 19. First Amended Complaint, *Comcast SportsNet Mid-Atlantic, L.P. v. Baltimore Orioles L.P., et al.*, No. 260751-V (Md. Cir. Ct. filed May 24, 2005)
- 20. Declaration of David Gluck In Support of the Carriage Agreement Complaint of TCR Sports Broadcasting Holding, L.L.P. (June 3, 2005)
- 21. Mid-Atlantic Sports Network Affiliate Term Sheet for Comcast with Cover Email dated Apr. 13, 2005 from D. Gluck to M. Bond
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- 23. Letters dated April 21, 2005 from J. Williams, President & CEO, Comcast SportsNet to various Multichannel Video Programming Distributors

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28. Term Sheet For Carriage of Mid-Atlantic SportsNetwork ("MASN") between TCR Sports Broadcasting Holding, L.L.P., dba MASN and Comcast Corporation ("Comcast") (May 13, 2005)
29. Comcast SportsNet "Frequently Asked Questions," *available at* <http://midatlantic.comcastsportsnet.com/contact.asp>; DirecTV Washington – Washington – Lineup (June 8, 2005); RCN Cable Starpower – Washington – Lineup (June 8, 2005)
30. Telecast Rights Agreement dated as of December 6, 1996 by and between TCR Sports Broadcasting Holding, L.L.P. and Home Team Sports Limited Partnership
31. "Project Extradition: Hypothetical Financial Model" Preliminary Draft – For Discussion Purposes Only (June 2, 2004)
32. Email dated April 18, 2005 from D. Gluck to M. Bond
33. Letter dated May 23, 2005 from D. Gluck to M. Bond
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35. Letter dated June 9, 2005 from D. Gluck to M. Bond
36. Motion to Dismiss Complaint and Memorandum in Support, *Comcast SportsNet Mid-Atlantic, L.P. v. Baltimore Orioles L.P., et al.*, No. 260751-V (Md. Cir. Ct. filed June 13, 2005)
37. Motion to Dismiss Amended Complaint as to Mid-Atlantic Sports Network for Lack of Personal Jurisdiction and Memorandum in Support, *Comcast SportsNet Mid-Atlantic, L.P. v. Baltimore Orioles L.P., et al.*, No. 260751-V (Md. Cir. Ct. filed June 13, 2005)