

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

In the Matter of)	
)	
TCR Sports Broadcasting Holding, L.L.P.,)	
)	
Complainant,)	
)	
v.)	File No. _____
)	
Comcast Corporation,)	
)	
Defendant.)	
)	

REPLY IN SUPPORT OF CARRIAGE AGREEMENT COMPLAINT

EXHIBITS 1 - 16

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EXHIBIT 1

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

<hr/>	
COMCAST SPORTSNET MID-ATLANTIC, L.P.,)
)
Plaintiff,)
)
v.)
)
BALTIMORE ORIOLES L.P., TCR SPORTS BROADCASTING HOLDING, L.L.P., MAJOR LEAGUE BASEBALL, MID-ATLANTIC SPORTS NETWORK,)
)
Defendants.)
<hr/>	

Civil Action No. 260751-V

MEMORANDUM IN OPPOSITION
TO DEFENDANTS' MOTIONS TO
DISMISS

MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS

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July 12, 2005

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Plaintiff Comcast SportsNet Mid-Atlantic, L.P. (“CSN”), by its undersigned counsel, submits the following Memorandum in Opposition to Defendants Baltimore Orioles L.P.’s (the “Orioles”) and TCR Sports Broadcasting Holding, L.L.P.’s (“TCR”) Motion to Dismiss Amended Complaint, Defendant Major League Baseball’s (“MLB”) Motion To Dismiss For Failure To State A Claim, and Defendants’ Motion To Dismiss Amended Complaint As To Mid-Atlantic Sports Network (“MASN”) For Lack Of Personal Jurisdiction. For the reasons set forth below, Defendants’ Motions should be denied.

INTRODUCTION

At the motion to dismiss stage prior to any discovery (except those limited, and in one instance significantly redacted, documents that Defendants chose to disclose in their moving papers), Defendants ask this Court to bless an attempt at a corporate shell game devised to evade and render meaningless essential contractual obligations owed by the Orioles, and to trample valuable contractual rights for which CSN (formerly Home Team Sports or “HTS”) paid enormous sums as part of the 10-year agreement signed in 1996 (the “1996 Agreement”) to license the local pay television rights to Baltimore Orioles baseball games. The Court should reject this request.

Contrary to Defendants’ arguments, there are no facts and there is no case law that can hide the fact that the ransom demanded by the Orioles and paid by MLB and the Washington Nationals for the return of baseball to the nation’s capital is Defendants’ recent creation of a new regional sports network, MASN, to telecast Washington Nationals games beginning this season and Baltimore Orioles games beginning in the 2007 season. The agreement purportedly creating this new regional sports network, although provided in heavily redacted form by the Orioles and

TCR in their moving papers, makes clear that the Orioles have sold their future local pay television rights to this new network for specified (but redacted) license fees. This transfer of future television rights to Orioles games to a rival regional sports network is precisely the transaction intended to trigger the right to match provision in CSN's current contract with the Orioles and, by its timing, also violates the contract's exclusive negotiation period provision.

Defendants' motions should be denied and discovery should commence promptly for the following reasons:

- The facts alleged in the Amended Complaint and reflected in the various documents submitted by Defendants in their moving papers demonstrate that the Orioles have agreed to transfer their future television rights to a rival regional sports network in breach of the 1996 Agreement.
- Plaintiff's proffered interpretation of the 1996 Agreement is reasonable, particularly in light of the nature of the contract, the circumstances surrounding its negotiation and execution, the prior dealings between the parties, and industry custom. By contrast, Defendants' proffered interpretation of the 1996 Agreement renders the right to match provision meaningless.
- Plaintiff has alleged facts that preclude this Court from determining at the motion to dismiss stage that the right to match provision in the 1996 Agreement is unambiguous and may only be interpreted in the nonsensical fashion suggested by Defendants.
- Maryland common law recognizes a private right of action where, as here, a party has taken actions to injure or frustrate the right of the other party to receive the benefits of a contract.
- An exclusive negotiation provision limited by a specified time period is sufficiently certain and definite to be enforced.
- Because Plaintiff has adequately pled breach of contract and breach of implied covenant of good faith and fair dealing claims, it also has adequately pled a tortious interference with contract claim.

RELEVANT FACTS

A. The CSN Regional Sports Network

Since the original creation of the Home Team Sports regional sports network over twenty years ago, HTS (later renamed CSN) has owned the exclusive right to produce and exhibit on local pay television Baltimore Orioles baseball games not licensed nationally by MLB. First Amended Complaint (“Am. Compl.”) ¶ 28. These local pay television rights today permit CSN to televise Orioles games on the CSN regional sports network.

The Orioles’ local pay television rights always have been one of the cornerstones of the CSN regional sports network. These rights are particularly valuable because of the popularity of the Orioles in the Washington-Baltimore region, the large volume of live programming available as a result of the Orioles’ 162-game regular season schedule (a schedule that is roughly equal to the NBA Washington Wizards’ franchise and the NHL Washington Capitals’ franchise schedules combined), and the lack of other local sports programming alternatives during the summer months. *Id.* ¶ 29. CSN and HTS have paid the Baltimore Orioles many millions of dollars in rights fees to license Orioles baseball games over the years, and have spent even larger sums of money creating, building and operating the CSN regional sports network that is carried by various cable and satellite television operators in Washington, D.C., Maryland, Virginia, Delaware, Pennsylvania and West Virginia. *Id.* ¶ 28.

In order to protect the enormous investment made in the CSN regional sports network, exclusive negotiation period and right to match/right of first refusal¹ provisions have been included in contracts with local professional sports teams such as the Orioles, Wizards and

¹ A right to match is a type of right of first refusal.

Capitals. The purpose, intent and effect of these contractual provisions, which are common in the regional sports network industry, are (1) to provide a regional sports network a window of opportunity prior to the expiration of a contract to negotiate exclusively for an extension or renewal of the contract, and (2) in the event that negotiations during the exclusive negotiating period are not successful, to provide the regional sports network the opportunity to retain the local television rights if it matches any deal made by a bona fide competing regional sports network. *Id.* ¶ 30.

These exclusive negotiation rights and rights of first refusal constitute valuable consideration received by a regional sports network in exchange for the tens of millions of dollars in rights fees paid by the network to the team. These contractual provisions also benefit professional sports teams by providing regional sports networks with the incentive to make the substantial financial expenditures necessary to create, market and build a lasting and successful network that can afford to pay significant rights fees. *Id.* ¶¶ 30-31.

B. The 1994 Agreement Between HTS and the Orioles

In the summer of 1993, a limited partnership formed and controlled by Baltimore attorney Peter Angelos (Defendant Orioles), successfully bid to purchase the Baltimore Orioles baseball franchise. One of the most significant business matters then facing the new Orioles owner was the expiration after the 1993 season of the Orioles' ten-year local television contract with HTS.

Although new to the baseball business, Mr. Angelos understood the legal and financial significance of local pay television contracts with regional sports networks and the revenues generated from such contracts. With the contract between HTS and the Orioles set to expire, the

Orioles refused to engage in negotiations with HTS for a long-term contract that is typical of most professional sports team contracts with regional sports networks. Instead, the Orioles insisted on negotiating a short-term contract, so that the expiration of the Orioles-HTS television contract would coincide with the expiration of similar local pay television contracts running through the 1995-1996 season between HTS and the Washington Bullets (now Wizards) and Washington Capitals. *Id.* ¶¶ 33-34.

On January 1, 1994, the Orioles entered into an exclusive agreement (the “1994 Agreement”) with HTS’s then-parent company – Westinghouse Broadcasting Company, Inc. (“WBC”) – to telecast Orioles games on pay television. The 1994 Agreement had a term of three years, expiring on March 31, 1997. By timing the expiration of their contract to coincide with those of the Bullets and Capitals, the Orioles created a scenario that potentially would (a) allow the Orioles to own in whole or in part a new regional sports network that would televise all three local professional sports teams games, or (b) induce a new regional sports network to start a bidding war with HTS for the Orioles’, Bullets’ and Capitals’ television rights. *Id.* ¶¶ 32, 34.

Like every other agreement that the HTS network previously had entered into with the Orioles, Bullets or Capitals, the 1994 Agreement included exclusive negotiation period and right of first refusal provisions. In particular, Section 15.1 of the 1994 Agreement provided that “[d]uring the three-month period commencing on October 1, 1995 and ending on December 31, 1995, the Orioles and [HTS] shall negotiate exclusively with each other and with no other party with respect to acquiring additional years of Pay Television Rights.” Section 15.1 further provided that if no agreement was reached during the exclusive negotiating period, “[HTS] shall have the right of first refusal with respect to the Pay Television Rights” for the 15 month period

beginning on January 1, 1996 and ending on March 31, 1997. Under the right of first refusal provision, HTS had the right to match any bona fide offer from a third party to telecast Orioles games on local pay television within 60 days of notice of such offer. *Id.* ¶ 35.

Because the broad exclusive renegotiation right and right of first refusal set forth in Section 15.1 would not have permitted the Orioles to transfer the rights to Orioles games to a new regional sports network owned in whole or in part by the Orioles, the Orioles negotiated significant “exceptions” to these rights. In particular, Section 15.2 of the 1994 Agreement provided that neither the exclusive negotiation right nor right of first refusal provisions in Section 15.1 would apply if: (1) the Orioles decided to retain their local pay television rights, and produced and distributed Orioles games themselves to pay television outlets; (2) the Orioles licensed their pay television rights to a third party venture in which the Orioles or Peter Angelos owned at least a 38% equity interest and where “major decisions” by the venture required the Orioles’ approval; or (3) the Orioles decided to retain their pay television rights, not license them to any third party, but instead contract with one or more third parties in which the Orioles or Peter Angelos owned at least a 38% interest to produce and distribute Orioles games to pay television outlets. *Id.* ¶ 36.

C. **The 1996 Agreement Between HTS, the Orioles and TCR**

Pursuant to the 1994 Agreement, HTS continued its exclusive local pay television telecasts of Orioles games during the 1994-1996 seasons. At the end of the exclusive negotiating period provided for in the 1994 Agreement, the Orioles negotiated in the summer of 1996 with Fox/Liberty Networks (“Fox/Liberty”) to create a new regional sports network that would telecast, among other things, Orioles games on local pay television. On July 19, 1996, this new

network, Mid-Atlantic Sports Network, L.L.C., entered into a ten-year agreement (the “1996 Agreement”) for the Orioles’ local pay television rights.² The 1996 Agreement provided that Mid-Atlantic Sports Network, L.L.C. would be owned in part by the Baltimore Orioles or entities controlled by the Orioles. Soon after its execution, the Orioles forwarded a copy of the 1996 Agreement to MLB for its review and approval pursuant to MLB rules. *Id.* ¶¶ 37, 44.

Defendant TCR Sports Broadcasting Holding, L.L.P. executed the 1996 Agreement along with the Orioles. *Id.* ¶ 37. As its name suggests, TCR was a “holding company” that was registered on July 19, 1996 – the same date the new Mid-Atlantic Sports Network L.L.C. was formed – to “license and sublicense” Orioles television rights. Exh. 1 (“TCR Certificate”). Because TCR was a shell entity with no substantive function or assets, the Orioles guaranteed all of TCR’s obligations under the 1996 Agreement. *See* Exh. 1C to Orioles/TCR Mot. TCR took the form of a limited liability partnership, and Peter Angelos signed on TCR’s behalf as one of the limited liability partners in TCR.³ Mr. Angelos also executed the 1996 Agreement on the Orioles’ behalf, signing as president of the Orioles’ general partner, Baltimore Orioles, Inc. (“BOI”).

The 1996 Agreement raised the annual rights fee to be paid to the Orioles by more than 300% and, as part of the consideration in return, contained exclusive negotiation and right to

² On the same day that the Orioles’ agreement was executed, the Bullets and Capitals also entered into agreements with Mid-Atlantic Sports Network, L.L.C. for the local pay television rights to Bullets and Capitals games. Am. Compl. ¶ 38.

³ Because Defendants have not yet begun producing documents in discovery, CSN does not know the identity of the TCR partners at the time of the 1996 Agreement or even the identity of all of the partners in TCR today after execution of the 2005 Agreement, though Mr. Angelos also executed the 2005 Agreement on TCR’s behalf.

match provisions for the new network *without any of the exceptions found in the 1994 Agreement*. Fox/Liberty intentionally drafted a strong right to match provision in the 1996 Agreement (as they did in similar agreements with the Bullets and Capitals) so that the Orioles could not evade triggering these provisions as they had attempted through the 1994 exceptions and through the very formation of Mid-Atlantic Sports Network, L.L.C. itself. In particular, Section 16 of the 1996 Agreement provided:

Right to Match. Prior to the last year of the Term, MASN has the right to negotiate exclusively and during the last year nonexclusively for an extension of this Letter Agreement or a new agreement. If Owner and MASN do not reach an agreement and Owner thereafter receives a bona fide written offer from a third party for the telecast rights for the games of the Team, Owner shall promptly forward such offer to MASN and MASN shall have the right to match such offer within thirty (30) days thereafter and obtain the offered rights. In order to allow for a fair comparison of offers, Owner agrees to entertain only those offers for the rights for the games of the Team which are for a fixed term of no less than three (3) years and in which all elements are reasonably reducible to a cash value, matchable in cash, and reasonably related to the grant of rights therein. This provision will survive expiration of this Letter Agreement.

Am. Compl. ¶¶ 41-42.

Besides the lack of any exceptions, this provision was further strengthened by requiring that any offer by a competing network be for a minimum three-year term and be reducible to cash terms – provisions again designed to guarantee that the right to match could not be frustrated or otherwise evaded through the act of creating an entity owned in whole or in part by the Orioles.

While Fox/Liberty believed it had an ironclad agreement with the Orioles that met the exceptions contained in the 1994 Agreement, and thus did not trigger the right of first refusal

provision, the Orioles apparently believed otherwise. On July 22, 1996, just three days after the Orioles executed the 1996 Agreement with Fox/Liberty, the Orioles tendered the 1996 Agreement to HTS pursuant to the right of first refusal, *characterizing the 1996 Agreement as between Mid-Atlantic Sports Network, L.L.C. and the Orioles, through TCR. Id.* ¶ 45. The Bullets and Capitals likewise tendered their agreements with Fox/Liberty to HTS pursuant to right of first refusal provisions. On September 17, 1996, HTS notified the Orioles, Bullets and Capitals that it had decided to match Fox/Liberty’s respective agreements with the teams. Had HTS not matched these agreements, it would have gone out of business. *Id.* ¶¶ 46-48.

On October 8, 1996, HTS, the Orioles and TCR executed an Agreement Acknowledging Acceptance (“1996 Acceptance”) of the 1996 Agreement that became part of the 1996 Agreement. *See* Exh. 1C to Orioles/TCR Mot. Therein, the parties expressly acknowledged that “on July 19, 1996, *the Orioles* and Mid-Atlantic Sports Network LLC (‘MASN’) entered into a Telecast Agreement [the 1996 Agreement] concerning the Pay Television Rights of the Orioles on the terms and conditions specified in the [1996 Agreement].” *Id.* (emphasis added). The 1996 Acceptance also incorporated the terms of the 1996 Agreement, as modified by the parties and/or MLB, and substituted “HTS” for Mid-Atlantic Sports Network, L.L.C. in all instances. The 1996 Acceptance also provided further indications that the Orioles, not TCR, were the integral party to the 1996 Agreement, specifically that: (1) the Orioles shall be subject to the terms and conditions of the 1996 Agreement; (2) the Orioles acknowledged that HTS’s acceptance of the 1996 Agreement was valid, and agreed to act in a manner consistent with that acknowledgment; (3) HTS agreed to indemnify the Orioles for liabilities arising out of the 1996 Agreement; and (4) HTS agreed to pay the Orioles an additional \$10 million in fees in lieu of the

ownership interest provision in the 1996 Agreement with Fox/Liberty. *See* Exh. 1C to Orioles/TCR Mot.

Within weeks, Fox/Liberty filed suit against the Orioles, Bullets and Capitals, alleging, in part, that the 1996 Agreement with the Orioles and TCR was “not subject to a right of first refusal by . . . HTS pursuant to the [1994] Agreement because it falls within the exception contained in Section 15.2 of the Agreement.” Complaint ¶ 85, *Mid-Atl. Sports Network, L.L.C. v. Wash. Bullets L.P., et al.*, No. CA-08211 (D.C. Super. Ct. Oct. 11, 1996) (“Fox/Liberty 1996 Complaint” attached as Exhibit 2). The parties settled the lawsuit several months later and HTS stepped into all of the rights and obligations in the 1996 Agreement, including the right to match.

In 2000, Comcast Corporation, through its wholly-owned subsidiaries, acquired all the partnership interests in HTS, and thereby acquired all of HTS’s rights in the 1996 Agreement. After the HTS acquisition, the HTS name was changed to CSN. Am. Compl. ¶ 49. CSN continues to operate today as the exclusive regional sports network televising Orioles games on local pay television.

D. The 2005 Agreement Between MLB, the Orioles, TCR and the Washington Nationals To Form MASN

At or around the beginning of the 2005 MLB season, the Orioles, TCR, MLB and the Washington Nationals entered into an agreement to form a new joint venture. Specifically, on March 31, 2005, MLB issued a press release entitled “MLB, Orioles reach agreement” that described the creation of the new joint venture as part of a “settlement” between the Orioles and MLB to resolve the Orioles’ long-standing opposition to a baseball franchise playing in Washington, D.C.:

Both clubs have agreed to form a joint venture designed to insure that fans throughout the Orioles' and Nationals' home television territory can continue their allegiance to the American League club, while also giving them a team to root for in the National League. The joint venture, backed by MLB, will guarantee the Nationals a fair market value for the club's broadcasting rights, as well as normal protections concerning the quality and frequency of telecasts.

Id. ¶¶ 53-54.

This joint venture, apparently MASN, which Defendants now claim is but a new trade name registered by TCR on April 7, 2005, has been created as a new regional sports television network to produce and exhibit on local pay television Washington Nationals games beginning in the 2005 season and Orioles games beginning in the 2007 season. It is in every respect a new entity that has acquired the Orioles' and Nationals' television rights with a new partner for a new purpose. MASN is jointly owned by the Orioles and MLB (in its capacity as owner of the Nationals). MASN is currently 90% owned by the Orioles and 10% owned by MLB. Starting in five years, the ownership structure of MASN will gradually change by one percent per year until such time as the Orioles own a 67% interest and MLB (or its transferee) will own a 33% interest in MASN. *Id.* ¶ 55. There is no term to the 2005 Agreement; apparently, the Orioles and Nationals have agreed to transfer their future television rights to MASN in perpetuity.

MLB reportedly has agreed to pay \$75 million, in addition to contributing all of the Nationals' television rights, for its ownership and/or economic interest in MASN (although the version of the 2005 Agreement submitted by the Orioles and TCR redacts this information). In connection with MLB's sale of the Nationals' franchise, MLB reportedly has asked potential owners to submit two separate bids: one bid for the Nationals' franchise, and a second bid that will value MLB's interest in MASN. MASN reportedly has agreed to pay the Nationals a fee of

\$21 million annually, subject to adjustment over time, for the right to televise Nationals games locally on pay television for the foreseeable future (again this information is redacted from the 2005 Agreement submitted by the Orioles and TCR). *Id.* ¶¶ 56-57. According to the terms of the 2005 Agreement, MASN has guaranteed the Orioles the same rights fees as the Nationals, regardless of whether the Nationals' television rights are worth more than the Orioles' rights. *See* 2005 Agreement ¶ 2.J.3 (attached as Exh. 2 to Orioles/TCR Mot.).

The 2005 Agreement also expressly provides that the Orioles will transfer all local Orioles television rights not owned by CSN to MASN, beginning with the 2007 season and thereafter. *See id.* ¶ 2.D (“The Orioles *shall grant and license* the right and the obligation to the telecast of their Available Games to [MASN].”) (emphasis added); *id.* (“It is expressly understood and agreed, however, that for 2005 and 2006, certain of the Orioles games are currently under contract to a third party cable distributor and those games are not available for telecast by [MASN] until 2007. The telecast rights of those Orioles' games which are available in 2005 and 2006 for telecast and not contracted to a third party cable distributor *shall be granted and licensed to [MASN]* for over-the-air telecasts, or as otherwise permitted as a reservation of rights in the Orioles' third party contract.”) (emphasis added); *id.* ¶ 2.E (“The Nationals and the Orioles shall cooperate with [MASN] in the sale, promotion and distribution of their games for telecast by [MASN]”); *id.* ¶ 2.G (“The Nationals and the Orioles shall be paid an annual rights fee from [MASN].”); *id.* (providing that the Orioles shall be paid specific rights fees (redacted) to be agreed upon between the Orioles and MASN for 2005 and 2006, and thereafter the Orioles shall receive the same rights fees as the Nationals). There is no evidence that the

Orioles transferred their local pay television rights to the new TCR/MASN prior to the 2005 Agreement.

MASN has, in turn, commenced negotiations with local cable and satellite television operators regarding carriage of the new regional sports network, including the telecasts of Orioles games beginning with the 2007 season. Am. Compl. ¶ 58.

NATURE OF ACTION

As the 1996 Agreement nears the end of its term, Peter Angelos and the Orioles have elected to take the opposite position from that taken when the deal was signed. In 1996, the Orioles acknowledged that they were a party to the 1996 Agreement and that their transfer of television rights to Mid-Atlantic Sports Network, L.L.C., had triggered HTS's right to match. Today, having threatened and pressured MLB to enter into a lopsided agreement, the Orioles take the opposite position, arguing that no Orioles television rights have been transferred. Ironically, the impetus behind Mr. Angelos' latest grab at the television rights pie has been the very thing he fought for years to prevent – a professional baseball franchise in Washington, D.C.

The Orioles' transfer of their future pay television rights to the new regional sports network, MASN, amounts to (1) a breach of the 1996 Agreement; (2) a breach of the implied covenant of good faith and fair dealing; and (3) tortious interference with the 1996 Agreement. For the reasons set forth below, none of these claims is subject to dismissal.

STANDARD OF REVIEW

In considering Defendants' motions to dismiss, the Court "must assume the truth of all well-pleaded facts and allegations in the complaint, as well as all inferences that can reasonably be drawn from them." *Morris v. Osmose Wood Preserving*, 340 Md. 519, 531, 667 A.2d 624,

630 (1995). Dismissal is proper “only when the alleged facts and permissible inferences, even if later proven to be true, would fail to afford relief” to CSN. *Id.*

ARGUMENT

I. THE ORIOLES’ TRANSFER OF FUTURE TELEVISION RIGHTS TO MASN HAS BREACHED THE 1996 AGREEMENT.

Defendants argue they have not breached CSN’s right to match because TCR has not licensed any Orioles television rights, but instead the future television rights to Orioles games “remain” with TCR. Orioles/TCR Mot. at 8-9. Defendants further argue that the sale of an interest in TCR to MLB, does not as a matter of law amount to a sale of the Orioles’ television rights for purposes of triggering the right to match. Orioles/TCR Mot. at 10-14.

As explained below, Defendants’ factual arguments are incorrect and, at the very least, present disputes that cannot be resolved on a motion to dismiss. The limited facts before the Court confirm CSN’s allegation that (1) the Orioles, not TCR, have transferred the Orioles’ future local pay television rights to the new regional sports network, MASN, and (2) the Orioles were a party to the 1996 Agreement that provides CSN a right to match such a transfer. Where a genuine issue of material fact arises as to whether an interest was transferred that would trigger a right of first refusal, the matter may not be disposed of on a motion to dismiss. *Esca of Balt., LLC v. Colkitt*, 164 F. Supp. 2d 584, 588 (D. Md. 2001) (denying the parties’ motions for summary judgment); *Mieuli v. DeBartolo*, No. C-00-3225 JCS, 2001 U.S. Dist. LEXIS 22518 (N.D. Cal. Jan. 16, 2001) (court denies motion to dismiss because Court cannot say as a matter of law that Letter Agreement tag-along provision does not apply to transfers of indirect interests). Similarly, granting a motion to dismiss is not proper where there is an ambiguity in a contractual

term such that it is susceptible to more than one reasonable determination. *E.g., St. Paul Fire & Marine Ins. Co. v. Pryseski*, 292 Md. 187, 197-99, 438 A.2d 282, 287-88 (1981).

Moreover, Defendants' case law citations regarding the legal impact of the sale of an interest in TCR to MLB fare no better. The unique exclusive negotiation and right to match provisions at issue here, the circumstances in which these provisions were negotiated and the course of prior dealings between the parties easily distinguish the present case from the cases cited by Defendants. Although Defendants have tried mightily to devise an elaborate scheme to prevent CSN from receiving the benefits of the rich bargain the Orioles were happy to strike in 1996, Defendants cannot credibly argue that, at the motion to dismiss stage, the right to match provision at issue here – designed to provide CSN with the opportunity to match any deal that the Orioles make for future television rights with a new competing regional sports network – has not been triggered by the Orioles' transfer of their rights to MASN.

A. The Orioles Transferred Television Rights in 1996 to CSN and Have Transferred Future Television Rights to MASN in 2005 Thereby Triggering the 1996 Exclusive Negotiation and Right To Match Provisions.

A corporate shell game cannot obscure the fundamental factual, economic and legal reality that the Orioles – not TCR – were the contracting party that licensed Orioles' television rights for purposes of the 1994 and 1996 Agreements with HTS. Nearly a decade later, the Orioles again are the party that has transferred television rights as part of the 2005 Agreement with MLB. Under these circumstances, this Court cannot dismiss the Amended Complaint.

First, TCR did not exist in 1994; indeed, TCR was not created until July 19, 1996 – the date of the 1996 Agreement. Importantly, TCR's initial Certificate of Limited Liability Partnership filed with the Maryland State Department of Assessments and Taxation provides that

TCR was established to “license and sublicense sports broadcasting and related programming.” See Exh. 1 (“TCR Certificate”). TCR was not registered to operate as a regional sports network.

Second, the same person – Peter Angelos – executed the 1996 Agreement on behalf of both the Orioles and TCR. He did so as a “partner” in TCR and as president of Baltimore Orioles, Inc. (the general and managing partner of the Orioles). Because TCR was a wholly-owned Orioles’ shell company with no assets, the Orioles agreed to guarantee all of TCR’s obligations under the 1996 Agreement, including the right to match provision. See Exh. 1A to Orioles/TCR Mot. ¶ 20. The 1996 Agreement required TCR to perform various obligations that, by their nature, only the Orioles could perform – not a holding company set up to license television rights on the day of the 1996 Agreement. These obligations included: (1) providing notice to the network in the event that the Orioles planned to discontinue operations or move the team out of the Washington-Baltimore metropolitan area, *id.* ¶ 10c; (2) granting the network the right to use the Orioles’ team name, insignia and marks for the purpose of promoting Orioles telecasts, *id.* ¶ 8a; (3) using reasonable efforts to provide Baltimore Orioles players, team personnel and front office officials to the network at the preferred team in-house rate for non-commercial promotions, photo shoots and appearances, *id.* ¶ 18a; (4) providing in-stadium signage for the new network, *id.* ¶ 9a; and (5) providing promotional literature about the Orioles to the new network to include in mailings to network subscribers, *id.* ¶ 9f. TCR, as a nondescript holding entity, could not alone perform these obligations.

Third, on July 22, 1996, just three days after execution of the 1996 Agreement, the Orioles forwarded a copy of that Agreement to HTS pursuant to its right of first refusal provision. As part of the transmittal of the 1996 Agreement to HTS, the Orioles described the

1996 Agreement as “*between Mid-Atlantic Sports Network L.L.C. and the Baltimore Orioles, through TCR.*” Am. Compl. ¶ 46 (emphasis added). Again, the focus was on the Orioles entering into this agreement, using TCR as a holding entity. Notably, in forwarding the 1996 Agreement to HTS pursuant to its right of first refusal, the Orioles treated themselves and TCR as interchangeable entities. Even though TCR was not a party to the 1994 Agreement, its purported licensing of rights in 1996 triggered HTS’s right of first refusal from the 1994 Agreement with the Orioles.

Fourth, HTS matched the 1996 Agreement on September 17, 1996. Three weeks later, on October 8, 1996, HTS and the Orioles and TCR executed the 1996 Acceptance that was incorporated into the 1996 Agreement with HTS. This part of the 1996 Agreement treated the Orioles and TCR “collectively” as the Orioles. Exh. 1C to Orioles/TCR Mot. Moreover, the 1996 Acceptance described the 1996 Agreement as between the Orioles and Mid-Atlantic Sports Network, L.L.C. (making no mention of TCR) and expressly provided that the Orioles and HTS “shall be subject to the terms and conditions of the [the 1996] Agreement.” *Id.* On October 9, 1996 and December 4, 1996, the Orioles (not TCR) and HTS executed letter agreements providing for additional modifications to the 1996 Agreement. Exhs. D&E to Orioles/TCR Mot. In short, all of the dealings surrounding the 1996 Agreement necessarily involved the Orioles.⁴

Fifth, contrary to Defendants’ assertions, TCR had no pay television rights to Orioles games to “retain” prior to the 2005 Agreement. The 2005 Agreement expressly provides that the Orioles, not TCR, *shall* contribute all Orioles television rights to the creation of MASN and

⁴ At this stage of the proceedings, there is no evidence that in 1996 TCR had any identity, function or existence separate from the Orioles or that the Orioles executed any formal license or transfer of television rights to TCR in 1996.

affirmatively perform other obligations to advance the Orioles' interest in the new TCR. *See* 2005 Agreement (Exh. 2 to Orioles/TCR Mot.) ¶¶ 2.D, 2.E, 2.G, 2.P.1. The new TCR is in fact (a) conducting entirely different business operations – a regional sports network as opposed to licensing or sublicensing sports broadcasting programming, (b) purportedly operating under an entirely different name – MASN – recently registered after the purported effective date of the 2005 Agreement, and (c) a new entity owned in part by MLB. The new TCR – rather than retaining the Orioles' pay television rights – has entered into the 2005 Agreement to *acquire* Orioles and Nationals television rights. The old TCR essentially no longer exists.

Every Orioles pay television licensing agreement entered into since Peter Angelos purchased the team clearly demonstrates that the Orioles – not TCR – were the party transferring television rights to regional sports networks. These agreements make clear that in 1996, TCR was nothing more than a shell entity controlled by the Orioles.⁵ It was understood by all parties that, under the 1996 Agreement between the Orioles, TCR and HTS, the Orioles were licensing their local pay television rights to HTS for a 10-year period and that if the Orioles licensed such future rights to another regional sports network, the right to match provision would be triggered.

The parties further understood that for the right to match provision to have any meaning at all, it would have to apply to any transfer of the Orioles' future pay television rights – whether directly by the Orioles or indirectly by TCR. Yet the Orioles now contend that they are not a party to the 1996 Agreement, even though they have always owned the future television rights implicated by the right to match provision. Defendants' interpretation would mean that no

⁵ At this stage, prior to any discovery, one can only speculate as to why TCR was formed in the first place.

transfer by the Orioles of these rights could ever trigger CSN's right to match because the Orioles, not TCR, own the Orioles' future television rights.

These factual issues are, by themselves, grounds for denying Defendants' motions directed to CSN's breach of contract and tortious interference claims. Defendants' arguments as to these claims are premised upon the disputed assertion that there has been no transfer of Orioles television rights that could under any set of factual circumstances trigger the 1996 right to match and exclusive negotiation right provisions. The facts set forth above are to the contrary.

B. CSN Has Posited a Reasonable Interpretation of the 1996 Agreement in Support of its Breach of Contract Claim that Cannot Be Rejected on a Motion To Dismiss.

This Court also must deny Defendants' motions because, at this stage of the proceedings, this Court cannot conclude that (1) Defendants' interpretation of the 1996 Agreement is the only reasonable interpretation, and that CSN has failed to allege a reasonable interpretation of the 1996 Agreement, or (2) alternatively, the 1996 right to match provision is unambiguous in light of extrinsic evidence. Specifically, the various documents evidencing the 1996 Agreement demonstrate that the Orioles were a party to the Agreement and that any transfer by the Orioles of future television rights triggered the right to match provision. Moreover, the purpose, intent and effect of the exclusive negotiation and right to match provisions was to provide CSN with the opportunity to match any transaction that involved the Orioles' local pay television rights beginning with the 2007 season.

Defendants suggest that this Court should focus narrowly on the use of the word "Owner" in the right to match provision in the 1996 Agreement – which Defendants claim can implicate only TCR and does not extend to a transfer of rights by the Orioles – and selected parts of the

2005 Agreement. The Court is not obliged, however, to turn a blind eye to the 1996 Agreement as a whole, as well as other critical facts and circumstances that evidence the parties' intentions and course of dealing.

“The cardinal rule of contract interpretation is to effectuate the intentions of the parties.” *Owens-Ill., Inc. v. Cook*, 386 Md. 468, 497, 872 A.2d 969, 985 (2005). To “ascertain the parties' intent, the court must construe the instrument as a whole.” *Catalina Enters., Inc. Pension Trust v. Hartford Fire Ins. Co.*, 67 F.3d 63, 65 (4th Cir. 1995) (quotation omitted); *see also Owens-Ill.*, 386 Md. at 497, 872 A.2d at 985-86 (“In seeking to discern the parties' intention, we construe the contract as a whole, giving effect to every clause and phrase, so as not to omit an important part of the agreement.”) (citations omitted). In this regard, the court “must first determine from the language of the agreement itself what a reasonable person in the position of the parties would have meant at the time it was effectuated.” *Owens-Ill.*, 386 Md. at 496, 872 A.2d at 985 (quotation omitted). In addition to the contract itself, the court also may consider “the character of the contract, its purpose, and the facts and circumstances of the parties at the time of execution.” *Heat & Power Corp. v. Air Prods. & Chems., Inc.*, 320 Md. 584, 596, 578 A.2d 1202, 1208 (1990) (quoting *Pac. Indem. Co. v. Interstate Fire & Cas. Co.*, 302 Md. 383, 388, 488 A.2d 486, 488 (1985)); *see also Catalina Enters.*, 67 F.3d at 65 (same); *Stanbalt Realty Co. v. Commercial Credit Corp.*, 42 Md. App. 538, 545, 401 A.2d 1043, 1047 (1979) (“One is to admit extrinsic evidence of the negotiations leading up to the formulation of a contract, of the circumstances of the parties at the time of entering into the contract and of the parties' own construction of the contract in order to discern [the parties'] intention[s].”). The Court also may examine the course of dealing and performance by the parties and any operative usages of trade.

See Restatement (Second) of Contracts § 209 cmt. a (“[B]oth integrated and unintegrated agreements are to be read in the light of the circumstances and may be explained or supplemented by operative usages of trade, by the course of dealing between the parties, and by the course of performance of the agreement.”); *Gov’t of U.K. v. Northstar Servs., Ltd.*, 1 F. Supp. 2d 521, 524 (D. Md. 1998) (“A general principle of contract law allows for the parties’ course of dealing to ‘give meaning to’ the terms of a contract.”) (quoting *Restatement (Second) of Contracts* § 223).

The Court may consider all of these circumstances and practices not only in determining the parties’ intent and proper interpretation of the contract, but also in deciding whether there is any ambiguity in its terms. The Court need not make an initial finding that any contractual provision is ambiguous before considering this evidence. *See Admiral Builders Sav. & Loan Ass’n v. S. River Landing, Inc.*, 66 Md. App. 124, 129, 502 A.2d 1096, 1099 (1986) (“[I]n the initial determination of ambiguity, *vel non*, extrinsic evidence need not be excluded from the trial court’s consideration (so long as that evidence does not vary, alter, or contradict the plain meaning of the writing) because, until the evidence is heard, ambiguity or the lack thereof cannot be fully appreciated.”); *Coakley & Williams Constr., Inc. v. Structural Concrete Equip., Inc.*, 973 F.2d 349, 353 n.2 (4th Cir. 1992).

1. The nature and purpose of exclusive negotiation and right to match provisions

In recognition of the significant value that regional sports networks place on professional sports television rights, they frequently negotiate broad exclusive renegotiation and right to match provisions as part of their contracts with teams. The purpose, intent and effect of these contractual provisions is to provide a regional sports network the opportunity to retain the

valuable professional sports programming that is the foundation of the network so long as it is willing to offer competitive terms. Other courts have acknowledged that rights of first refusal are common in television programming agreements. *E.g.*, *Fox Sports Net Minn., LLC v. Minn. Twins P'ship*, No. 01-961 (DSD/SRN), 2002 U.S. Dist. LEXIS 8896, at *20 (D. Minn. May 6, 2002); *Dover Downs, Inc. v. ESPN, Inc.*, C.A. No. 11830, 1991 Del. Ch. LEXIS 76, at *5-8 (Del. Ch. Apr. 26, 1991); *see also USA Cable v. WWFE, Inc.*, C.A. No. 17983, 2000 Del. Ch. LEXIS 87, at *50 (Del. Ch. June 27, 2000), *aff'd*, 766 A.2d 462 (Del. 2000).

Most businesses, including national television networks that televise both sports and non-sports programming, may acquire the raw materials or inputs necessary to sustain their business operations from any number of vendors. Regional sports networks, by contrast, primarily attract viewers through the telecast of live local professional sports events exhibited by a finite number of local professional sports teams. Without contracts to telecast these events, a regional sports network such as CSN simply is not viable. Accordingly, so that regional sports networks have the incentive to invest the significant sums of money necessary to build, grow and promote a successful network, they typically insist on right to match and exclusive negotiation provisions.

Sports teams benefit from these provisions as well. By allowing a team to negotiate with a rival regional sports network for higher rights fees, a right to match ensures that the team receives a license fee based on competitive market rates. Moreover, because these provisions entice regional sports networks to invest in and build successful networks, networks work in partnership with teams to provide valuable promotion and advertisement of the team.

2. The circumstances surrounding and the course of dealing established by the negotiation and execution of the 1994 and 1996 Agreements

The 1994 Agreement between the Orioles and HTS contained an exclusive negotiation and right of first refusal provision similar to the right to match provision contained in the 1996 Agreement. However, because the Orioles recognized that these provisions conflicted with their plan to explore the possibility of starting a rival sports network or owning a significant equity interest in such a network, the Orioles negotiated express exceptions. Under these exceptions, HTS had no right to match if (a) the Orioles retained their rights and produced the games themselves, (b) the Orioles licensed their rights to a third party venture and Peter Angelos had at least 38% ownership interest in the venture; or (c) the Orioles retained their rights and contracted with a third party for the production and distribution of Orioles games to pay television outlets. Am. Compl. ¶ 36.

In the summer of 1996, the Orioles negotiated with Fox/Liberty to create a new regional sports network (operated by Mid-Atlantic Sports Network, L.L.C.) that would televise Orioles games beginning with the 1997 season. As part of the agreement, the Orioles received a “38% membership interest” in the new network. 1996 Agreement ¶ 14. The Washington Bullets and Washington Capitals entered into similar agreements with the new regional sports network, and all three teams provided HTS with the right to match their agreements. Once HTS matched the agreements, Fox/Liberty subsequently sued the Orioles and the other teams, claiming against the Orioles that their agreement satisfied the exceptions in the 1994 Agreement and thus did not trigger the right of first refusal provision.

The 1996 Agreement negotiated by the Orioles and Fox/Liberty contains the broad right to match provision at issue in the present action. However, unlike the 1994 Agreement, the 1996 Agreement does not contain the significant “exceptions” to the right to match that would permit the Orioles to avoid this provision by gaining an ownership interest in a new rival sports network such as MASN. This was no accident given the circumstances in which it was negotiated. Specifically, Fox/Liberty understood that its successful acquisition of the Orioles’ local pay television rights potentially depended upon not triggering HTS’s existing right of first refusal. Believing that it had accomplished this by meeting the exceptions to the 1994 Agreement, Fox/Liberty made certain that the right to match provision it negotiated in the 1996 Agreement did not contain such exceptions. And having agreed to match an agreement that provided for a 300% increase in the rights fees to be paid to the Orioles, HTS understood that the 1996 Agreement contained significantly stronger right to match provisions than the 1994 Agreement.

This evidence illustrates the circumstances surrounding the negotiation and execution of the 1996 Agreement as well as the course of the parties’ dealing from the inception of their relationship. A course of dealing “is a sequence of previous conduct between the parties to an agreement which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.” *Restatement (Second) of Contracts* § 223(1); *see also Citiroof Corp. v. Tech Contracting Co.*, 159 Md. App. 578, 590 n.9, 860 A.2d 425, 432 n.9 (2004) (same). The Restatement provides that “a course of dealing between the parties gives meaning to or supplements or qualifies their agreement.” *Restatement (Second) of Contracts* § 223(2); *see also Pavel Enters., Inc. v. A.S. Johnson Co.*, 342 Md. 143, 167 n.30, 674 A.2d 521, 533 n.30 (1996) (course of dealing and usage of trade evidence “provide strong indices of the

reasonableness of a [party's] expectations"). "There is no requirement that an agreement be ambiguous before evidence of a course of dealing can be shown, nor is it required that the course of dealing be consistent with the meaning the agreement would have apart from the course of dealing." *Restatement (Second) of Contracts* § 223 cmt. b; *see also Gov't of the U.K.*, 1 F. Supp. 2d at 524.⁶

Exceptions like those found in the 1994 Agreement – but not in the 1996 Agreement – are required to prevent an agreement creating a new regional sports network owned in whole or in part by a team from triggering a right to match provision like the one at issue here. Indeed, the 1994 right of first refusal and the accompanying exceptions closely resemble a right of first refusal provision in a 1998 telecast agreement between Fox Sports Net Minnesota and the Minnesota Twins that also was the subject of litigation. *Fox Sports Net Minn.*, 2002 U.S. Dist. LEXIS 8896, at *20. There, the governing agreement had a right of first refusal provision that gave Fox the right to match "a bona fide written offer from a third party." *Id.* But the same agreement set forth exceptions to Fox's right of first refusal where the Twins decided to produce and sell advertising on the telecasts of games by itself or through any entity or entities that were either controlled or majority-owned by the Twins, its owners and/or investors organized by its owners. *Id.* at *20-21. The litigation arose when Victory Sports, an affiliate of the Twins owned

⁶ The Maryland Code also supports the use of course-of-dealing evidence to interpret a contract involving a sale of goods, regardless of whether the provision is ambiguous. The Code provides that "[a] course of dealing is a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct." Md. Code Ann., Com. Law I § 1-205(1); *see also Thomas J. Kline, Inc. v. Lorillard, Inc.*, 878 F.2d 791, 794 (4th Cir. 1989) ("Maryland expressly allows parol evidence of 'course of dealing,' 'usage of trade' or 'course of performance' to explain written memoranda, so long as such evidence does not contradict the plain language of an agreement.").

by the same owner as the team, negotiated a rights deal with the Twins. The court found that the exception to the right of first refusal applied and therefore the Twins had not breached Fox's right of first refusal by entering into an agreement with a new regional sports network affiliated with the Twins. *Id.* at *21. Notably, the court's interpretation of the exceptions in this agreement did not question that the new network was a third party notwithstanding the team's interest in the network.

Defendants make little or no reference to the nature of right of first refusal contracts, the circumstances under which the 1994 and 1996 Agreements were negotiated, or the parties' prior dealings or industry usage and custom, instead suggesting that the Court should ignore all these facts. The Orioles and TCR assert that CSN "is plainly wrong in its attempt to divine a 'clear intent' from an expired 1994 agreement between HTS and the Orioles to indicate that CSN had the 'right to determine whether or not to televise Orioles games on local pay television beyond 2006.' That expired agreement between parties in very different circumstances is completely irrelevant here." Orioles/TCR Mot. at 21. This is legally incorrect and the factual issues raised by Defendants are not properly decided on a motion to dismiss.⁷

When a court interprets a contract, "[b]oth language and conduct are to be understood in the light of the circumstances, including course of dealing or usage of trade or course of performance." *Restatement (Second) of Contracts* § 5 cmt. a; *see also Gov't of the U.K.*, 1 F. Supp. 2d at 524 (general principle of contract law allows for parties' course of dealing to give

⁷ Defendant MLB similarly argues that the circumstances surrounding the negotiation and execution of the 1994 and 1996 Agreements and the parties' prior dealings are "irrelevant" because the 1996 Agreement is not ambiguous. MLB Mot. at 8-9. For the same reasons, MLB's statement of the law is incorrect.

meaning to contract terms; no requirement that contract be ambiguous or that course of dealing be consistent with meaning that would have been given to the contract without the course of dealing). Here, these circumstances strongly support enforcement of CSN's right to match.

At the very least, the circumstances surrounding the negotiation and execution of the 1994 and 1996 Agreements, the parties' prior dealings, and industry custom preclude a conclusion at this stage of the proceeding that the 1996 Agreement is unambiguous. In the threshold determination of ambiguity, "extrinsic evidence need not be excluded from the trial court's consideration (so long as that evidence does not vary, alter, or contradict the plain meaning of the writing) because, until the evidence is heard, ambiguity or the lack thereof cannot be fully appreciated." *Admiral Builders*, 66 Md. App. at 129, 502 A.2d at 1099 (adopting *Restatement (Second) of Contracts* § 214(c) cmt. b); *see also Morgan v. Cohen*, 309 Md. 304, 317-18, 523 A.2d 1003, 1009 (1987).

Whether the court finds an ambiguity is a two-step process:

On the one hand, extrinsic evidence may be offered but, of course, when the proffered evidence fails to convince the judge that the writing is ambiguous, or when the evidence varies, alters, or contradicts the clear meaning of the writing, the parol evidence rule requires that the extrinsic evidence be excluded from the factfinder. On the other hand, when the interpretive evidence can be construed as consistent with the language of the writing, the court may decide, depending on the strength of that evidence, that an ambiguity exists. At that stage, the factfinder may . . . use the extrinsic evidence further, *i.e.*, to resolve the ambiguity.

Admiral Builders, 66 Md. App. at 131, 502 A.2d at 1100 (citation omitted). Here, the proffered evidence is consistent with the language of the 1996 Agreement that the right to match provision would be triggered if the Orioles negotiated a television rights contract with another regional sports network. This Court may not grant Defendants' motions if it determines that there is any

ambiguity in a contract's terms such that it is susceptible to more than one reasonable interpretation.⁸ See *JMP Assocs., Inc. v. St. Paul Fire & Marine Ins. Co.*, 345 Md. 630, 647-48, 693 A.2d 832, 840 (Md. 1997); *St. Paul Fire & Marine Ins.*, 292 Md. at 196-99, 438 A.2d at 287-88; *Truck Ins. Exch. v. Marks Rentals, Inc.*, 288 Md. 428, 433-34, 418 A.2d 1187, 1190 (1980); *GEICO v. De James*, 256 Md. 717, 719-25, 261 A.2d 747, 749-52 (1970).⁹

3. The Court should not adopt Defendants' interpretation that would render the right to match and exclusive negotiation provisions meaningless and produce an unjust result

Defendants' narrow interpretation of the 1996 Agreement effectively nullifies both the right to match and exclusive negotiation provisions. As a matter of law, the Court should not credit this unreasonable and unjust interpretation. See *Towson Univ. v. Conte*, 384 Md. 68, 81, 862 A.2d 941, 948 (2004) (“[C]ourts do not interpret contracts in a manner that would render provisions superfluous or as having no effect.”); *Stanbalt Realty Co.*, 42 Md. App. at 545, 401

⁸ Defendants' motions must be denied if the Court concludes either that (1) the 1996 Agreement is unambiguous and CSN has proffered a reasonable interpretation of the parties' intentions, considering the contract's language, character and purpose, the facts and circumstances surrounding its negotiation and execution, the parties' prior dealings and industry custom, or (2) the 1996 Agreement is ambiguous and extrinsic evidence demonstrates that CSN's proffered interpretation is reasonable. By arguing at this stage of the proceedings that the Court may deny Defendants' motions by finding a possible ambiguity in the terms or meaning of the 1996 Agreement, CSN does not suggest that after discovery has been completed it may not file a motion for summary judgment arguing that its proffered interpretation of the contract is the only reasonable interpretation that could be found by a jury.

⁹ Any ambiguity in the 1996 Agreement must be interpreted against the Orioles and TCR in light of the fact that the 1996 Agreement was negotiated by the Orioles and Fox/Liberty in the first instance and then presented to HTS pursuant to the right of first refusal provision in the 1994 Agreement. “[I]t is a canon of contract construction that ambiguities in the contract are to be construed against the drafter because that party had the better opportunity to understand and explain its meaning.” *Biggus v. Ford Motor Credit Co.*, 328 Md. 188, 223, 613 A.2d 986, 1004 (Md. 1992).

A.2d at 1047 (“[A]n interpretation which is fair and reasonable will be preferred to one which leads to an unreasonable result.”); *City of Baltimore v. Indus. Elecs., Inc.*, 230 Md. 224, 229, 186 A.2d 469, 471 (1962) (“The rule to be applied is that an interpretation which makes a contract fair and reasonable will be preferred to one leading to a harsh or unreasonable result, so that a reading which produces a forfeiture will not be favored.”); *Middlebrook Tech, LLC v. Moore*, 157 Md. App. 40, 66, 849 A.2d 63, 79 (2004) (“The court’s interpretation should not permit an absurd or unreasonable result.”); *see also Restatement (Second) of Contracts* § 203(a) (“[A]n interpretation which gives a reasonable, lawful, and effective meaning to all the terms is preferred to an interpretation which leaves a part unreasonable, unlawful, or of no effect.”).

All parties to the 1996 Agreement understood and expected that either the exclusive negotiation period would yield an agreement between the Orioles and CSN or CSN would be provided a right to match an agreement between the Orioles and another regional sports network such as MASN (i.e., a third party). The parties did not intend that these provisions would have no effect or would never provide any benefit to CSN, yet that is precisely the result if Defendants’ interpretation of the 1996 Agreement is adopted. Faced with conflicting interpretations of a contract, courts have rejected the interpretation that would render a right of first refusal meaningless. *See Williams Gas Processing-Wamsutter Co. v. Union Pac. Res. Co.*, 25 P.3d 1064, 1072-73 (Wyo. 2001) (court refuses to adopt construction of contract that would result in defendant rendering right of first refusal “meaningless”); *Colonie Motors, Inc. v. Heritage Corp.*, 403 N.Y.S.2d 574, 576 (N.Y. App. Div. 1978) (“If this argument were to be accepted, however, the lessor . . . could have circumvented the plaintiff’s right of first refusal as lessee by the simple device of conveying partial interests in the premises. Surely, such a

construction would be unreasonable.”). This fundamental precept of contract interpretation further supports CSN’s claims.

C. The Case Law Cited by Defendants Is Distinguishable.

Defendants argue that the sale of a minority interest in TCR to MLB does not, as a matter of law, amount to a transfer of the telecast rights to future Orioles games sufficient to trigger the right to match provision in the 1996 Agreement. Defendants primarily rely upon two *summary judgment* cases to support this argument – *K.C.S., Ltd. v. East Main Street Land Development Corp.*, 40 Md. App. 196, 388 A.2d 181 (1978), *cert. denied*, 283 Md. 734 (1978), and *Tenneco, Inc. v. Enterprise Products Co.*, 925 S.W.2d 640 (Tex. 1996). Orioles/TCR Mot. at 10-12; MLB Mot. at 8. These cases are distinguishable on their facts.

K.C.S., like a number of the cases cited by Defendants on this point, involved a right of first refusal provision contained in a lease for real property. The right of first refusal gave the tenant – who operated a beauty salon – the right to purchase the leased property if an offer to purchase the property was made to the landlord by a third party during the tenancy. The Court of Special Appeals concluded that the sale of the landlord’s corporate stock to a third party did not trigger the right of first refusal in the lease because title to the property remained with the landlord, albeit a landlord owned by different stockholders. *K.C.S.*, 40 Md. App. at 199, 388 A.2d at 183.

The *K.C.S.* court reached this conclusion based on several observations about the nature of the right of first refusal applicable to the real property at issue. First, the court noted that notwithstanding that the ownership in the landlord had changed, the “[t]enant [was] in no worse position than it was before the sale of the stock. Tenant still possesses all the rights and

privileges conferred on it by the lease, including the ‘right of first refusal’ to purchase the property demised to the [t]enant.” *Id.* Second, the court expressed concerns about the implications of triggering a right of first refusal in every instance where a corporation with a multitude of stockholders sold some number of its shares – a fact that the court noted was “an every day occurrence.” *Id.* at 200, 388 A.2d at 183. Third, the court noted that “[t]he fact that as a result of the stock sale the control of the corporate landlord will be altered did not change the ownership of the East Main Street property.” *Id.*

There is no comparison between the interests at stake in *K.C.S.* and those present here. First, in a commercial property lease, there is no certainty or even expectation that the landlord will sell the property during the course of the tenancy. The right of first refusal only is triggered if the landlord receives an offer to purchase the real property. *E.g., Ace & Co. v. Balfour Beatty PLC*, 148 F. Supp. 2d 418, 425-26 (D. Del. 2001) (court denies defendants’ motion for summary judgment on issue of whether right of first refusal regarding defendant’s business was triggered by sale of defendant’s assets). In a professional sports television rights agreement, there is no question that the rights will be exploited at the conclusion of the agreement. Here, all parties understood that Orioles games would be televised on pay television on a regional sports network during the 2007 season and beyond, which is why the right to match provision was negotiated.

Second, the court in *K.C.S.* noted that the sale of the landlord’s stock did not result in the tenant being worse off than before the sale because the right of first refusal continued in effect. 40 Md. App. at 199-200, 388 A.2d at 183. Here, however, Defendants’ corporate shell game intentionally ensures that a new regional sports network will acquire the Orioles’ future pay television rights without CSN being afforded the chance to exercise its right to match – a

development that will forever prevent CSN from receiving the benefit of the right to match provision. This result desired by Defendants – that CSN’s right to match be vitiated permanently – runs contrary to the intended purpose and effect of the provision that all parties understood would be triggered at some time in the future.

Third, the *K.C.S.* court’s concern regarding restraints on transfers of stock by corporations is not present here. CSN is not arguing, for example, that the sale of the Orioles’ baseball franchise to a new ownership group would trigger its right to match. The provision is implicated where the Orioles sell their future television rights to another regional sports network – a narrow restriction aimed at the specific subject of the 1996 Agreement.

The *Tenneco* case similarly is distinguishable. *Tenneco* involved a right of first refusal applicable to ownership interests in a natural gas liquids fractionation plant. The *Tenneco* court rejected certain of the plant owners’ claim that a sale of the corporate stock in another one of the plant’s owners triggered a right of refusal with regards to a transfer of the corporation’s interest in the plant, holding that (1) courts must narrowly construe rights of first refusal on public policy grounds because such rights restrict the free transfer of stock, and (2) the plant owners could have included in their agreements that a change-of-control in one of the owners triggered the right of first refusal. *Tenneco*, 925 S.W.2d at 646.

These rationales do not apply here. First, as previously noted, CSN does not argue that the right to match provision would be triggered by a sale of the Orioles’ franchise. In that circumstance, the new owners of the franchise would be contractually bound to honor the 1996 Agreement, but the sale of the team would not trigger a right to match regarding the Orioles’ future pay television rights. Second, given the context in which the 1996 Agreement was

negotiated, there was no reason for HTS (or Fox/Liberty Networks) to have even considered negotiating a TCR “change-of-control” provision in the 1996 Agreement. The purpose of the right to match provision in the 1996 Agreement was to guarantee an opportunity to match a deal between the Orioles and another competing regional sports network. Neither HTS (nor Fox/Liberty) could have anticipated that the Orioles would manipulate the ownership in TCR to attempt to defeat this provision, particularly since the team had helped to set up a separate legal entity, Mid-Atlantic Sports Network, L.L.C., to operate the new rival sports network.¹⁰

Finally, Defendants’ argument that acquiring a limited liability partnership interest is no different than acquiring a minority stock interest in a corporation is not persuasive because it ignores a number of unique partnership characteristics that give partners significantly more financial and legal control over a partnership. First, a partner is allocated its share of the partnership’s profits as they are earned and is taxed directly on such profits. A shareholder does

¹⁰ The other cases cited by Defendants are similarly distinguishable. *See, e.g., New Paradigm Software Corp. v. New Era of Networks, Inc.*, No. 99 Civ. 12409, 2002 WL 31749396 (S.D.N.Y. Dec. 9, 2002) (case does not involve interpretation of right of first refusal); *U.S. Cellular Inv. Co. of L.A., Inc. v. GTE Mobilnet, Inc.*, 281 F.3d 929 (9th Cir. 2002) (right of first refusal among partners to cellular telephone service not triggered by sale of stock in one of the partners as opposed to sale of partner’s interest in service; parties understood that partner was a legitimate corporation, as opposed to a shell entity, and could have easily negotiated a provision restricting sale of corporation’s stock but chose not to do so); *LaRose Mkt. Inc. v. Sylvan Ctr., Inc.*, 530 N.W.2d 505 (Mich. Ct. App. 1995) (sale of landlord corporation’s stock does not trigger tenant’s right of first refusal relating to sale of leased real property; relying on *K.C.S.*); *In re Integrated Res., Inc.*, No. 90-B-10411, 1990 WL 325414 (Bankr. S.D.N.Y. Oct. 22, 1990) (sale of stock in general partner of a partnership did not trigger provision in partnership barring transfer of general partner’s partnership interest; other provisions in the partnership agreement envision and authorize transfer of general partner’s stock); *Frandsen v. Jensen-Sundquist Agency, Inc.*, 802 F.2d 941 (7th Cir. 1986) (court concludes that right of first refusal regarding sale of majority bloc of holding company’s stock was not triggered by sale of stock in one company owned by holding company because right of first refusal was not designed to protect plaintiff from liquidation of his stock, but rather from becoming a minority shareholder with a new majority bloc owner).

not share in the corporation's profits unless a dividend is declared or the shareholder is able to liquidate its shares at a profitable price. In the present case, however, MLB will share directly in the new TCR's profits through payments made by cable and satellite television operators and advertising sold during Orioles telecasts. Second, partners in a limited liability partnership are not constrained by law in their ability to be actively involved in the management of the partnership (in contrast to a limited partnership where only the general partner has such authority) and, in fact, every partner is deemed to be a general agent of the partnership for purposes of conducting the partnership's business. Md. Code Ann., Corps. & Ass'ns § 9A-301. The same is not true for shareholders in a corporation. Third, a partner in a limited liability partnership has certain rights and duties that go far beyond what a shareholder would have with respect to a corporation. For example, Maryland law requires that all partnership decisions "outside the ordinary course of business" be made by unanimous vote of the partners unless otherwise specified in the limited liability partnership agreement. *Id.* § 9A-401(j). The same is not true of shareholders. Partners also owe duties of care and loyalty, and obligations of good faith and fair dealing, to a partnership not owed by minority shareholders in a corporation. *Id.* §§ 9A-404(b), (c), § 9A-103(b)(5). In sum, partners own a more direct and significant financial stake in a partnership than shareholders own in a corporation, and have significantly greater management power, duties and obligations than corporate shareholders. For these additional reasons, the sale of a partnership interest in MASN to MLB also demonstrates that MLB has acquired an ownership interest in the Orioles' future television rights.

II. CSN HAS STATED A COGNIZABLE CLAIM FOR BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING.

The Orioles and TCR argue that Maryland does not recognize a “separate” cause of action for breach of the implied covenant of good faith and fair dealing. Orioles/TCR Mot. at 18-19. Defendants are incorrect to the extent that they suggest that Maryland law does not permit a private right of action for breach of contract where one party to a contract acts in such a manner as to frustrate the other party from receiving the benefits of a contract or otherwise renders valueless an express provision of an otherwise enforceable contract.

“Maryland law recognizes an implied covenant of good faith and fair dealing in all negotiated contracts.” *E. Shore Mkts., Inc. v. J.D. Assocs. Ltd. P’ship*, 213 F.3d 175, 182 (4th Cir. 2000); *see also Julian v. Christopher*, 320 Md. 1, 9-10, 575 A.2d 735, 739 (Md. 1990); *Food Fair Stores, Inc. v. Blumberg*, 234 Md. 521, 534, 200 A.2d 166, 174 (1964); *Automatic Laundry Serv., Inc. v. Demas*, 216 Md. 544, 550-51, 141 A.2d 497, 501 (1958); *7-Eleven, Inc. v. McEvoy*, 300 F. Supp. 2d 352, 360-61 (D. Md. 2004). Even the cases cited by Defendants recognize this. *See, e.g., Paramount Brokers, Inc. v. Digital River, Inc.*, 126 F. Supp. 2d 939, 945 (D. Md. 2000) (“Maryland recognizes that every contract imposes a duty of good faith and fair dealing in its performance.”); *Abt Assocs., Inc. v. JHPIEGO Corp.*, 104 F. Supp. 2d 523, 534 (D. Md. 2000) (same), *aff’d*, 9 Fed. Appx. 172 (4th Cir. 2001).

Beyond mere recognition of this legal principle, Maryland common law recognizes a private right of action – sounding in contract not tort¹¹ – for breach of the implied covenant of

¹¹ CSN has pled its claim for breach of the implied covenant of good faith and fair dealing in the alternative to its breach of contract claim. CSN asserts that Defendants’ actions have breached the terms of the 1996 Agreement. However, even assuming *arguendo* that Defendants’ shell

good faith and fair dealing to redress circumstances where one party to a contract engages in conduct “that will have the effect of injuring or frustrating the right of the other party to receive the fruits of the contract between them.” *E. Shore Mkts.*, 213 F.3d at 184 (trial court’s grant of motion to dismiss reversed where plaintiff stated claim for breach of implied covenant of good faith and fair dealing to prevent defendant from engaging in destructive competition against plaintiff); *see also 7-Eleven*, 300 F. Supp. 2d at 362 (breach of implied covenant of good faith and fair dealing claim survives motion for summary judgment where defendant affirmatively acted to frustrate plaintiff’s performance under the contract); *Md. Nat’l Bank v. Traenkle*, 933 F. Supp. 1280, 1288-89 (D. Md. 1996) (breach of duty of good faith and fair dealing claim survives motion for summary judgment); *Automatic Laundry*, 216 Md. at 551-52, 141 A.2d at 501 (court recognizes claim for breach of implied covenant of good faith and fair dealing to prevent tenant from acting to render valueless percentage rent provision of contract).

Maryland courts have not been presented with a claim for breach of the implied covenant of good faith and fair dealing in the circumstance where a party plays a corporate shell game to avoid triggering a right of first refusal. However, courts in other jurisdictions have not hesitated to recognize a claim for breach of the implied covenant of good faith and fair dealing in circumstances like those present here.

In *Oregon RSA No. 6, Inc. v. Castle Rock Cellular of Oregon Ltd. Partnership*, 840 F. Supp. 770 (D. Or. 1993), the court denied defendants’ motions for summary judgment on facts similar to those presented in this case. *Oregon RSA* involved a right of first refusal among

game has technically not breached these express terms, CSN has pled that such shell game breaches the implied covenant of good faith and fair dealing found in this and every contract.

partners in a cellular telephone service business. When one of the partners attempted to avoid triggering a right of first refusal provision by selling stock in itself, rather than its interest in the partnership, other partners sued for breach of contract and breach of the implied covenant of good faith and fair dealing. Defendant moved for summary judgment, arguing that a sale of the partner's stock did not trigger a right of first refusal to purchase the partner's interest in the limited partnership. *Id.* at 772-73.

The court denied defendant's motion for summary judgment on plaintiff's claim for breach of the implied covenant of good faith and fair dealing, concluding that "[t]he transaction in question here is an artifice intended to thwart plaintiff's legitimate contractual expectation that it would have a right of first refusal before the partnership interest owned by [a partner] could be transferred to someone outside the [partnership]." *Id.* at 776. Policy considerations required such an outcome: "If in each contract the parties had to expressly describe and prohibit every artifice by which the parties could potentially deprive each other of the fruits of their agreement, then contracts would soon become as long as the tax code, as difficult to interpret, and (like the tax code) still contain innumerable loopholes available to a party that wished to avoid the spirit of its bargain." *Id.* The Ninth Circuit subsequently affirmed the district court's decision, holding that "[t]o permit the transfer of a shell company as a way around the first refusal provisions was 'an artifice intended to thwart plaintiff's legitimate contractual expectation.'" *Oregon RSA No. 6, Inc. v. Castle Rock Cellular Ltd. P'ship*, 76 F.3d 1003, 1007 (9th Cir. 1996) (quoting *Oregon RSA*, 840 F. Supp. at 776).

Other courts have reached similar conclusions. In *Mieuli v. DeBartolo*, No. C-00-3225 JCS, 2001 U.S. Dist. LEXIS 22518 (N.D. Cal. Jan. 16, 2001), the court denied defendant's

motion to dismiss a claim of breach of the implied covenant of good faith and fair dealing, holding that “where an agreement does not specifically state that the right of first refusal applies to transfers of stock ownership, the court must look to extrinsic evidence to determine what the intentions of the parties to the agreement were and whether the defendants were seeking to circumvent that agreement.” *Id.* at *22; *see also Quigley v. Capolongo*, 383 N.Y.S.2d 935, 936-37 (N.Y. App. Div. 1976) (court finds that defendant breached obligation of dealing in good faith when it entered into a contract denominated as a lease in the hopes of circumventing plaintiff’s right of first refusal to purchase property), *aff’d*, 372 N.E.2d 797 (N.Y. 1977).

The cases cited by Defendants miss the relevant issue here. Those cases stand for the proposition that Maryland law does not recognize a separate cause of action for breach of the implied covenant of good faith and fair dealing where (1) the parties never entered into an enforceable contract in the first place, or (2) plaintiff can point to no provision of the contract breached, but instead seeks to impose obligations on defendant not provided for in the contract. For example, in *Paramount Brokers*, 126 F. Supp. 2d at 950, the court found that “[t]here can be no breach of the duty of good faith and fair dealing in this case because no such duty can be implied when there is no binding agreement between the parties.” In the present case, however, there is no question that the 1996 Agreement and the right to match provision contained therein are binding on the parties.

Other cases cited by Defendants are equally inapplicable because CSN does not seek to impose obligations on the Orioles that are not expressly found in the 1996 Agreement, nor does CSN seek to bring a tort action based on the breach of this implied covenant. *See Estrin v. Natural Answers, Inc.*, 103 Fed. Appx. 702, 705 (4th Cir. 2004) (no contract found to exist

between parties); *Eaglehead Corp. v. Cambridge Capital Group, Inc.*, 170 F. Supp. 2d 552, 562 (D. Md. 2001) (court rejects plaintiffs' assertion that contract obligated plaintiffs to provide satisfactory appraisal of collateral only if requested by defendant within ten days of contract execution; plaintiff therefore concedes that under these circumstances, it has no claim for breach of covenant of good faith and fair dealing); *Adams v. NVR Homes, Inc.*, 135 F. Supp. 2d 675, 699 (D. Md. 2001) (no separate cause of action for breach of implied covenant of good faith and fair dealing where plaintiff can point to no provision of contract that was breached); *Abt Assocs.*, 104 F. Supp. 2d at 534 (no separate claim for breach of implied duty of good faith and fair dealing where no contract was formed between the parties); *Marland v. Safeway*, 65 Fed. Appx. 442 (4th Cir. 2003) (relying on case holding that no separate tort cause of action exists for breach of the implied duty of good faith and fair dealing). CSN's claim is premised upon affirmative actions that Defendants have taken to frustrate and deny CSN's receipt of benefits expressly provided for in a binding and enforceable contract. Under these circumstances, Maryland courts recognize a claim for breach of the implied covenant of good faith and fair dealing.

Finally, adopting Defendants' argument would render Maryland law contrary to the majority of state laws throughout the country that have recognized a cause of action for a breach of the implied covenant of good faith and fair dealing where one party has acted to deprive another of the rights, benefits and reasonable expectations secured by an enforceable contract. *See, e.g., Brunswick Hills Racquet Club, Inc. v. Route 18 Shopping Ctr. Assocs.*, 864 A.2d 387, 396 (N.J. 2005) (covenant of good faith and fair dealing calls for parties to contract to refrain engaging in conduct that will have the effect of destroying or injuring the right of the other party to receive the benefits of the contract; "subterfuges and evasions" in the performance of the

contract violate the covenant even where defendant believes its conduct is justified); *O'Tool v. Genmar Holdings, Inc.*, 387 F.3d 1188, 1195-97 (10th Cir. 2004) (quoting *Chamison v. Healthtrust, Inc.*, 735 A.2d 912, 920 (Del. Ch. 1999)) (applying Delaware law, court finds that the “implied covenant [of good faith and fair dealing] is a judicial convention designed to protect the spirit of an agreement when, without violating an express term of the agreement, one side uses oppressive or underhanded tactics to deny the other side the fruits of the parties’ bargain”); *Paul v. Howard Univ.*, 754 A.2d 297, 310, n.28 (D.C. 2000) (“If a party to the contract evades the spirit of the contract, willfully renders imperfect performance, or interferes with performance by the other party, he or she may be liable for breach of the implied covenant of good faith and fair dealing.”); *Somers v. Somers*, 613 A.2d 1211, 1215 (Pa. Super. Ct. 1992) (reversing dismissal of plaintiff’s claims, “[b]oth counts state a claim for breach of contract, based on the implied obligation to act in good faith”); *Scherer Constr., LLC v. Hedquist Constr., Inc.*, 18 P.3d 645, 655-56 (Wyo. 2001) (joining the “majority of jurisdictions,” the Court recognizes that “parties to a commercial contract may bring a claim for breach of the implied covenant . . . based on a contract theory”).¹²

¹² See also *Eggett v. Wasatch Energy Corp.*, 94 P.3d 193, 197 (Utah 2004) (“Under the covenant of good faith and fair dealing, both parties to a contract impliedly promise not to intentionally do anything to injure the other party’s right to receive the benefits of the contract.” “A violation of the covenant is a breach of the contract.”); *Howard Opera House Assocs. v. Urban Outfitters, Inc.*, 166 F. Supp. 2d 917, 933 (D. Vt. 2001) (Vermont law recognizes covenant of good faith and fair dealing claim where one party undermines or destroys the other’s rights to receive the benefits of the agreement); *Boddie-Noell Props., Inc. v. 42 Magnolia P’ship*, 544 S.E.2d 279, 284-85 (S.C. Ct. App. 2000) (affirming jury’s verdict on South Carolina breach of implied covenant of good faith and fair dealing claim); *Nomeco Bldg. Specialties, Inc. v. Pella Corp.*, 184 F.R.D. 609, 610 (D. Minn. 1999) (plaintiffs’ implied covenant count, alleging that defendant “unreasonably deprive[d]” them “of the benefits of the contract[,]” stated a valid claim under Minnesota law); *Hilton Hotels Corp. v. Butch Lewis Prods., Inc.*, 808 P.2d 919, 922-23 (Nev. 1991) (plaintiff “may . . . be able to recover damages for breach of the implied covenant . . .

III. THE EXCLUSIVE NEGOTIATION PROVISION IN THE 1996 AGREEMENT IS ENFORCEABLE.

Defendants argue that the exclusive negotiation provision in the 1996 Agreement is equivalent to an unenforceable agreement to negotiate. Orioles/TCR Mot. at 14-17; MLB Mot. at 7. Defendants are incorrect because the agreement here operates as a negative covenant barring Defendants from negotiating a transfer of the Orioles' future television rights to another regional sports network during this specific period of time.

The cases cited by Defendants stand for the proposition that an agreement to negotiate undetermined terms and conditions is unenforceable because it is too indefinite and uncertain. In these cases, the parties agreed to negotiate to come to terms on a future contract, but no contract was ever agreed to. Under these circumstances, courts will not enforce agreements never reached by the parties. *See First Nat'l Bank of Md. v. Burton, Parsons & Co.*, 57 Md. App. 437,

[w]here the terms of a contract are literally complied with but one party to the contract deliberately contravenes the intention and spirit of the contract”); *Case Credit Corp. v. Stephens & Michaels Assocs., Inc.*, No. 04-C-0716, 2005 WL 1154262 at *3 (E.D. Wis. Apr. 28, 2005) (quoting *Kham & Nate's Shoes No. 2, Inc. v. First Bank*, 908 F.2d 1351, 1357 (7th Cir. 1990) (sustaining counterclaim for breach of implied covenant where claimant alleged that former business partner took “opportunistic advantage in a way that could not have been contemplated at the time of the drafting, and which therefore was not resolved explicitly by the parties”) (slip op.); *Kaiser v. Royal Ins. Co. of Am.*, 89 P.3d 740, 742 (Alaska 2004) (party may be found to have violated implied covenant where it “takes direct action to deprive the other party of the benefit of the agreement”); *1-10 Indus. Assocs., LLC v. Trim Corp. of Am.*, 747 N.Y.S.2d 29, 31 (N.Y. App. Div. 2002) (plaintiff’s allegation that defendant “acted in bad faith to thwart its [contractual] right . . . is sufficient to state a cause of action to recover damages for breach of contract based upon violation of the implied covenant”); *Cates Constr., Inc. v. Talbot Partners*, 980 P.2d 407, 415 (Cal. 1999) (“The essence of the implied covenant is that neither party to a contract will do anything to injure the right of the other to receive the benefits of the contract.”); *Gilmore v. Duderstadt*, 961 P.2d 175, 182 (N.M. Ct. App. 1998) (under New Mexico law, implied covenant requires neither party do anything to injure the rights of the other to receive the benefit of their agreement); *see also Local Am. Bank of Tulsa v. United States*, 52 Fed. Cl. 184, 191-92 (Ct. Fed. Cl. 2002) (federal government breached implied covenant when it wielded its power to deprive contractor of its contractual expectations, violating “the spirit of the bargain”).

470 A.2d 822 (1984), *cert. denied*, 300 Md. 90, 475 A.2d 1201 (1984) (court refuses to enforce employment contract provision providing that parties may negotiate further agreement for royalty payments because too indefinite to enforce); *Candid Prods., Inc. v. Int'l Skating Union*, 530 F. Supp. 1330, 1335 (S.D.N.Y. 1982) (court refuses to enforce agreement to negotiate first in good faith with plaintiff before negotiating with others because to do so would amount to enforcing a right of first refusal provision that one of the parties expressly refused during negotiation of the agreement); *Paramount Brokers*, 126 F. Supp. 2d at 949 (court refuses to enforce “Letter of Interest” because the letter and the conduct of the parties demonstrated that no final binding and enforceable agreement was ever reached).¹³

In the present case, there is no question that the parties entered into an enforceable agreement that prevented the Orioles from discussing television rights with a rival sports network during a specific period of time. The rationale for the holding in *Candid* – a case relied upon by the Court of Special Appeals in *Burton* and cited by Defendants – recognized that this type of agreement was sufficiently definite to enforce. In *Candid*, the court held that even if a contractual provision could be interpreted to require defendant to negotiate in good-faith with plaintiff before negotiating with others, this clause was too vague and uncertain in defining the negotiation obligations of the parties to be enforceable. *Candid*, 530 F. Supp. at 1336. In particular, the court noted the difficulty in enforcing such a negative covenant where it is “silent as to the length of time such exclusive negotiation period is to run.” *Id.*

¹³ The cases from other jurisdictions cited by Defendants fare no better. None of these cases addressed an exclusive negotiation provision that operated for a definite period of time.

The *Candid* court, however, cites with approval the holding in *American Broadcasting Co. v. Wolf*, 420 N.E.2d 363 (N.Y. 1981), that an exclusive negotiation and right of first refusal provision with a definite time period is enforceable because its terms were sufficiently definite.

In *American Broadcasting*, the contract contained a good faith negotiation and first refusal clause which, in substance, required . . . defendant, to engage in exclusive good faith negotiations with the plaintiff for a forty-five day period, and if the parties failed to agree, then to be followed by a second forty-five day period during which time . . . [defendant] could negotiate, but not sign, with third parties and granted plaintiff a right of first refusal with respect to any offer received by him . . . The court, based upon the specifics of the foregoing provisions, which demonstrate a definiteness that is totally absent from the provisions at issue here, held that [defendant] had breached his obligation to negotiate in good faith by signing a contract with a third party Here, in contrast, [plaintiff's] claim is based upon an undertaking that is unenforceable as a matter of law because it is vague and indefinite

Candid, 530 F. Supp. at 1338. Other courts also have recognized that an agreement to negotiate exclusively with another party “is sufficiently definite to be specifically enforced.” *Channel Home Ctrs. v. Grossman*, 795 F.2d 291, 300 (3d Cir. 1986).

Because the exclusive negotiation provision in the 1996 Agreement is definite in time and scope, it does not amount to a simple agreement to agree on undefined terms. Accordingly, it is an enforceable part of the 1996 Agreement.

IV. CSN HAS PLED A VIABLE CLAIM FOR TORTIOUS INTERFERENCE WITH CONTRACT.

If the Court concludes that CSN has adequately pled a breach of contract or breach of implied covenant of good faith and fair dealing claim, the Court must deny MLB's motion to dismiss CSN's claim for tortious interference with contract. MLB's sole argument in support of dismissal is that “[w]ithout a breach of contract, there can be no claim for tortious interference of

an existing contract against MLB.” MLB Mot. at 10. Indeed, MLB’s brief on this point repeats the arguments and case citations found in the Orioles’/TCR’s brief. *See* MLB Mot. at 5-10.

For the reasons set forth above, CSN has adequately pled alternative claims for breach of contract and breach of the implied covenant of good faith and fair dealing that form a basis for its claim of tortious interference with the 1996 Agreement by MLB. CSN also has alleged that MLB had knowledge of the terms of the 1996 Agreement, including the right of exclusive negotiation and right to match provisions at issue here, and intentionally interfered with the performance of that contract. Am. Compl. ¶¶ 44, 64-69, 84-90. Under these circumstances, CSN has adequately pled a claim for tortious interference with contract against MLB.

MLB devotes a significant portion of its brief to arguing that CSN had not adequately pled a claim for tortious interference with economic relations. MLB Mot. at 10-13. But, at least at present, CSN is not pursuing such a claim against MLB. Perhaps recognizing the weakness in its motion, MLB tries to convert CSN’s claim for tortious interference with an existing contract into a claim for tortious interference with economic relations, arguing that this is appropriate “[b]ecause CSN focuses on future expectancies” *Id.* at 10. MLB is wrong.

The exclusive negotiation and right to match provisions have nothing to do with “future expectancies.” These contractual provisions are binding and controlling now, and they have been violated by Defendants’ wrongful actions. There are no future or prospective rights or expectancies at issue in the current action. The Orioles presently are contractually obligated to negotiate exclusively with CSN and to provide CSN with the opportunity to match any transfer of future Orioles television rights to a rival regional sports network. Given these facts, MLB’s

attempt to convert CSN's claim for tortious interference with existing contractual rights into a claim for tortious interference with prospective economic relations must fail.

V. THE COURT SHOULD NOT DISMISS CLAIMS AGAINST MASN OR TCR AT THIS STAGE OF THE PROCEEDINGS.

Finally, Defendants seeks dismissal of CSN's claim for tortious interference with contract against MASN, on the grounds that TCR and MASN are one and the same and that MASN therefore has no separate existence from TCR. Dismissal of CSN's single claim against MASN is premature given that no discovery has yet occurred. Defendants' lone piece of "evidence" filed with their motions to dismiss is a State of Maryland trade name registration indicating that TCR is doing business as MASN. What this registration does not resolve, however, is whether MASN has any responsibilities, obligations or employees independent of TCR. Moreover, while defendants argue that MASN cannot tortiously interfere with the 1996 Agreement because TCR was a party to that Agreement, it is clear that the TCR that entered into the 1996 Agreement is fundamentally different from the TCR that now purports to operate MASN. Given these uncertainties, and based on CSN's factual allegations, the motion to dismiss CSN's claims against MASN should be rejected at this preliminary stage of the proceedings prior to any discovery.

CONCLUSION

For the foregoing reasons, Defendants' motions to dismiss should be denied.

Dated: July 12, 2005

Respectfully submitted,

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EXHIBIT 2

NOVEMBER 22, 2004

MEDIA

Rumble In Regional Sports

With Comcast -- and teams themselves -- airing local games, Fox is losing ground

There's plenty of sweat trickling onto playing fields and courts every week. But the biggest battle in sports today is being waged by the suits on the sidelines fighting over local team programming.

Look no further than Sacramento for a taste of the game. At 7:30 a.m. on the day the Sacramento Kings' pact with its longtime TV carrier, Fox Sports Net Bay Area, was to expire, executives at Kings parent Maloof Sports & Entertainment were already in a meeting. They were talking to cable giant Comcast Corp. ([CMCSA](#)) -- Fox's rival -- to iron out a new TV deal. By the time the season kicked off on Nov. 2, the Kings were signed up for a 10-year run on the newly created Comcast SportsNet West. In turn, when it looked as if the Memphis Grizzlies might launch their own sports network, Fox Sports South jumped in just ahead of the season's tip-off and offered the team a six-year deal to drop its cable plans. Fox promised to show 60 games this year, vs. 25 last season.

The hottest rivalry in regional sports is between two big foes, Fox parent News Corp. ([NWS](#)) and Comcast. It's the latest iteration of the media giants' contest to win over America's TV viewers. And it's essentially Fox's battle to lose. As ESPN was building itself into a national franchise, Fox Sports Networks decided to go local. Fox Sports Chief Executive David Hill proclaimed that all sports are "tribal" and launched a bunch of regional sports networks (RSNs), many in partnership with cable operator Cablevision Systems Corp. ([CVC](#)), to tap the passion of regional fans for their local teams. Fox has ruled regional sports ever since -- until now.

It's no surprise that others want in: RSNs generate tons of cash by commanding the second-highest fees, as much as \$2 per subscriber a month, next to ESPN, at \$2.25 per subscriber. (In contrast, CNN gets about 40 cents.) "These sports networks are all about instant cash flow. Advertising is the icing on the cake," says TV consultant Mike Trager. Comcast, with cable systems in 22 of the 25 largest U. S. cities, is looking to RSNs to build its brand and exert greater control over the escalating fees it pays for sports. Sports teams are entering the fray, too: With player payrolls and stadium debt hitting all-time highs, they're looking to cut out costly middlemen by creating their own TV channels.

BRANDING OPPORTUNITY

Comcast is making the most inroads by joining with teams in New York and Chicago to launch new sports networks -- in each case luring teams away from tightfisted Cablevision, whose sports networks operate as affiliates of Fox Sports. Controlling local sports channels is a great way to promote itself to rabid fans and gives the company a platform to sell such services as high-speed data and video-on-demand. "Having your name attached to a local sports network is a huge branding opportunity," says Comcast COO Steve Burke. Its RSNs also give Comcast leverage in negotiating fees it pays to News Corp. to carry FX, Fox News, and other channels.

The biggest blow to the Fox Sports-Cablevision duo came in sports-mad Chicago in October, when Comcast debuted its new RSN, a partnership with the NBA's Bulls, the NHL's Blackhawks, and

baseball's Cubs and White Sox, all of which had existing agreements with the Cablevision-majority-owned Fox Sports Network. Also in October, Comcast agreed to take a 10% interest in a new New York Mets channel with the team and Time Warner Cable ([TXW](#)), leaving Cablevision's MSG Network out in the cold.

FINANCIAL HOME RUNS

In all, the FOX Sports Network has lost the rights to 11 teams since 2000, according to Fox. Today it controls rights to 62 of the nation's 82 pro teams, excluding pro football. "They're losing eyeballs, and that means lower revenues from national advertisers," says Sanford C. Bernstein & Co. analyst Craig Moffett. "It will eventually lower fees from cable operators."

Teams doing TV on their own are also a worry for Fox. Emboldened by the financial home runs by sports networks launched by the New York Yankees and the Boston Red Sox, as many as 25 pro teams own or are planning their own networks, says consultant Lee H. Berke, who advised the Yankees in creating the YES network in 2002. "You see more teams adopting our model," says Sean P. McGrail, president of the Red Sox' 20-year-old New England Sports Network (NESN).

Still, not every team can pull off its own sports channel. Baseball's Kansas City Royals and Minnesota Twins and the NBA's Portland Trail Blazers all folded their channels after losses and being dropped by cable and satellite companies. The counter-offers to teams are getting richer, too. On Nov. 8, Fox said it had averted another planned team-owned channel by offering an estimated 15-year, \$600 million deal to the Houston Rockets and Astros. The teams and Fox had been fighting in court since 2003.

Fox Sports execs figure they can beat back Comcast and outlast the solo-team channels. "We're not going away," says Randy Freer, Fox Sports Nets' chief operating officer. It promises to be a nasty rumble: Rumors persist that Comcast wants to buy Cablevision's sports channels in San Francisco, Florida, and New England. That surely will elevate the local-sports grab to championship status.

By Ronald Grover in Los Angeles and Tom Lowry in New York, with William C. Symonds in Boston

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EXHIBIT 3



[Zinkle](#) > [Chicago Sun-Times](#) > [Article](#)

Kickoff time is here for new sports channel

Chicago Sun-Times, Oct 1, 2004 by [Robert Feder](#)

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The launch today of Chicago's newest sports channel represents a giant leap forward for the owners of the Cubs, White Sox, Bulls and Blackhawks, who stand to gain a larger share of revenue than ever before.

For all practical purposes, the premiere of Comcast SportsNet Chicago also sounds the death knell for Fox Sports Net, which has existed in various forms and under various owners for 20 years.

But this time around, viewers have been promised a wide array of local sports programming unlike anything they've ever seen.

Through it all, the one constant has been Jim Corno, who headed Fox Sports Net since its inception as SportsChannel and now oversees the debut of Comcast SportsNet as senior vice president and general manager.

"Since this business was announced late last year, we have accomplished so much leading up to this day," Corno said on the eve the launch.

"Through a lot of hard work from our dedicated staff of professionals, we will finally be ready to turn on the switch at 5:30 p.m. today."

For the record, the first live event on Comcast SportsNet will be the Akron at Northern Illinois football game at 3 p.m. Saturday.

Tom Waddle and Mitch Robinson will join play-by-play host Dave Kaplan.

Dialing: Scott Tyler's kiss off

* Scott Tyler is out after two years as afternoon personality at WKSC-FM (103.5). Program director Rod Phillips said Tyler resigned after violating company policy by sending an unauthorized message on the Top 40 outlet's digital readout system that was "damaging to our image as a radio station."

An immediate search is under way for a replacement.

Tyler, who grew up in Green Bay, Wis., joined "Kiss FM" from Clear Channel Radio sister station KZHT-FM in Salt Lake City, where he hosted afternoons for two years.

* Four weeks after originally scheduled, Carl Grapentine and Lisa Flynn premiere Monday as the new morning team on WFMT-FM (98.7). Their debut was postponed after Grapentine suffered a heart attack and underwent angioplasty

Chicago Sun-Times: Kickoff time is here for new sports channel

surgery.

Grapentine previously had been solo morning host at the classical music station. Flynn hosted evenings and weekends.

* Felicia Middlebrooks today marks her 20th anniversary as morning news anchor at WBBM-AM (780). She joined "Newsradio 780" as a reporter and weekend anchor in 1983 and was promoted to mornings (alongside John Hultman) in 1984. Since 2000, her partner has been Pat Cassidy.

Staffers will honor Middlebrooks in the newsroom with a giant cake and flowers.

* Katey Kohn, director of marketing at WSCR-AM (670), has been named director of marketing at WFAN-AM in New York.

Both stations are owned by Infinity Broadcasting.

Tracking: Party time

* Today is the deadline for reservations to attend Tuesday's Emmy nomination announcement party hosted by the Chicago/Midwest chapter of the National Academy of Television Arts and Sciences.

Don Lemon, news anchor at WMAQ-Channel 5, and Vicente Serrano, news anchor at WSNS-Channel 44, will emcee the event at the Hard Rock Hotel, 230 N. Michigan. For information, call (312) 435-1825.

This year's Emmys will be presented Dec. 4 at the Joan W. and Irving B. Harris Theater in Millennium Park.

* Dan Roan, sports anchor at WGN-Channel 9, will host "Wild Ride: The 2004 Cubs," a one-hour review of the Cubs' season, at noon Sunday. Joining him for the live special will be sports anchor Mike Barz and Cubs announcers Chip Caray and Steve Stone.

Channel 9 follows the special with the last scheduled game of the regular season between the Cubs and Atlanta Braves.

* "Conspiracy?," a new History Channel series exploring some of the most vexing mysteries of all time, debuts this weekend with an examination of TWA Flight 800, the jumbo jet that exploded in mid-air and fell into the Atlantic with 230 passengers on board in 1996. The documentary suggests links to terrorists associated with the Sept. 11 attacks.

The series, produced by Chicago-based Towers Productions, premieres at 9 p.m. Sunday.

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EXHIBIT 4

Multichannel News

February 28, 2005

SECTION: TOP STORIES; Pg. 3

LENGTH: 592 words

HEADLINE: Regional Openings for Comcast

BYLINE: By R. Thomas Umstead & Mike Reynolds

BODY:

Comcast Corp.'s burgeoning regional sports business could be a major beneficiary of the recent News Corp.-Cablevision Systems Corp. financial restructuring of their shared sports holdings.

Industry sources said Comcast could vie for Cablevision Systems Corp.'s stakes in the non-New York area regional sports networks Cablevision will own once the new structure of the Regional Programming Partners, in which Cablevision and News Corp. hold respective 60% and 40% shares, is complete.

In what the parties are labeling "a generally tax-free exchange of assets," once the restructuring is finalized Cablevision will own 100% of Madison Square Garden and its assets: the arena; the Theater at Madison Square Garden; the National Basketball Association's New York Knicks; the National Hockey League's New York Rangers; the WNBA's New York Liberty; Radio City Music Hall; Madison Square Garden Network; and FSN New York. Cablevision also gets 100% of FSN Chicago and continues to co-own FSN New England with Comcast.

Cablevision will continue to manage all of these operations.

News Corp. gets 100% of FSN plus FSN Ohio, FSN Florida and National Advertising Partners.

News will assume management of both FSN Ohio and FSN Florida and continue its management of FSN and NAP.

Finally, Cablevision and News will continue to maintain a 60-40 split, respectively, of FSN Bay Area through their partnership, with Cablevision retaining management.

The stage is set for Cablevision to sell its non-New York area regional sports networks, the way it sold its cable systems outside the New York DMA several years ago.

“The regionals certainly don’t fit into their core strategy,” Kagan Associates sports analyst John Mansell said of Cablevision. “It made a lot of sense when they owned systems in Ohio and New England, but they don’t anymore. It’s also a tougher business, with teams collaborating [with other MSOs] or going out on their own.”

Likely buyer: Comcast, which has recently created regional sports networks in markets where it is the dominant MSO.

It’s almost certain the MSO will obtain FSN Chicago, as it has already siphoned all of the pro sports rights from the network to create Comcast SportsNet Chicago, in partnership with four local sports teams.

Comcast would also be the likely suitor for Cablevision’s share of FSN New England, as it already owns half of the network and has a big cable presence in the area.

“It’s a more likely scenario that it will be the cable operator in the market that buys the [regional] networks,” Mansell added.

Comcast and Cablevision officials would not comment on the matter.

The deal effectively resolves the regional sports partnership Fox and Cablevision forged in 1997.

Back then, News Corp. and Liberty Media paid Cablevision \$850 million for 40% of Regional Programming Partners, the holding company for the Garden, the pro teams, MSGN, what was then SportsChannel New York and several regional sports networks. (News bought out Liberty’s portion of the partnership in 1999.)

At the time, the idea was to combine all the regional networks to provide a national footprint for Fox Sports Net to effectively compete with ESPN.

But Fox Sports Net failed to vie with ESPN for pricey rights to marquee national sports packages.

Further, Comcast’s entry into the regional sports business with networks in Philadelphia, Washington, D.C., and more recently in Chicago and Sacramento, Calif. — and team-based regional networks in Denver and Charlotte, N.C. — has made it tougher for FSN to deliver significant product to a number of key markets.

LOAD-DATE: March 2, 2005

EXHIBIT 5

Larry move would rate at MSG

Friday, July 22nd, 2005

The Knicks have more guards than Rikers Island.

They have an owner - James Dolan - who won't (and this is being kind) be winning a popularity contest anytime soon.

And they have a general manager - Isiah Thomas - who has steered the team down the road to irrelevancy, changing philosophy as often as he changes his socks.

The Knicks were once a great show.

Today, they are a lame show.

If this has dawned on Joe Glass, Larry Brown's agent, he will realize he is selling his client on the cheap. Twelve million dollars a year? Please. Inserting Brown into this mess, which, in the media's eyes, will make the Knicks relevant again, is worth, well, at least \$20 million per.

Analyzing this situation in a vacuum is a foolish exercise. Don't think of it as some kind of simple equation: *Brown + Knicks = X more wins than last season*. Figuring out that brain teaser may kill countless hours on sports talk radio, but does not accurately measure the impact Brown would have on the Knicks and the entire Madison Square Garden operation - most importantly, the MSG Network.

Anointing Brown as an out-and-out savior is a reach, but for the Garden he would at least provide short-term salvation, which would be well worth whatever Dolan decides to pay him. Considering the entries in Brown's resume, the short term is the most appropriate time frame to deal with.

In December 2003, when Dolan evicted Scott Layden from the premises and welcomed Thomas, the Knicks' ratings on MSG increased. When Thomas brought Stephon Marbury to the Knicks, the ratings were juiced even more. After a short-term ratings boost, the ratings flatlined for the rest of 2003-04 season before heading into the toilet for most of the 2004-05 campaign.

With Brown on the Knicks bench, MSG's ratings would get a desperately needed boost, reminiscent of the numbers Pat Riley helped generate when he first came to the Knicks. While Riley had a much better nucleus of players, Brown comes with the same big reputation, hype and ability to sell hope for a brighter Knicks future.

Brown's coaching credibility would help build a TV audience. And it couldn't come at a better time for the MSG Network. Once the cash cow of the Garden empire, the MSG Network has lost its power and impact. MSG is in fierce competition for eyeballs and advertisers with the Yankees Entertainment & Sports Network. In 2006 another competitor, the Mets Network, will join the fray.

At the Garden, the days of Knicks sellouts are long gone. Bringing in Brown would figure to have a positive impact on ticket sales. In interviews with season subscribers - past and present - there was a sense of intrigue and anticipation, which could lead some to renew their tickets and others to return to the Garden. Still, there were other fans who took a bottom-line approach.

Ron Ervolino, an architect who lives in Manhattan, spent eight years on the waiting list for Knicks tickets before being able to purchase them. He attended games for five seasons before becoming fed up with the product and canceling his tickets.

"I could care less if they get Brown," Ervolino said yesterday. "The product Isiah is putting on the floor is not worth the price the Garden is charging people to see it. Even Larry Brown can't change that fact."

By February, this statement could be proven true. But it neglects to consider a couple of factors. Win or lose, the soap-opera qualities that have surrounded Brown, and some of the teams he's coached, would make for compelling theater.

Already, there are stories about a possible rift between Brown and Marbury. If he does get the job, Brown will have some kind of spin to defuse this perception. The man is a master media manipulator.

Some of the same commentators who tore into Riley and Jeff Van Gundy after their awkward departures from the Knicks now chronicle all of Brown's serpentine maneuverings before concluding, "That's just Larry."

Talk about living a charmed life.

Now, all the stories tell us about the local guy, at the age of 64, on the verge of coming home and fulfilling his dream of coaching the Knicks. Most of this stuff is nauseatingly corny.

Then again, when was the last time the Knicks have been on the back pages in July? That's what Larry Brown can do.

And that's good. Real good for Garden business.

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Daily News (New York)

January 7, 2005 Friday
SPORTS FINAL EDITION

SECTION: SPORTS; Pg. 110

LENGTH: 183 words

HEADLINE: MSG NET SELECTS BAIR

BYLINE: BY BOB RAISSMAN

BODY:

JAMES DOLAN HAS reached into Cablevision's past for someone to lead the Madison Square Garden Networks (MSG/FSNY) into the future.

The Garden boss yesterday named Mike Bair, the executive responsible for launching the old SportsChannel Bay Area, as president of MSG Networks.

Bair replaces Mike McCarthy, who resigned from MSG in late November. Bair, who vowed to "deliver a powerful viewing experience" for Knicks and Rangers fans, has his work cut out for him.

He arrives at MSG/FSNY during a time when both networks are in decline and, after the 2005 Mets season, will have no marquee summer programming. Fred Wilpon, along with Time Warner and Comcast, will debut a Mets Network in 2006.

In the past, Bair has shown resourcefulness. He oversaw SportsChannel's eight regional networks and was responsible for the transition from SportsChannel to Fox Sports Net. Since September 2004, Bair served as the Rangers senior VP of marketing and business operations.

According to an MSG spokesman, McCarthy, the former MSG/FSNY prez, will help in Bair's transition before becoming a consultant for MSG/FSNY.

LOAD-DATE: January 7, 2005

EXHIBIT 6

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Adelphia deal to shuffle cable

One in 10 subscribers to get new operator as a result of \$17.6B purchase by Comcast, Time Warner.

April 21, 2005: 10:59 AM EDT

By [Chris Isidore](#), CNN/Money senior writer

NEW YORK (CNN/Money) - About one in ten U.S. cable subscribers would get a new provider as the result of the \$17.6 billion deal unveiled Thursday in which Comcast Corp. and Time Warner Corp. agreed to jointly buy Adelphia Communications as well as swap some of their own cable customers.

[Comcast](#) ([Research](#)), the nation's largest cable operator, and media conglomerate [Time Warner](#) ([Research](#)) will pay \$12.7 billion in cash as part of the deal. Time Warner will also pay 16 percent of the stock in its Time Warner Cable unit, the nation's No. 2 cable operator.

Bethpage, N.Y.-based cable operator [Cablevision](#) ([Research](#)) reportedly had expressed interest in bidding for Adelphia late in the process, but this deal apparently trumps those efforts.

Besides the normal regulatory approvals, the deal needs the consent of the bankruptcy court overseeing Adelphia's operations since the high profile collapse of what was then the nation's No. 6 cable operator three years ago.

Adelphia filed for [bankruptcy](#) in June 2002, about a month before its founder, chairman and CEO John Rigas was [arrested](#) and charged with looting the company's assets for their personal use. Two of his sons, who were also executives at the company, were also charged.

The elder Rigas and one of his sons were [convicted](#) of conspiracy, securities fraud and bank fraud in July 2004. They still await sentencing, while the other son charged in the matter faces a new trial after the jury couldn't reach a verdict on many of the counts against him.

One analyst said it shouldn't be assumed this is a done deal.

"We view this as the most logical deal and incrementally positive for Comcast and Time Warner," said Aryeh B. Bourkoff, an analyst with UBS, in a note to clients. "But the door remains open to competing bids given nature of the bankruptcy process." He said there is a \$450 million breakup fee due if the deal is not completed.

Competition with satellite TV

Time Warner is getting a net gain of about 3.5 million basic cable subscribers as part of the deal. It is paying



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SUBMIT

Comcast, Time Warner announce cash stock deal for Adelphia - Apr. 21, 2005

\$9.2 billion in cash for the Adelphia assets in addition to issuing the stake in its cable unit, as well as paying \$2.0 billion to Comcast for a stake it has held in Time Warner Cable.

The additional customers push Time Warner Cable ahead of the nation's two satellite television operators: [DirecTV \(Research\)](#) and [EchoStar Communications' \(Research\)](#) Dish Network.

Cable and satellite television operators are competing to provide not only television but also high speed Internet and phone service to U.S. households.

Officials from Time Warner and Comcast said that the deal will allow them to offer the Adelphia customers higher end services they might now have now, such as digital video recorders, programming on demand and a wider selection of programming on digital cable, in addition to the Internet and phone services.

They both said they expect Adelphia to lose some basic cable customers to satellite providers during the nine to 12 months it is expected to take to close the deal, due partly to the weaker product lineup Adelphia now offers. But they both expect to stop those losses once they get their new territories.

"The increased scale will provide us with a larger platform to market, sell and rollout new services," said Don Logan, chairman of Time Warner's media and communications group.

Comcast is acquiring a net gain of 1.8 million additional subscribers, as well as having its current 21 percent stake in Time Warner Cable redeemed.

Swapping customers

In addition to using Adelphia's territories to supplement their own system, Comcast and Time Warner will also swap certain cable operations as part of the deal to give each one greater concentration of customers in their new service area.

Time Warner will have 85 percent of its customers in five large clusters, with more than a third of its overall customer base in either the New York or Los Angeles metropolitan areas. Comcast will have much of its customer base concentrated in the Boston to Washington corridor, as well as the upper Midwest.

After the deal Comcast will have about 23.3 million basic cable customers of its own and an additional 3.5 million additional subscribers held in various partnerships. Time Warner will have 14.4 million basic subscribers of its own, and another 1.5 million in a continued partnership with Comcast.

Comcast has used acquisitions to grow, most recently with its 2002 purchase of AT&T Broadband, which brought it 13 million customers. It also made an unsuccessful bid for media conglomerate [Walt Disney Co. \(Research\)](#) in 2004.

Time Warner had until recently been a seller of assets, such as its Warner Music unit and its stake in cable channel Comedy Central, as it tried to cut debt levels. But last year, company officials announced the asset sales to be over and signaled their interest in buying more cable operations.

"As everyone on this call should know, we like this business. We've said it a gazillion times," said Time Warner Chairman and CEO Richard Parson on a call with analysts.

Time Warner said that the deal will boost its net debt levels by \$11.2 billion. That will put net debt near levels seen at the company in 2002 before it started selling assets. The company had used profits and past asset sales cut its net debt to about \$16.2 billion at the end of 2004.

But Chief Financial Officer Wayne Pace said that even that increased debt level is within the debt-to-earnings ratio targets previously disclosed by the company. Parsons said even with the new debt load, the company will still have the financial resources to look at future dividend increases or share buybacks.

<http://cnnmoney.printthis.clickability.com/pt/cpt?action=cpt&title=Comcast%2C+Time+Warner+announce+cash+stock...>

Comcast, Time Warner announce cash stock deal for Adelphia - Apr. 21, 2005

Time Warner also owns CNN/Money.

[Click here](#) for news of another big deal, this one involving the spirits industry. ■

Find this article at:

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Check the box to include the list of links referenced in the article.

EXHIBIT 7

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COMCAST / CHARTER SPORTS SOUTHEAST



EXHIBIT 8

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

-----X
COMCAST SPORTSNET :
MID-ATLANTIC, :
 :
 Plaintiff, :
 :
 v. : Civil No. 260751
 :
 BALTIMORE ORIOLES, L.P., :
 ET. Al., :
 :
 Defendants. :
 :
-----X

HEARING

Rockville, Maryland

July 27, 2005

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1 partnership agreement, and admitted Major League Baseball as a
2 10 percent profits of a party.

3 THE COURT: All right. Thank you, Mr. Weiner.

4 All right, the Court is called upon to consider
5 whether a motion to dismiss is, properly lies as to the various
6 counts that have been referred to in the arguments. There are
7 three, the first is a breach of contract, the second is a
8 breach of covenant of good faith and fair dealings, and the
9 third is tortuous interference.

10 The standard for a motion to dismiss requires the
11 Court to take the facts of the complaint that are well pled --
12 and I emphasize the word facts, assumptions or inferences of a
13 right, but the facts as well pled, to be true. In this case
14 the history of the matter, which has been espoused at length,
15 involves a contractual relationship between the Baltimore
16 Orioles and a subsequent entity known as TCR Sports
17 Broadcasting Holding Limited Liability Partnership.

18 On the one hand, with the initially Westinghouse
19 Broadcasting Network, then Home Team Sports, which was a
20 regional sports network bought out, eventually, by the
21 plaintiffs in this matter, Comcast Sports Mid-Atlantic Limited
22 Partnership.

23 Comcast asserts that it holds, and the Court finds
24 that it does in fact hold a right of first refusal. And it is
25 un-debated that it does -- actually, under its existing

1 contract, holds a right of exclusive negotiation, and then a
2 right, in the last year, of first refusal to certain broadcast
3 television rights that have been, these are paid television
4 rights, as an exclusion from the other kind.

5 And they assert, in their papers, that TCR and its
6 controlling entity, the Baltimore Orioles Limited Partnership,
7 have violated their right to first refusal on paid television
8 telecast rights for the period 2007 to, and thereafter. By
9 entering in and upon an agreement in March of 2005 of whom
10 Major League Baseball was a party, operating what is -- I think
11 you formistically referred to it as the Washington Nationals
12 Baseball franchise. And this is not a term of art, but in some
13 type of a receivership that is called for under the
14 organizational documents of Major League Baseball.

15 That agreement, in pertinent part, provides that the
16 ultimate holder of television rights will be TCR, operating as
17 a new entity, which is an acronym, I assume, for Middle
18 Atlantic Sports Network, or MASNA. And that in return for --
19 it's an extensive agreement, but in return for the contribution
20 of monies and the rights to the Nationals paid television
21 broadcast, the MASNA will pay certain fees, and will sell to
22 the Nationals, in essence, a portion of their being. They will
23 sell a percentage, which, at first, as I understand the
24 agreement, is 10 percent and extends, ultimately, to 33 and a
25 third percent.

1 And that the agreement provides for arrangements out
2 until the year 2011, and then there's much that says that they
3 will continue to operate, the terms will be negotiated as to
4 exactly how they'll operate thereafter.

5 The assertion is that this March 2005 agreement, as
6 triggered, is tantamount to, and has triggered, the sale of the
7 paid television rights in the Orioles, in violation of the
8 rights of Comcast Sportsnet Mid-Atlantic, without giving
9 Comcast the opportunity to bid upon it.

10 The parties have directed the Court to the history of
11 the contracts and to applicable statutory and case law. The
12 summary of the case law, I think, can be fairly stated as
13 saying that in most commercial circumstances the sale of an
14 entity, in part or in total, does not trigger the right of
15 first refusal in an asset that remains titled as it originally
16 has been titled.

17 And the best example of this is the real estate
18 circumstance. And I think I referred to it as the KSA case,
19 but it's the KSR case. Maryland Intermediate Appellate Court
20 holding that the sale of the stock of an owner of real property
21 did not trigger a right of first refusal contained in a lease
22 agreement because the title to the real estate interest had not
23 been sold, but rather, the stock of the company.

24 This case and others like it, Comcast has
25 distinguished in their papers, and they have relied, in part,

1 upon a federal decision interpreting Oregon law wherein the --
2 in those facts the seller, if you will, created a shell
3 corporation that allowed the transfer of certain property
4 interests that the Oregon -- or that the Federal Court found
5 violated the Oregon law, and, therefore, damaged the holder of
6 the right of first refusal.

7 The Oriole entities have attempted to distinguish
8 that case by later holdings of the Appellate, the Ninth
9 Circuit, the applicable circuit, to the Oregon cases. And I
10 have reviewed those cases as gone on.

11 The additional party to these proceedings is Major
12 League Baseball, and they are involved in only Count No. 3
13 alleging tortuous interference. A preliminary motion has been
14 made to dismiss for want of personal jurisdiction, MASN. The
15 Court has little or no difficulty in granting that motion.
16 MASN is not a legal entity, as far as the Court can see from
17 any of the papers. And accordingly, the Court will grant the
18 motion to dismiss that entity, to the extent that it exists,
19 from this lawsuit.

20 The next question that will be addressed by the Court
21 is Count No. 2, breach of implied covenant of good faith and
22 fair dealing against the Orioles and TCR. And I think Mr.
23 Schmidlein was candid in acknowledging the Court's
24 interpretation in whether a cause of action of that type
25 actually existed in Maryland.

1 It is confusing, I think, to non-lawyers, and
2 possibly to lawyers and judges alike, about what the covenant
3 of good faith and fair dealing really means. But it is, as the
4 Court interprets it, a separate cause of action basically
5 stating that a party may not act in detriment to its own
6 contract, that is separate and apart from a breach of contract.

7 The Court, acting in accordance with what I
8 understand is established Maryland law, dismisses Count 2,
9 without leave to amend, based on the fact that such a cause of
10 action as an independent cause of action does not exist in
11 Maryland. And, accordingly, any remedies that are raised by
12 Comcast must be pursued under Counts 1 and 3.

13 The Court further moves onto Count No. 3, which is
14 the tortious interference of contract by the agreement set
15 forth in Major League Baseball. As might have been determined
16 from the colloquy that the Court initiated with Mr.
17 Schmidlein, the Court views, even in its most malignant sense,
18 the agreement of March 2005, -- malignant in the eyes of
19 Comcast, as, essentially, nothing really different than the Fox
20 Liberty agreement of 1996. And that is an arrangement of
21 wherein the Orioles games would be handled in a certain fashion
22 in the future.

23 And as such, it is not in interference with the
24 existing contract. If it said that, or it somehow bars Comcast
25 from raising the kinds of issues that it's raising in this

1 lawsuit, perhaps some action would lie, but at this point I see
2 absolutely no basis for tortuous interference with contract by
3 Major League Baseball. They've entered into, on behalf of the
4 Washington Nationals franchise, an arrangement for the
5 broadcast of games.

6 The argument that, made by Ms. Braza that it was
7 simply a simple exchange of the Nationals games in return for
8 an interest, and that it was adding to the entity of TCR and
9 not taking away from the Orioles, or the rights that TCR may
10 have had in the Orioles games, might be a tad naive. I don't
11 suggest she's naive, but a naive argument.

12 And I don't accept it at face value that that's all
13 it is, but, rather, undoubtedly there is a significant backdrop
14 to Major League Baseball's efforts to return a franchise to the
15 Washington D.C. area wherein the Orioles had asserted their
16 rights, their television rights, very broadly so, apparently,
17 to the entire state of Virginia and parts of North Carolina and
18 parts of Pennsylvania, all of Maryland, and all of the District
19 of Columbia.

20 Now, it is to be remembered in all of this that these
21 entities are not public institutions, but, rather, they are
22 corporations. They're in the business to make money. They are
23 sophisticated in their operations, and they, that while there
24 is a, perhaps, an intense public interest in the outcome of all
25 of this, it is really nothing more than contract, corporate

1 contract law.

2 The Court, accordingly, dismisses on the facts as
3 pled in the first amended complaint, Count No. 3, without leave
4 to amend, at this point.

5 And alternate Count No. 1, which is, had the Orioles
6 and TCR breeched their agreement. The Court has listened
7 carefully to the arguments and that, we've obvioulsy paid a lot
8 of attention to the pleadings. The plaintiff wishes the Court
9 to interpret the agreement in light of contractual dealings.
10 The Court feels constrained to interpret it by the plain
11 language and meaning of the agreement which would exclude
12 consideration of a great deal of that which was presented.

13 I will say that plaintiffs make a very persuasive
14 argument and position at first, but the plain terms of the
15 agreement, -- and I guess it wasn't lost on me, and it
16 certainly was probably appropriate that the licensing agreement
17 should be left on the board. The Court does not believe, in
18 this set of facts, that the sale of an interest in TCR, MASN,
19 is a triggering act to the right of first refusal.

20 And that, while this may work a harsh result, it may
21 not, I don't know, but that the Court believes that in accord
22 with established Maryland law, so to the extent that it has
23 been set forth, the count fails to state a cause of action
24 against the Orioles and the entity known as TCR. Which is
25 obliged, I guess, to convert its name to MASN, or to operate

1 it's trade name under that.

2 So, accordingly, the Court does dismiss Count No. 1.
3 But I do so with a grant of 30 days leave to amend. If there
4 are new and different facts which would lead the Court to
5 maintain that cause of action I would certainly entertain a new
6 view of it. And I'm stressing the word "new facts" that have
7 to be pled.

8 Otherwise, the Court, in the matter of this type,
9 observes that this is one judge's opinion of the state of the
10 law and the plaintiffs are certainly free to take my decision
11 and carry it forward into an Appellate posture where higher
12 policy making courts can examine the issues. But, I based my
13 decision upon existing Maryland law and general precedent that
14 I've observed through the country, as well as the plain reading
15 of the agreement, and I will not look behind the agreement.

16 Having said that, I will ask Mr. Weiner and Company
17 to provide an order reflecting the Court's decision.

18 I am going on leave fairly shortly here and, so, I
19 doubt if I will be able to reach it until I get back after
20 leave. But I can be reached -- if the parties want to discuss
21 it, I can be reached while I'm on leave. And, certainly, I'd
22 be happy to act on anything that necessitates my action on a
23 very short term basis.

24 I don't know what the time line is. We've tried to
25 reach this matter as quickly as we could and have the parties

1 prepared. So, --

2 MR. WEINER: When is Your Honor leaving?

3 THE COURT: Today.

4 MR. WEINER: Oh! What time? If we have it here
5 before 4 o'clock --

6 MR. BRAULT: As soon as possible.

7 THE COURT: But I'll be happy to -- Mr. Brault, if
8 you want I'll leave a fax number where we can be reached.

9 MR. BRAULT: Oh, very good, Your Honor.

10 MS. BRAZA: Your Honor, if I could just take up one
11 point?

12 THE COURT: Yes, ma'am?

13 MS. BRAZA: You described an ownership relationship
14 with respect to Washington Nationals, that is not --

15 THE COURT: I don't know what it is.

16 MS. BRAZA: Right. And all I would like to do --

17 THE COURT: I surmised, is all.

18 MS. BRAZA: Okay. Thank you, Your Honor. Is to make
19 clear that, from our standpoint, that is not an accurate
20 representation.

21 THE COURT: I'm not making any findings of material
22 fact here, this is all on a motion to dismiss, all on pled
23 facts, and nothing I have answered would be binding in any
24 event, we had no trial. All right?

25 MS. BRAZA: Thank you, Your Honor. I appreciate that

1 clarification.

2 THE COURT: Okay.

3 All right, we'll stand in recess. You may be about
4 your business.

5 THE CLERK: All rise.

6 (Recess)

7 (The proceedings were concluded.)

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√ Digitally signed by Patricia F. Zuiker

DIGITALLY SIGNED CERTIFICATE

DEPOSITION SERVICES, INC. hereby certifies that the foregoing pages represent an accurate transcript of the duplicated electronic sound recording of the proceedings in the Circuit Court for Montgomery County in the matter of:

Civil No. 260751

COMCAST SPORTSNET MID-ATLANTIC

v.

BALTIMORE ORIOLES, L.P., ET. AL.

By:



Patricia F. Zuiker
Transcriber



EXHIBIT 9

[washingtonpost.com](http://www.washingtonpost.com)

Judge Dismisses Comcast Lawsuit Against Orioles

But Company Is Unlikely To Begin Airing Nats Games

By Thomas Heath
Washington Post Staff Writer
Thursday, July 28, 2005; E09

Montgomery County Circuit Court Judge Durke Thompson yesterday dismissed Comcast cable company's lawsuit against the Baltimore Orioles' television network, but the decision does not increase the likelihood that Comcast will begin airing Washington Nationals games on its cable channels.

Comcast has refused to carry any Nationals games, which are produced by the fledgling Mid-Atlantic Sports Network in a complicated arrangement with Major League Baseball, while its lawsuit works its way through the courts. A Comcast spokesman indicated yesterday that despite the ruling, Comcast would continue to fight MASN for control of the region's sports television. Thompson's ruling allows Comcast to resubmit its case within 30 days if it has new information.

"We are disappointed in the judge's decision today," said David L. Cohen, Comcast executive vice president, in a statement. "He has invited us to amend the complaint, and we will promptly decide whether we will amend or appeal. We remain fully confident in our legal position and believe that it will be vindicated upon further review."

"I am definitely pleased with the court's decision," Orioles owner Peter Angelos said. "And now we can get back to the first order of business, which is to get all of the Nationals games to all of the Nationals fans."

Comcast sued the Orioles, Major League Baseball and MASN, the regional sports network jointly owned by the club and the league, last spring. It alleged that the Orioles and MLB were going to take the Orioles' television rights from Comcast and give them to MASN starting in 2007 without giving Comcast the right to match MASN's offer.

Comcast's lawsuit hung on its contention that its contract with the Orioles to carry the club's games on Comcast SportsNet included language that said it has the right to match any offer from "a third party." Thompson agreed with the Orioles' argument that MASN was not a third party and was a continuation of the Orioles' television network under a new name.

"The court feels constrained to interpret by the plain language of the agreement," Thompson said. "The court does not believe this set of facts that a sale, whether in whole or in part, is a triggering act of right to match."

"The court has made it clear this was a bogus lawsuit," said Arnold Weiner, an attorney for the Orioles. "Comcast's old excuse for not carrying the games has been swept aside, and Comcast should get on with making the Nationals games available."

Philadelphia-based Comcast is the largest cable company in the United States, with about 21 million subscribers. Cohen has said previously that there is room for only one regional sports network in the Baltimore-Washington region.

Baseball allowed the Orioles to keep control over the sport's television rights throughout the area in return for allowing the Nationals, formerly known as the Montreal Expos, to relocate to Washington. The Orioles pay the Nationals \$20 million a year, with escalator clauses, for the right to produce and televise the team's games on MASN. But MASN needs to produce Orioles games -- Baltimore's contract with Comcast expires after the 2006 season -- in order to maximize MASN's profitability.

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Judge Dismisses Comcast Lawsuit Against Orioles

MASN has reached agreements with satellite provider DirecTV, cable company RSN and over-the-air Washington broadcasters WDCA-20 (UPN) and WTTG-5 (FOX) to air the games. But MASN needs agreements with big cable carriers such as Comcast, Cox and Time-Warner to carry the Nationals games in order to get wide distribution for the team and to give MASN the jump-start it needs to succeed.

"Our goal from the start has been to get the broadest possible distribution of the Nationals' games for the team's fans," said MLB President Robert DuPuy. "To the extent today's decision assists in getting the games carried, we are pleased with the result."

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EXHIBIT 10

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

In the Matter of)	
)	
TCR Sports Broadcasting Holding, L.L.P.,)	
)	
Complainant,)	
)	
v.)	File No. _____
)	
Comcast Corporation,)	
)	
Defendant.)	
)	

**DECLARATION OF MARK C. WYCHE IN SUPPORT OF THE CARRIAGE
AGREEMENT COMPLAINT OF TCR SPORTS BROADCASTING HOLDING,
L.L.P.**

1. My name is Mark C. Wyche. I am over the age of 21 years and have personal knowledge of the facts contained herein.

2. I am a Managing Director at Bortz Media & Sports Group, Inc. ("Bortz"). Bortz is a nationally recognized media and sports consulting firm that provides its clients with expert assistance relating to business opportunities, market trends, and technological innovations in media, telecommunications, and sports. Bortz has an established practice advising professional and college sports clients regarding negotiations associated with their media rights. We have substantial experience both with structuring media rights and with negotiating these agreements. I have been a Managing Director of Bortz for 5 years. During that period, I have led the group that advises sports teams on media rights issues.

3. Bortz was hired by the Baltimore Orioles L.P. (“BOLP”) to provide it advice on negotiating its media rights contracts. I was asked to participate in negotiations between TCR Sports Holdings, Inc. (“TCR”), the regional sports network (“RSN”) that is majority owned by BOLP, and various cable and satellite providers concerning the carriage of TCR for the 2005 baseball season and beyond. After gaining the rights to televise the Washington Nationals games, TCR sought to negotiate these contracts with cable and satellite providers so that TCR could begin delivering Nationals games to fans immediately. In that capacity, I advised BOLP and TCR about the best approach to gain immediate carriage, I helped BOLP and TCR devise the appropriate terms for its service, and I participated in the negotiations with cable and satellite providers.

4. TCR opted to air Nationals games during the 2005 baseball season as a “games only service” as opposed to immediately beginning its service as a 24-hour-a-day RSN. The primary reason that TCR launched initially as a “games only service” was that the cable and satellite providers that opted to carry TCR requested that it not be a 24-hour service during the 2005 season.

5. Major League Baseball and the Baltimore Orioles reached an agreement at the end of March that enabled TCR to offer the Nationals. Because the baseball season began in April, the short amount of lead time made it extremely difficult for subscription TV distributors (*e.g.*, DirecTV) to allocate a full time channel (*i.e.*, 24 hours per day, seven days per week) to TCR. It would be much easier for these providers to allocate a channel that would be active only during the Nationals games over the short term. As such, the distributors requested that TCR be a “games only service” in 2005 to relieve channel capacity issues. To accommodate these distributors, and in the context of

negotiating distribution agreements, TCR complied with this request. The “games only service” provided a short term solution that allows TCR to begin airing Nationals games immediately so that Nationals fans will have access to the games, while, at the same time, accommodating the needs of the cable and satellite providers that will carry the service. TCR plans to convert to a 24-hour service in March 2006, and negotiated the right to do so with its current distributors (*i.e.*, DirecTV and RCN).

6. In the course of our negotiations, I am not aware that any prospective distributor with which TCR held detailed discussions expressed any objection to the “games only service” for the 2005 season.

7. RSNs routinely obtain rights to anchor programs – such as Major League Baseball games – and then build a 24-hour schedule around those programs. Accordingly, it is not uncommon for an RSN to build its programming around one or two professional sports teams when it begins broadcasts. When an RSN begins broadcasts with one or two teams, the RSN generally expects that it will increase its offerings of live sporting events over time. After these RSNs are established, they will engage in negotiations to gain the rights to produce and televise other sporting events, as the rights to such programming become available.

8. It is my understanding that TCR plans to build its 24-hour programming using this model. TCR plans to build its programming around the Nationals in the 2006 season and the Nationals and the Baltimore Orioles thereafter. I also understand that TCR intends to compete with other RSNs to buy the rights to televise other live sporting events when those rights become available. Based on my experience in the industry, there is nothing unusual about TCR’s plans for creating its 24-hour programming.

I swear that the above statements are true to the best of my knowledge.


Mark C. Wyche

August 3, 2005

EXHIBIT 11

Copyright 2005 The Baltimore Sun Company
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June 16, 2005 Thursday
FINAL EDITION

SECTION: BUSINESS; Pg. 1D

LENGTH: 1181 words

HEADLINE: Orioles, Comcast spat hurts the fans;
Analysts predict accord on regional cable network

BYLINE: Childs Walker, SUN STAFF

BODY:

If the Baltimore Orioles and Comcast Corp. cannot work through their legal problems, a regional cable network - thought to be a boon for the club - could be more of a short-term bust, and many baseball fans in the Baltimore-Washington area could lose the opportunity to watch their home teams almost every night.

Or, industry analysts say, the standoff could be no more than posturing between giants who realize it's in their mutual best interest to reach a deal.

"Obviously, they're both losing money in the short term, but this isn't about losing, it's about winning," Roger Caplan, whose Howard County ad agency places commercials on local sports broadcasts, said yesterday. "There is a huge amount of money to be won at the end of the day, and you've got two of the best poker players in the region in Comcast and Peter Angelos."

Comcast SportsNet is suing the Orioles, claiming the team breached its contract with the network by creating the regional Mid-Atlantic Sports Network to broadcast Washington Nationals and Orioles games. The team has responded by filing a complaint with the Federal Communications Commission, claiming Comcast is unfairly using its dominant market position to keep MASN-produced Nationals games off the air.

MASN, which is co-owned by the Orioles and Major League Baseball, was thought to be the plum in a compensation package that Peter G. Angelos, the Orioles' owner, negotiated when the Expos moved from Montreal into what he considered to be competing territory.

The first casualties in the battle have been about 60 Nationals games, unavailable to Comcast subscribers in the Baltimore-Washington area. Orioles fans have been unaffected because the team's contract with Comcast SportsNet lasts through 2006.

But the Orioles hope to produce and broadcast most of the team's games on MASN beginning in

2007, and if Comcast won't carry the channel, a large portion of the team's fan base - the cable giant serves about two-thirds of households in the Baltimore-Washington region - might be unable to watch.

A protracted standoff could blow a hole in the value of MASN. But that doomsday scenario will probably never happen, analysts say.

"I think these sorts of regional sports networks do encounter distribution problems but, inevitably, they work themselves out," said Lee Berke, a Scarsdale, N.Y., consultant who has worked on similar network launches. "There's obviously a great demand for the games, and these networks are valuable."

The situation resembles the New York Yankees' awkward attempt to launch a regional network in 2002. Cablevision Systems Corp., the primary provider in the New York metro area, balked at the team's terms and refused to carry games for a year. Fans were outraged and an arbitrator had to intervene. The sides reached a deal, and the YES network, valued at about \$1.2 billion, is viewed as a major factor in the Yankees' financial dominance of the sport.

"There was a lot of public bad blood there, but, you know what, they reached a deal," Berke said. "My experience is that these networks don't even necessarily plan to have full distribution in Year One. I have little doubt that MASN will be very profitable."

Twins' effort failed

The Minnesota Twins provide a more cautionary example. The team launched the Victory Sports One network in late 2003 without having agreements with the five major cable providers in the Twin Cities market. Fans were left without access to games, and by May 2004, the team had folded the network - estimated to be losing millions of dollars - and cut a deal with Fox Sports Net.

Attempts to create regional networks also failed in Anaheim, Calif.; Kansas City, Mo.; and Houston, but analysts such as Berke say the Baltimore-Washington market is lucrative enough to support both MASN and Comcast SportsNet.

The Orioles might have to take a short-term hit because Comcast is protecting its own regional network, said David Ehrlich, a Denver consultant who helped launch a Colorado regional sports network.

"It's obviously very difficult in the short term, but if they focus on the long term, it's surmountable," Ehrlich said. "They have product, a terrific product."

Comcast could also overplay its hand and drive away subscribers if the company keeps baseball off the air for an extended period, he said.

Angelos will probably have to reach terms with Comcast because the company controls television access to so many households, said Caplan, the Howard County adman. But that

doesn't mean Angelos has to give in easily.

"You're talking about two entities with deeper pockets than any of us," Caplan said. "It won't hurt either one of them long term. This is all about positioning for power at the end of the day."

MASN officials say they're moving ahead with plans to launch all-day programming in March and to put the Nationals on as many screens as possible between Pennsylvania and North Carolina. They say the Comcast obstacle is not a surprise.

"Anytime you expand your business, you're going to go through a period of capitalization expenses," said MASN President Bob Whitelaw. "It's part of the process."

Games, ad revenue

The Orioles don't disclose their revenue from selling television rights, so it's hard to predict how lucrative the cable deal could be for the team or how much could be lost if the club doesn't reach terms with Comcast. Major League Baseball paid about \$75 million for its 10 percent share of the network. The Nationals could one day own 33 percent of the network under the agreement.

The Orioles would garner revenue from selling the games to distributors such as Comcast and by selling advertising time on the broadcasts. The distribution money tends to be the larger revenue stream, Berke said. Industry sources say MASN would charge cable providers \$2 to \$3 per subscriber to receive the Orioles and Nationals, a fee that would likely be passed on to cable consumers.

MASN officials say they offered Comcast a deal to distribute Nationals games but the cable company responded by demanding equity in MASN.

Comcast officials deny ever seeking a share of MASN.

Such an arrangement has precedent. Jerry Reinsdorf, owner of the White Sox and the Chicago Bulls, joined with the Chicago Blackhawks and Chicago Cubs to form a regional sports network that includes Comcast Corp. as a 30 percent partner.

Comcast will also partner in a planned New York Mets network.

The legal wrangling began in April, when Comcast SportsNet sued the Orioles, saying the team had violated the network's exclusive contract to negotiate for Orioles broadcast rights after 2006. The network claims it had exclusive negotiating rights through November and the right to match any offer after that.

The Orioles say MASN is not a third party covered by the exclusive negotiating clauses in the Comcast SportsNet contract. The club says MASN is a trade name for the team's broadcasting arm, TCR Sports, which has existed for years.

The only fans with full access to the MASN-produced games are 1.3 million DirecTV

subscribers in the Baltimore-Washington area and about 185,000 residents served by cable provider RCN.

LOAD-DATE: June 16, 2005

Document 1 of 1.

EXHIBIT 12

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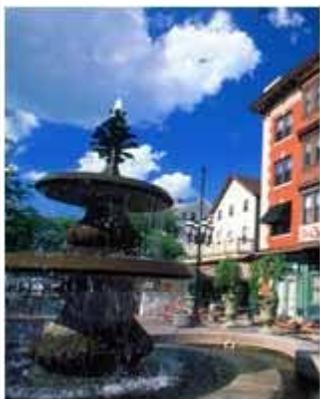
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EXHIBIT 13

Boston Business Journal

LATEST NEWS

September 2, 2004

Red Sox-Angels game nets largest rating in NESN history

Boston Business Journal

The Sept. 1 [Boston Red Sox-Anaheim Angels](#) baseball game earned the highest household rating for any event in the 20-year history of regional TV network [New England Sports Network](#), officials said.

The [Major League Baseball](#) game brought in a 15.1 household rating in metropolitan Boston, with NESN's coverage peaking at 18.8 at around 9 p.m., the network said.

NESN's highest rating previously was a 14.6, recorded during Boston's 5-4, 13-inning loss at New York on July 1, 2004.

Red Sox baseball is currently averaging a 9.2 household rating through 97 games this season, a 21 percent increase from last season after the same number of games.

The five highest ratings at the station previously had been New York Yankees games, according to NESN officials.

The private company, about 80 percent owned by the Sox, has been hugely successful ever since the network switched from premium to basic cable in July 2001.

On air since 1984 and with offices at Fenway Park almost as long, the network is currently in the market to more than triple its office space, hoping to expand from its current 12,000-square-foot office located on the second floor of the park next to the Green Monster.

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The Anaheim A's? It's possible

By Peter Gammons
Special to ESPN.com

June 9

Random thoughts on some matters:

Attendance, TV ratings and contraction

Attendance at major-league games is -- well -- OK. The Twins are up considerably, but that is relative; this past week they failed to top 25,000 in any of the four games in a first-place showdown with Cleveland. The Phillies are second to the lowest in the NL to the Expos, whose theme song is "Splendid Isolation."

According to the Elias Sports Bureau, through June 6, the average attendance was down significantly in 12 cities, down slightly in five, up significantly in seven and up slightly in six others.

On the other hand, local television ratings are apparently up, in some markets they're going through the roof. Seattle has drawn a 22 rating, the Red Sox claim that one Yankees game on their cable outlet NESN was the highest-rated program in the Boston market that night and that NESN and over-the-air ratings are off the charts.

The Marlins say their ratings are up 70 percent, the Blue Jays had a record April, Minnesota and Philadelphia are up from 60 percent to 225 percent on their various over-the-air and cable outlets and the Padres, Tigers and Brewers are up from 26 percent to 29 percent. The Expos telecast ratings are up to the point that they are even with or slightly ahead of the regular-season ratings of the NHL's Canadiens.

Of the 20 teams that responded to the inquiry, 11 reported significant increases, four slight increases, two (Reds, White Sox) significant decreases and three slight decreases.

Disney so wants out of baseball that it would consider folding the Angels, which would allow owners Ken Hofmann and Steve Schott to move the A's from Oakland to Anaheim.

So the interest is there. However, it raises three issues:

PAST COLUMNS

Gammons: column archive

🔊 Can Jason Giambi and the A's expand by contraction? ESPN's Peter Gammons explains.
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- Are ticket prices approaching the maximum limit? Is there so much television entertainment that people are staying home and watching whatever is on the tube?
- With so many fans getting their primary information from TV, those cities where player/analysts are allowed to speak their minds and discuss the game rather than play hucksters, those analysts have more influence than any media members before them.

Examples are the following: Jim Kaat and Ken Singleton in New York, Jerry Remy in Boston, Mike Flanagan in Toronto, Don Sutton and Joe Simpson in Atlanta, Kirk Gibson in Detroit, Mike Krukow and Duane Kuiper in San Francisco, John Cerutti in Toronto, to name just a few. This is where Larry Dierker, Bob Brenly and Buck Martinez all came from, and if some or many of the current announcers wanted to move into management, they could. If White Sox broadcaster Ken Harrelson, who has a tremendous baseball mind, had moved into management at the right place or time his management career might have been different.

- Does this mean that baseball is booming and that the notion of a November freeze is fading?

Yes and no.

"No matter what the local ratings say and how much we love the notion of the Twins and Phillies being in first place," says one management source familiar with the workings of the Blue Ribbon Commission, "the bottom lines are not good. The core economic problems of this system are still in need of an overhaul. The Twins and Phillies are like the White Sox and A's last year. One-year deals."

The source insists the owners still want to eliminate four teams, but would settle for two. Ownership is apparently united -- as ownership can be -- against Jeffrey Loria keeping the Expos in Montreal, do not want him to be able to move and reap a windfall on that withered franchise and figure that he will run out of patience losing money and will fold. The two Florida teams remain in limbo; if Tampa Bay could be folded, Florida could be moved west of Orlando. But what has readily been discussed is a shocker. And that is that Disney so wants out of baseball that it would consider folding the Angels, which would allow owners Ken Hofmann and Steve Schott to move the A's from Oakland to Anaheim.

"What we still may see are a lot of owners that are losing money worried about the labor situation and the winter -- remember, if there's a freeze, it could greatly slow ticket, corporate and TV revenues --then they may force their general managers to slash budgets," said one AL GM this week. "Teams like the Yankees that can afford to wait and take one or two big contracts could really benefit. But look around."

Royals owner David Glass told another owner this week that he is prepared to move any player who is making good money, from [Jermaine Dye](#) to [Jeff Suppan](#), [Roberto Hernandez](#) to [Joe Randa](#), and that they will immediately begin another reconstruction.

The White Sox, meanwhile, have shopped contracts, although not only was the [David Wells](#) interest apparently vastly exaggerated, but now concerns about his back are even greater after he walked off the mound Friday. Jerry Reinsdorf knows that [Royce Clayton](#) and [James Baldwin](#) likely have no markets, but that a needy team like Boston might take Sandy Alomar and that with [Keith Foulke](#) crossing the \$6 million plateau this winter, he could be used as trade bait as well.

Tampa Bay heightened attempts to move [Albie Lopez](#), [Greg Vaughn](#), [Fred McGriff](#), Gerald Williams, [John Flaherty](#) and/or [Mike DiFelice](#). Montreal is at the point that it just needs a taker for [Ugueth Urbina](#); the way the Yankees are having to work [Mariano Rivera](#) and [Mike Stanton](#), it may be worth their while to trade for Urbina. The Reds reportedly have marketed a number of players from [Pokey Reese](#) (the L.A. rumors have been heard), [Dmitri Young](#) and others. If Marlins owner John Henry tires of fighting his good fight, will he decide to move salary, such as [Cliff Floyd](#)?

"Oakland is still a wild-card contender, but if they don't know they have a home next year and they're out of it in July, don't they have to move ([Jason](#)) [Giambi](#), [Johnny Damon](#) and [Jason Isringhausen](#)?" asks an NL GM. "And I'd keep my eyes on Anaheim."

The owners do not buy the Northern Virginia baseball people's conclusion that a team in that area would have minimal impact on the Orioles. As for the notion of reparations, one ownership source suggests, "You can't even decide how much or for how long. They are a bad concept."

The Anaheim A's? The Polk County Gators? There are many of us who still refuse to believe that, in the end, the owners will pull off contraction any more than they were going to implement some of their hairbrained systems, from pay-for-performance to a salary cap. But it's worth discussion, and a watchful eye.

Is the strike zone bringing back the classic curveball?

There has been more discussion about the new strike zone than there has been legitimate impact, at least thus far. But one conclusion that's commonly voiced is that it is bringing the old-fashioned 12-to-6 curveball back into the game.

"There's no question that the high breaking ball is being called, and it's bringing the curveball back," says one veteran major-league scout. "It's really helped [Pat Hentgen](#), who seven or eight years ago had that great hard curveball and gave it up because it wasn't called (the feeling is that was a major factor in Hentgen's comeback, although his current arm fatigue may stem from using a pitch he hadn't thrown in a few years). It's helped [Aaron Sele](#), [Jason Isringhausen](#), [Paul Shuey](#), [Steve Karsay](#), even [Tim Wakefield](#) (who when he didn't have a good knuckler Thursday threw a lot of curveballs). It's really helped [Troy Percival](#), who now that he's healthy is throwing his curveball, and has had the best stuff of any closer in the game -- and has had the best season. It really also helps Tom Gordon."

One pitching coach suggests that because hitters haven't been conditioned to swing at high breaking balls for so long, they're taking some hangers that could be hit out of the park. "But when they start to look up for them instead of consistently looking down," says the pitching coach, "it will in turn help the pitchers because then it will be easier to get outs down in the strike zone. What it's doing is making it easier for pitchers to change the hitters' sight plane."

Four pitchers this week suggested that the strike zone has impacted slap hitters who try to crouch away from breaking balls, get a lot of pitches and get on base for the run producers.

Through Friday's games, the leadoff on-base percentages for the American and National Leagues were .325 and .319 respectively. Last season, they were .349 and .345. Last season, there were five players with 300 or more plate appearances in the leadoff spot who got on base at least 40 percent of the time. This season, the only players above .400 are Benny Agbayani and [Damian Jackson](#), not necessarily regular leadoff hitters. Only [Shannon Stewart](#) (.394) and [Ichiro Suzuki](#) (.390) are above .365 in the AL, [Barry Larkin](#) (.394), [Juan Pierre](#) (.383), [Paul Lo Duca](#) (.375) and [Quilvio Veras](#) (.372) above .366 in the NL. At the other end of the spectrum, there are eight regular or semi-regular players whose leadoff on-base percentage is under .285.

"I know it's tougher to find a great on-base leadoff hitter who can score runs than it is a cleanup hitter to knock them in," says Phil Garner. "Now, a [Manny Ramirez](#) or [Jason Giambi](#) is in a separate category, but it's very difficult to find a young player who can see a lot of pitchers, get on base and get pitches for other players the way [Rickey Henderson](#) used to do."

By the time the bonus numbers on this year's draft are completed, will this force an overhaul of the current draft system?

Likely, if as anticipated, Joe Mauer will get \$6 million for five years from the Twins, Mark Prior \$16 million from the Cubs and Mark Teixeira \$14M from the Rangers. The White Sox have a deal with the 16th pick, right-handed pitcher Kris Honel, for \$1.5M and the A's reportedly have the same deal with the 26th pick, righty Jeremy Bonderman, a high school junior from Pasco, Wash.

There are several interesting sidelights:

- The Rangers were allowed to take Teixeira, the slugging, switch-hitting Georgia Tech slugger, because owner Tom Hicks was convinced by GM Doug Melvin that after Prior and Devon Brazelton there were no impact college pitchers and that Teixeira has a chance to be a star. Hicks has apparently been convinced that the Rangers cannot compete next season, and that if Melvin can build on what he has, develop some of the young pitching like Joaquin Benoit, Colby Lewis and Ryan Dittfurth and allow Carlos Pena, Jason Romano, Mike Young and Kevin Mench to develop around [Alex Rodriguez](#) that they can build a good team for the long run. So Melvin is apparently safe, which is good news to

anyone associated with the franchise.

- One of the most interesting top picks was Seattle using its first selection, 36th overall, on Michael Garciaparra, Nomar's switch-hitting younger brother, who played at Don Bosco High School in La Habra Heights, Calif. They took him at pick 36 rather than at 49 because they were afraid Boston would nab him at 48. To some, it was a surprise, because Garciaparra had hurt his knee and played only four games this spring, and before last summer had concentrated on soccer. Red Sox scouting director Wayne Britton worked the younger Garciaparra out twice, but the Mariners knew him best.

"We know him well, and really like him," says Roger Jongewaard, Seattle's scouting director. "He played for our winter team, so while he played four games in the high school season, he played a season for us. Our area scout knows him well."

Well? The scout, Derek Valenzuela, was a high school teammate of Nomar's, who in turn was the best man in Valenzuela's wedding. Michael is signed with the University of Tennessee, but the fact that the Vols do not have soccer indicates that the younger Garciaparra - who, incidentally, has many of his brother's idiosyncrasies -- signed there underscores his dedication to baseball. So he likely will sign with Seattle.

"I was ready to sign out of high school with the Brewers," says Nomar. "It really was a very small monetary difference, then some other issues crept in."

- In 2000, righty Matt Harrington was the seventh overall selection in the draft and University of San Francisco 3B/1B Taggart Bozied was a sandwich pick by Minnesota. Neither signed. This year, they were selected in the second and third round respectively by San Diego. Harrington, who is pitching in the Northern League and was clocked at 95 in his last start, and his family are going to San Diego this week. If both insist on last year's money, they both might end up in the Northern League.

- Most teams wanted Kent State slugger John VanBenschoten as a hitter, but two teams wanted him as a pitcher, and one of those clubs -- the Pirates -- drafted him. So when VanBenschoten gets to the New York-Penn League, he will pitch and DH a couple of days a week.

- Seminole (Fla.) High School had six players drafted on the first day, including first baseman Casey Kotchman to the Angels with the 13th overall pick and shortstop Bryan Bass in the sandwich round (31st overall) to Baltimore.

- "The two teams that had the best drafts," says one NL GM, "were the Indians with all their pitching and the Padres." But another scouting director chimed in with the Orioles, with Cumberland College left-hander Chris Smith, LSU second baseman Mike Fontenot and Bass.

- The Royals got the two players they wanted, righty

Colt Griffin from Marshall, Texas, and outfielder Roscoe Crosby of Union, S.C. They tried to get Crosby to sign a deal stating he would give up football, but they couldn't get it done. Thus, they played it safe by selecting Griffin at No. 9, then came back and selected Crosby later (with the 53rd pick in the second round). The bet here is that Crosby will play baseball in the summer and football at Clemson in the fall.

- Mauer and Crosby were first team high school All-Americans in football. So was Midland, Texas running back Cedric Benson, but he wasn't taken until the 12th round by the Dodgers, which will try to buy him out of his deal with the University of Texas. Boston also faces trying to sign outfielder Antonio Gonzalez, an all-state QB-DB from Framingham, Mass., who is signed to play at Boston College.

- In 1997, Tyrell Godwin was the first pick of the Yankees, but picked an academic scholarship at North Carolina. In 2000, he was a sandwich pick of the Rangers, but flunked Texas' physical, had an operation, graduated and this time went in the third round to Toronto.

- In the spring, many projected Harvard right-hander Ben Crockett to go in the sandwich round. But even though he finished the season with a perfect game, Crockett slipped to the 10th round to the Red Sox because his medical history showed a slight ligament tear. "He can go to the Cape for a few starts to prove he's healthy," says a Red Sox scout, "and he could be a steal, because he could come quick."

- The joke around baseball is that the Yankees took Florida State outfielder John-Ford Griffin -- an outstanding hitter -- so George Steinbrenner could further annoy Tampa Bay's ownership. Griffin's father was a limited partner with the Rays before stepping aside due to some issues.

What in the world is going on in Boston?

Since Tom Yawkey died in 1976, it has been an ownership of fractured chaos, owner vs. owner, 25 cabs for 25 guys and now Dan Duquette vs. Jimmy Williams, without an ownership strong or courageous enough to come out of the trainer's room and put an end to it. The relationship has been tenuous for years, from Williams' playing Steve Avery and Mike Stanley to meet contract rollovers to Duquette dumping [Mike Benjamin](#) because he was the manager's favorite utilityman to Williams' refusal to play Izzy Alcantara to Duquette's public siding with [Carl Everett](#) against the manager last September, a move that has since undercut Williams' authority and encouraged \$6 million players to whine about playing time.

Duquette can't abide by some of Williams' unusual lineups, and one of Jimmy's advocates in the front office implored him not to so infuriate the general manager. Now here they both sit, free agents at the end of the season, the club up for sale and Duquette using his radio show to feed the flames of discontent.

Monday night, Williams and pitching coach Joe Kerrigan

removed [Pedro Martinez](#) after 90 pitches in a game they led 4-3 and eventually lost to the Yankees. That spewed the foam out of talk show hosts' mouths, and 90 minutes after Martinez explained to the media that he was behind the move and essentially asked for it, Duquette on his pregame radio show said that Williams owed the "market" more of an explanation.

Now, before you giggle at The Duke's reluctance to confirm a weather forecast, the next night, when informed that Martinez had supported the manager, Duquette said if you read between the lines that Martinez wanted to stay in and later second-guessed Williams for ending up with defensive replacement [Darren Lewis](#) hitting behind [Manny Ramirez](#), saying "the main reason for the four intentional walks was that Lewis was hitting behind him." In fact, Lewis was behind Ramirez for two of the walks.

"The most important thing is for us to keep Pedro healthy and respect his well-being," says Kerrigan. "He's 175 pounds, dripping wet. He's not a Clemens or a Schilling. He's gone on four days rest three times, and this was back-to-back outings, tough, grueling games against the Yankees in which he'd thrown 241 pitches. As soon as that second start in Boston was over, I walked into Jimmy's office and the first thing we each said was that we had to limit Pedro to 90 pitches in New York. He might have actually liked the extra day, but we couldn't do it because of our staff being shot in Toronto. It's been right at this time each of the last three years that Pedro's had a minor breakdown and ended up on the disabled list. We don't want that happening, and if someone can't see that, too bad."

Tigers manager Phil Garner and Phillies skipper Larry Bowa arrived in Boston in the midst of all the controversy. "You'd think they were in last place," said Bowa. "I look out at that team and wonder how in the world they're doing what they're doing," said Garner. "They're amazing, for the personnel they have."

"I've been on a lot of teams," says one veteran player. "But this is the most insane place I've ever been around. There's always something going on."

Is that the Orioles creeping toward .500?

Indeed, even without [Pat Hentgen](#), the Orioles have done remarkably well because of their young pitchers -- [Sidney Ponson](#) and [Josh Towers](#), 24, [Willis Roberts](#), 25 and [Jason Johnson](#), 27. And look down below to the young pitchers like Beau Hale and Rich Stahl and the rebuilding of the pitching has begun.

Ponson has begun to mature and harness his 92-93 mph fastball and big-time stuff. Towers, who is so self-confident he asked for [Mike Mussina](#)'s number 35 (Mike Flanagan points out that between Mike Cuellar, Mussina and Towers, that number had 283 wins), is a control, count guy who has a 15/3 strikeout/walk ratio in his first 31 2/3 innings and Friday shut out Montreal to lower his ERA to 1.99.

Roberts has a live arm and had early success. And Johnson is now up to 5-3. The former Devil Ray touches

95 on the gun on occasion, but the biggest reason for his maturation is that he has found that the device that he attaches to his hip has solved his long-running diabetic problem by automatically monitoring his insulin. In the past, Johnson wasn't as attentive to the diabetes as he should have been, and as a result had problems. The device he now wears has alleviated that, and has allowed him to become one of the hottest pitchers in the league.

Towers, as stated earlier, has Mussina's old number. When Hentgen signed with the O's and asked for his number 41, Johnson gave it to him and now wears 16, which by the way is Scott McGregor's old number.

OK, Jim Palmer's 22 is retired and no one has recently worn Flanagan's 46. Think they'd loan them to Beau Hale and Rich Stahl?

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YES' Yankees Telecasts No. 1 in Primetime

YES NETWORK'S YANKEES TELECASTS RANK #1 IN PRIMETIME MEN 18+ IN NEW YORK FOR FOUR CONSECUTIVE NIGHTS

Yankees on YES Consistently Defeating Broadcast Networks in New York

NEW YORK, July 21, 2005 – New York Yankees telecasts on YES Network, the most-watched regional sports network in the United States, have ranked #1 in men 18+ in primetime in New York* for four consecutive game nights, according to Nielsen Media Research. In addition, YES has enjoyed some of its highest-rated Yankees telecasts over the past week.

YES' Last Four Yankees Telecasts All Ranked #1 in Men 18+ in Primetime in New York...

Wed., July 20 (tied for 1st at 3.2 with Law and Order on WNBC-TV, Channel 4)

Tues., July 19 (4.7, vs. 3.4 for Law and Order SVU on WNBC-TV, Channel 4)

Mon., July 18 (4.2, vs. 4.1 for Everybody Loves Raymond on WCBS-TV, Channel 2)

Thur., July 14 (6.3, vs. 3.2 for CSI on WCBS-TV, Channel 2)

YES' Recent Yankees Telecasts Have Generated Some of the Network's Best Ratings of the Year...

■ Yankees-Boston on Thursday, July 14, garnered a 7.7 household rating, the second-highest-rated Yankees telecast this season

■ Yankees-Texas on Tuesday, July 19, scored a 6.8 household rating, the fourth-highest- rated Yankees telecast this season

■ Yankees-Texas on Monday, July 18, scored a 6.6 household rating, the fifth-highest- rated Yankees telecast this season

***In addition, for three consecutive game nights – Tuesday, July 19,
Monday, July 18, and Thursday, July 14, YES was #1 in primetime in New
York in men 18-49, men 25-54 and adults 25-54.***

**Primetime for WNYW-TV (Channel 5), WPIX-TV (Channel 11) and WWOR-TV (Channel 9) is 8-10 p.m. ET, and for WABC-TV (Channel 7), WCBS-TV (Channel 2) and WNBC-TV (Channel 4) is 8-11 p.m. ET.*

For a full archive of YES Network News, [Click Here](#).

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HEADLINE: TURNER SOUTH: Young executive grows up along with cable network

BYLINE: Matt Kempner, Staff

SOURCE: AJC

BODY:

Sometimes it's not enough to be head honcho of a cable TV network. Especially when you're across the negotiating table from people old enough to be your father.

That's when David Rudolph, Ted Turner's youngest network chief, puts on his glasses. They make him appear less like a college kid, though he thinks he looks "dorky" wearing them.

Every little bit helps.

"Sometimes they think they can pull one over on me," says the blue-eyed executive with a wrinkleless face. "Sometimes it's true. Sometimes it's not true."

Last year, 12 days after his 26th birthday, Rudolph launched Turner South. Operating in six Southeast states, Turner South is Atlanta-based Turner Broadcasting System's only regional network.

So it has been a prove-yourself year both for Rudolph and Turner South, which marked its first birthday this month. If they do well, Turner --- cable's most powerful programmer --- is likely to consider more regional networks in other parts of the country.

Turner South is supposed to be television with a Southern feel, featuring well-worn movies, sitcom reruns, original programming and live sport events including Atlanta Braves games.

It's a tiny corner of the vast Turner and Time Warner empire, and it was handed to a young executive working off a crash course in the cable television business.

With recent deals, the network will have access to half of the 7.5 million cable homes in Georgia, Alabama, Mississippi, Tennessee, South Carolina and parts of North Carolina.

"That's definitely over the hump," says John Mansell, a senior analyst for media analysis firm Paul Kagan Associates.

Compared with other Turner networks, Turner South is still a pipsqueak. Even with 100 percent penetration, it would have less than a 10th of flagship TBS Superstation's more than 80 million U.S. homes. But it's Rudolph's shot at the big leagues.

Turner has a history of giving young executives big jobs --- a fact the company likes to point out as parent Time Warner prepares to merge with youthful Internet power America Online.

But Rudolph is young even by the standards of Turner, where many network chiefs are in their 30s or 40s. The company says the only younger network boss was Scott Sassa, who raced up the ranks after heading Turner's short-lived music video network in his early 20s. Sassa now is NBC's West Coast president.

"How many companies would give someone like me an opportunity like this?" asks Rudolph, who is younger than many of his 40 employees.

Youth does have its complications. During an important dinner with a major cable executive, it came up that Rudolph's dad had been a college classmate of the executive's.

Now Rudolph sometimes tries to limit his boyish looks by putting on his glasses. He also avoids getting his hair cut too short after Kristine, his wife of two years, warned that it makes him look five years younger.

A former boss, William Burke, who headed Turner Classic Movies and TNT at a young age, offered Rudolph some advice.

"He said age is only as big of an issue as I make it," Rudolph says. "I've never come to a situation where it can't be overcome."

Rudolph hadn't planned for a career in TV. A native of Clarksville, Tenn., he earned an academic scholarship to Georgia Tech, where he majored in industrial engineering. Then one of his father's close friends, Clarksville native and Turner finance executive Wayne H. Pace, helped Rudolph get internships with the cable company. When Rudolph graduated, he got a job in Turner's strategic planning office.

The timing was good. It was 1996, and Turner was preparing for its merger with Time Warner. Top Turner executive Terry McGuirk wanted ideas for new networks that could be rolled out using assets from both companies.

"I got a crash course in television," Rudolph says. Working 80- to 100-hour weeks, "We came up with off-the-wall concepts ... like 15 different networks." Only the idea for what became Turner South survived. (He declines to disclose the other network ideas.)

Rudolph had written the business plan. The concept was for a regional network with a Southern feel, even if all the programs weren't specifically Southern. The network also would give Turner more space to run Braves games.

Rudolph was chosen to become the network's general manager. As such, he goes on some sales calls to line up cable operators, oversees all day-to-day network operations and has final say on everything from programming to the content on www.turnersouth.com.

"He consistently just blew us away" with his talents even before he got the job, says Brad Siegel, Rudolph's boss and the president of Turner's general entertainment networks. "He believes in this project so much that he can go out and sell it to anybody. ... He gets out there in almost an evangelical way."

Rudolph knows he and the network are being closely watched. "If it works --- which it better --- you can be sure we will explore" launching other regional networks, he says. New starts would have to be in regions with strong cultural identities and enough viewers to make the networks financially feasible.

For now he's focusing on refining Turner South and trying to make it profitable within five years.

He's adding more original programming, such as the recently launched "Liars & Legends," focusing on Southern folklore, and the planned "Commander's Kitchen," following the executive chef of the Commander's Palace in New Orleans as he travels the South.

He's also trying to get more cable operators around the region to pick up the network. Most systems in metro Atlanta already have Turner South, and the biggest holdouts --- AT&T Broadband in the Peachtree City-Fairburn area and Charter Communications in Carrollton and Villa Rica --- are expected to add it by early next year.

Ratings have been compiled only for metro Atlanta, and they only began in June. But so far Turner South meets or beats competitors such as TV Land, HGTV, WHOT and TNN, Rudolph says. Turner South also has less regional competition now that TNN has moved away from its country-fried programming and taken a new name, the National Network.

Turner South's sports programming is a strength but also a potential vulnerability. Turner South currently uses all three of its sports franchises as bait to draw viewers and cable operators. Braves games are the network's highest-rated programming and provide a substantial share of Turner South's ad revenue, according to Mansell of Paul Kagan Associates.

But Fox Sports has sued Turner South, contending Turner South is a regional sports network and therefore violates a no-compete clause Turner signed when it sold its stake in what became Fox's Sports Net South. Fox also shows Braves games.

Rudolph declines to predict what Turner South would do if it lost the lawsuit, which is scheduled to go before a judge next spring.

Could the network survive without sports? "It would certainly be very difficult," says Mansell, who has been an expert witness for Fox in its lawsuit. "It is by far the most attractive programming that is presented."

But in the future, TV may not even be Turner South's biggest business, Rudolph says. As early as next year he hopes to launch a Turner South-branded Southern portal on the Internet, where visitors can find all things Southern. He also wants to sponsor consumer events such as a Super Bowl of barbecue cook-offs and to put the network's name on consumer products, such as Southern cookbooks.

Rudolph has become a student of Southernness, regularly reading Southeastern newspapers and occasionally trying out ideas with a retired professor specializing in Southern culture.

He's using the same dedication to master the TV business, he says. "I have more to learn than I have learned so far. Without a doubt."

GRAPHIC: Photo

David Rudolph - General manager, Turner South / CATHY SEITH / Staff

Graphic

A YOUNG EXECUTIVE ...

Name: David Rudolph

Job: General manager of Turner South

Age: 27

Home: A two-bedroom house in Morningside.

Hometown: Clarksville, Tenn.

Family: Married, no children.

Off the job: Works on his house; plays in an amateur soccer league.

... AND HIS YOUNG NETWORK

Name: Turner South

Launched: October 1999

Viewers: Available to half the 7.5 million cable homes in Georgia, Alabama, Mississippi, Tennessee, South Carolina and parts of North Carolina.

Programming: Reruns such as "The Courtship of Eddie's Father" and "Mayberry RFD"; movies, often shown in clusters such as "Kudzu Theater: Movies that Grow on You"; sports (35 Braves games, 46 Thrashers games and 15 Hawks games); original shows such as "Southern Living Presents" and "Live at the Bluebird Cafe."

LOAD-DATE: October 14, 2000

EXHIBIT 14


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Season Starts: February 20, 2005

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Season Starts: August 2005

Ends: November 2005



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Season Starts: NHL Season cancelled

Season Ends:



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Season Starts: November 2, 2004

Season Ends: April 20, 2005



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Season Starts: Late November

Season Ends: Late March

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MLB EXTRA INNINGSSM 2005

All Teams in August

- Schedule subject to change
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- [MLB EXTRA INNINGS High Definition game schedule.](#)

Monday August 1			
Channel	Start (eastern time)	Title	Carrier
771	12:30PM	Chicago White Sox at Baltimore	CSN-B
771	8:00PM	Florida at St. Louis	FSMW
772	8:00PM	Oakland at Minnesota	FSNO-M
Tuesday August 2			
Channel	Start (eastern time)	Title	Carrier
771	7:00PM	Chicago Cubs at Philadelphia	CSN-C
772	7:00PM	Kansas city at Boston	NESN
773	7:00PM	LA Dodgers at Washington	FSW2
774	7:00PM	NY Yankees at Cleveland	FSOH
775	7:00PM	San Diego at Pittsburgh	FSP
776	7:00PM	Atlanta at Cincinnati	FSOHalt
777	7:00PM	Milwaukee at NY Mets	MSG
778	8:00PM	Florida at St. Louis	FSMW
MB09	8:00PM	Oakland at Minnesota	FSNO-M
MB10	9:30PM	Houston at Arizona	FSAZ
771	10:00PM	Baltimore at LA Angels	CSN-B
772	10:00PM	Colorado at San Francisco	FSBAalt
Wednesday August 3			

MLB EXTRA INNINGS

Channel	Start (eastern time)	Title	Carrier
771	7:00PM	Chicago Cubs at Philadelphia	CSN-C+
772	7:00PM	Kansas city at Boston	NESN
773	7:00PM	LA Dodgers at Washington	FSW2
775	7:00PM	San Diego at Pittsburgh	FSP
776	7:00PM	Seattle at Detroit	FSD
777	7:00PM	Atlanta at Cincinnati	FSS
778	7:00PM	Milwaukee at NY Mets	MSG
774	8:00PM	Oakland at Minnesota	FSNO-M
MB09	8:00PM	Tampa Bay at Texas	FSSW
MB10	8:00PM	Toronto at Chicago White Sox	CSN-C
771	10:00PM	Baltimore at LA Angels	FSW
772	10:00PM	Colorado at San Francisco	FSBAalt
773	10:00PM	Houston at Arizona	FSAZ

Thursday August 4

Channel	Start (eastern time)	Title	Carrier
771	12:00PM	Milwaukee at NY Mets	FSNY
772	1:00PM	Kansas city at Boston	NESN
773	2:00PM	Toronto at Chicago White Sox	CSN-C
774	3:30PM	Colorado at San Francisco	FSBA
775	4:00PM	Baltimore at LA Angels	FSW
776	7:00PM	LA Dodgers at Washington	FSW2
777	7:00PM	NY Yankees at Cleveland	FSOH
778	7:00PM	Atlanta at Cincinnati	FSOHalt
MB09	8:00PM	Florida at St. Louis	FSMW
MB10	9:30PM	Houston at Arizona	FSSW

Friday August 5

Channel	Start (eastern time)	Title	Carrier
771	7:00PM	Cleveland at Detroit	FSD
772	7:00PM	San Diego at Washington	MASN
773	7:00PM	Milwaukee at Philadelphia	FSNO-W
774	7:00PM	Florida at Cincinnati	FSOHalt
775	8:00PM	Baltimore at Texas	FSSW
776	8:00PM	Seattle at Chicago White Sox	CSN-C
777	8:00PM	Atlanta at St. Louis	FSMW
778	8:00PM	Boston at Minnesota	FSNO-M
MB09	8:00PM	Oakland at Kansas City	RSTN
MB10	9:30PM	Colorado at Arizona	FSAZ

MLB EXTRA INNINGS

771	10:00PM	Tampa Bay at LA Angels	FSW
772	10:00PM	Houston at San Francisco	FSBA

Saturday August 6

Channel	Start (eastern time)	Title	Carrier
771	7:00PM	Cleveland at Detroit	FSD
772	7:00PM	LA Dodgers at Pittsburgh	FSP
773	7:00PM	Seattle at Chicago White Sox	CSN-C
774	7:00PM	San Diego at Washington	MASN
775	7:00PM	Florida at Cincinnati	FSFL
776	7:00PM	Boston at Minnesota	NESN
777	7:00PM	Oakland at Kansas City	RSTN
778	9:30PM	Colorado at Arizona	FSRM

Sunday August 7

Channel	Start (eastern time)	Title	Carrier
771	1:00PM	Cleveland at Detroit	FSD
772	1:00PM	San Diego at Washington	MASN
773	1:00PM	NY Yankees at Toronto	YES
774	1:30PM	LA Dodgers at Pittsburgh	FSP
775	1:30PM	Milwaukee at Philadelphia	FSNO-W
776	2:00PM	Baltimore at Texas	FSSW
777	2:00PM	Boston at Minnesota	FSNO-M
778	2:00PM	Oakland at Kansas City	FSBA
MB09	2:00PM	Atlanta at St. Louis	TSS
MB10	3:00PM	Seattle at Chicago White Sox	FSNW
771	4:00PM	Houston at San Francisco	FSSWalt
772	4:00PM	Tampa Bay at LA Angels	FSW

Monday August 8

Channel	Start (eastern time)	Title	Carrier
777	3:00PM	Florida at Colorado	FSRM
771	7:00PM	Chicago White Sox at NY Yankees	YES
772	7:00PM	Texas at Boston	NESN
773	7:00PM	Detroit at Toronto	FSD
774	8:00PM	Cincinnati at Chicago Cubs	FSOH
775	8:00PM	St. Louis at Milwaukee	FSNO-W
776	10:00PM	Minnesota at Seattle	FSNW

Tuesday August 9

Channel	Start (eastern time)	Title	Carrier
771	7:00PM	Arizona at Florida	FSFL

MLB EXTRA INNINGS

772	7:00PM	Chicago White Sox at NY Yankees	YES
773	7:00PM	Tampa Bay at Baltimore	CSN-B
774	7:00PM	Texas at Boston	NESN
775	7:00PM	Detroit at Toronto	FSD
776	7:30PM	San Francisco at Atlanta	TSS
777	8:00PM	St. Louis at Milwaukee	FSNO-W
778	8:00PM	Washington at Houston	FSSWalt
MB09	8:00PM	Cleveland at Kansas City	FSOH
MB10	9:00PM	Pittsburgh at Colorado	FSRM
771	10:00PM	LA Angels at Oakland	FSBAalt
772	10:00PM	Minnesota at Seattle	FSNW
773	10:00PM	NY Mets at San Diego	MSG
774	10:00PM	Philadelphia at LA Dodgers	FSW2

Wednesday August 10

Channel	Start (eastern time)	Title	Carrier
771	1:00PM	Chicago White Sox at NY Yankees	YES
772	2:00PM	St. Louis at Milwaukee	FSMW
773	2:00PM	Cincinnati at Chicago Cubs	CSN-C
774	7:00PM	Arizona at Florida	FSFL
775	7:00PM	San Francisco at Atlanta	FSS
776	7:00PM	Tampa Bay at Baltimore	CSN-B
777	7:00PM	Texas at Boston	NESN
778	7:00PM	Detroit at Toronto	FSD
MB09	8:00PM	Washington at Houston	FSSWalt
MB10	8:00PM	Cleveland at Kansas City	RSTN
771	9:00PM	Pittsburgh at Colorado	FSRM
772	10:00PM	LA Angels at Oakland	FSW
773	10:00PM	Minnesota at Seattle	FSNW
774	10:00PM	NY Mets at San Diego	MSG
775	10:00PM	Philadelphia at LA Dodgers	FSW2

Thursday August 11

Channel	Start (eastern time)	Title	Carrier
771	2:00PM	St. Louis at Chicago Cubs	CSN-C
772	3:30PM	LA Angels at Oakland	FSW
773	3:30PM	NY Mets at San Diego	FSNY
774	7:00PM	Tampa Bay at Baltimore	CSN-B
775	7:00PM	Texas at NY Yankees	YES

MLB EXTRA INNINGS

776	8:00PM	Washington at Houston	FSSWalt
777	8:00PM	Cleveland at Kansas City	RSTN
778	10:00PM	Philadelphia at LA Dodgers	FSW2

Friday August 12

Channel	Start (eastern time)	Title	Carrier
771	2:00PM	St. Louis at Chicago Cubs	FSMW
772	7:00PM	Chicago White Sox at Boston	NESN
773	7:00PM	Tampa Bay at Cleveland	FSOH
774	7:30PM	Arizona at Atlanta	FSAZ
775	7:30PM	San Francisco at Florida	FSFL
776	7:30PM	Toronto at Baltimore	CSN-B
777	8:00PM	Cincinnati at Milwaukee	FSOHalt
778	8:00PM	Pittsburgh at Houston	FSSW
MB09	8:00PM	Detroit at Kansas City	RSTN
MB10	9:00PM	Washington at Colorado	FSRM
771	10:00PM	LA Angels at Seattle	FSNW
772	10:00PM	Minnesota at Oakland	FSNO-M

Saturday August 13

Channel	Start (eastern time)	Title	Carrier
771	7:00PM	Chicago White Sox at Boston	NESN
772	7:00PM	Cincinnati at Milwaukee	FSNO-W
773	7:00PM	Pittsburgh at Houston	FSP
774	7:00PM	San Francisco at Florida	FSBA
775	7:00PM	Tampa Bay at Cleveland	FSOH
776	7:00PM	Detroit at Kansas City	RSTN
777	8:00PM	Washington at Colorado	FSRM

Sunday August 14

Channel	Start (eastern time)	Title	Carrier
771	1:00PM	Tampa Bay at Cleveland	FSOH
772	1:00PM	Texas at NY Yankees	YES
773	2:00PM	Chicago White Sox at Boston	NESN
774	2:00PM	Cincinnati at Milwaukee	FSOHalt
775	2:00PM	Pittsburgh at Houston	FSSW
776	2:00PM	Detroit at Kansas City	FSD
777	3:00PM	Washington at Colorado	MASN
778	4:00PM	Minnesota at Oakland	FSBA
MB09	4:00PM	LA Angels at Seattle	FSNW
MB10	4:00PM	NY Mets at LA Dodgers	FSW2

MLB EXTRA INNINGS

Monday August 15

Channel	Start (eastern time)	Title	Carrier
771	7:00PM	Boston at Detroit	FSD
772	7:00PM	Washington at Philadelphia	MASN
773	7:00PM	San Francisco at Cincinnati	FSOH
774	7:00PM	NY Yankees at Tampa Bay	FSFL
775	8:00PM	Minnesota at Chicago White Sox	FSNO-M
776	8:00PM	Chicago Cubs at Houston	FSSW
777	9:00PM	Milwaukee at Colorado	FSRM
778	10:00PM	Kansas city at Seattle	FSNW
MB09	10:00PM	Toronto at LA Angels	FSW
MB10	10:00PM	Baltimore at Oakland	FSBA

Tuesday August 16

Channel	Start (eastern time)	Title	Carrier
771	7:00PM	Boston at Detroit	FSD
772	7:00PM	San Diego at Florida	FSFL
773	7:00PM	Texas at Cleveland	FSOH
774	7:00PM	Pittsburgh at NY Mets	MSG
775	7:00PM	San Francisco at Cincinnati	FSOH
776	7:00PM	NY Yankees at Tampa Bay	YES
777	7:30PM	LA Dodgers at Atlanta	TSS
778	8:00PM	Minnesota at Chicago White Sox	CSN-C
MB09	8:00PM	Arizona at St. Louis	FSMW
MB10	9:00PM	Milwaukee at Colorado	FSRM
771	10:00PM	Kansas city at Seattle	FSNW

Wednesday August 17

Channel	Start (eastern time)	Title	Carrier
771	1:00PM	Boston at Detroit	NESN
772	4:30PM	Kansas city at Seattle	RSTN
773	7:00PM	LA Dodgers at Atlanta	FSS
774	7:00PM	Texas at Cleveland	FSOH
775	7:00PM	Washington at Philadelphia	MASN
776	7:00PM	Pittsburgh at NY Mets	MSG
777	7:00PM	San Francisco at Cincinnati	FSOH
778	7:00PM	NY Yankees at Tampa Bay	FSFL
771	8:00PM	Arizona at St. Louis	FSMW
MB09	8:00PM	Minnesota at Chicago White Sox	CSN-C
MB10	8:00PM	Chicago Cubs at Houston	FSSW

MLB EXTRA INNINGS

772	9:00PM	Milwaukee at Colorado	FSRM
773	10:00PM	Toronto at LA Angels	FSW

Thursday August 18

Channel	Start (eastern time)	Title	Carrier
771	12:00PM	Texas at Cleveland	FSSW
772	12:30PM	San Francisco at Cincinnati	FSBA
773	7:00PM	San Diego at Florida	FSFL
774	7:00PM	Pittsburgh at NY Mets	FSP
775	7:00PM	Washington at Philadelphia	MASN
776	7:30PM	LA Dodgers at Atlanta	FSW2
777	8:00PM	Milwaukee at Houston	FSSW
778	8:00PM	Seattle at Minnesota	FSNO-M
MB09	8:00PM	Arizona at St. Louis	FSMW
MB10	10:00PM	Boston at LA Angels	FSW

Friday August 19

Channel	Start (eastern time)	Title	Carrier
771	5:00PM	Chicago Cubs at Colorado	FSRM
772	7:00PM	Baltimore at Cleveland	FSOH
773	7:00PM	Pittsburgh at Philadelphia	FSP
774	7:00PM	Toronto at Detroit	FSD
775	7:00PM	Washington at NY Mets	FSNY
776	7:30PM	LA Dodgers at Florida	FSFL
777	7:30PM	San Diego at Atlanta	TSS
778	8:00PM	Milwaukee at Houston	FSSW
MB09	8:00PM	San Francisco at St. Louis	FSMW
MB10	8:00PM	Seattle at Minnesota	FSNO-M
771	10:00PM	Boston at LA Angels	FSW
772	10:00PM	Kansas city at Oakland	RSTN

Saturday August 20

Channel	Start (eastern time)	Title	Carrier
771	7:00PM	Baltimore at Cleveland	FSOH
772	7:00PM	Toronto at Detroit	FSD
773	7:00PM	Seattle at Minnesota	FSNW
774	7:00PM	Washington at NY Mets	MASN
775	8:00PM	Chicago Cubs at Colorado	FSRM
776	9:00PM	Kansas city at Oakland	FSBA

Sunday August 21

Channel	Start (eastern time)	Title	Carrier
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MLB EXTRA INNINGS

771	1:00PM	Baltimore at Cleveland	FSOH
772	1:00PM	San Diego at Atlanta	TSS
773	1:00PM	Toronto at Detroit	FSD
774	1:00PM	Washington at NY Mets	MASN
775	1:30PM	Pittsburgh at Philadelphia	FSP
776	2:00PM	Milwaukee at Houston	FSSW
777	2:00PM	Seattle at Minnesota	FSNO-M
778	2:00PM	Texas at Tampa Bay	FSFL
MB09	3:00PM	NY Yankees at Chicago White Sox	CSN-C
771	4:00PM	Boston at LA Angels	FSW
MB10	4:00PM	Kansas city at Oakland	FSBA

Monday August 22

Channel	Start (eastern time)	Title	Carrier
771	1:00PM	LA Dodgers at Florida	FSFL
772	7:00PM	St. Louis at Pittsburgh	FSP
773	7:00PM	Toronto at NY Yankees	YES
774	7:00PM	Cleveland at Tampa Bay	FSOH
775	8:00PM	Atlanta at Chicago Cubs	CSN-C
776	9:30PM	NY Mets at Arizona	FSNY
777	10:00PM	Houston at San Diego	FSSW
778	10:00PM	Philadelphia at San Francisco	FSBA

Tuesday August 23

Channel	Start (eastern time)	Title	Carrier
771	7:00PM	Cincinnati at Washington	FSOH
772	7:00PM	Oakland at Detroit	FSD
773	7:00PM	St. Louis at Pittsburgh	FSP
774	7:00PM	Toronto at NY Yankees	YES
775	7:00PM	Cleveland at Tampa Bay	FSOH
776	8:00PM	Atlanta at Chicago Cubs	CSN-C
777	8:00PM	Seattle at Texas	FSNW
778	8:00PM	Boston at Kansas City	RSTN
MB09	8:00PM	Chicago White Sox at Minnesota	FSNO-M
MB10	9:30PM	NY Mets at Arizona	FSAZ
771	10:00PM	Houston at San Diego	FSSW
772	10:00PM	Colorado at LA Dodgers	FSW2

Wednesday August 24

Channel	Start (eastern time)	Title	Carrier
771	2:00PM	Atlanta at Chicago Cubs	FSS

MLB EXTRA INNINGS

772	7:00PM	Cincinnati at Washington	FSOH
773	7:00PM	LA Angels at Baltimore	CSN-B
774	7:00PM	Oakland at Detroit	FSD
775	7:00PM	St. Louis at Pittsburgh	FSP
776	7:00PM	Toronto at NY Yankees	YES
777	8:00PM	Florida at Milwaukee	FSNO-W
778	8:00PM	Seattle at Texas	FSSW
MB09	8:00PM	Boston at Kansas City	RSTN
MB10	8:00PM	Chicago White Sox at Minnesota	FSNO-M
771	9:30PM	NY Mets at Arizona	FAZ
772	10:00PM	Houston at San Diego	FSSW
773	10:00PM	Colorado at LA Dodgers	FSW2
774	10:00PM	Philadelphia at San Francisco	FSBA

Thursday August 25

Channel	Start (eastern time)	Title	Carrier
771	1:00PM	Toronto at NY Yankees	YES
772	1:00PM	Chicago White Sox at Minnesota	CSN-C
MB10	1:00PM	Cincinnati at Washington	MASN
773	2:00PM	Seattle at Texas	FSSW
774	7:00PM	LA Angels at Baltimore	CSN-B
775	7:00PM	St. Louis at Pittsburgh	FSMW
776	7:00PM	Cleveland at Tampa Bay	FSFL
777	8:00PM	Boston at Kansas City	RSTN
778	9:30PM	NY Mets at Arizona	FAZ
MB09	10:00PM	Colorado at LA Dodgers	FSW2

Friday August 26

Channel	Start (eastern time)	Title	Carrier
771	2:00PM	Florida at Chicago Cubs	FSFL
772	7:00PM	Cincinnati at Pittsburgh	FSOH
773	7:00PM	Detroit at Boston	NESN
774	7:00PM	Kansas city at NY Yankees	RSTN
775	7:00PM	St. Louis at Washington	FSMW
776	7:00PM	Cleveland at Toronto	FSOH
777	7:00PM	LA Angels at Tampa Bay	FSFL
778	7:30PM	Oakland at Baltimore	CSN-B
MB09	8:00PM	Minnesota at Texas	FSNO-M
771	10:00PM	Colorado at San Diego	FSRM

MLB EXTRA INNINGS

772	10:00PM	NY Mets at San Francisco	FSBA
MB10	10:00PM	Chicago White Sox at Seattle	FSNW
773	10:30PM	Houston at LA Dodgers	FSW2

Saturday August 27

Channel	Start (eastern time)	Title	Carrier
771	7:00PM	Atlanta at Milwaukee	FSNO-W
772	7:00PM	Cincinnati at Pittsburgh	FSOH
773	7:00PM	Detroit at Boston	NESN
774	10:00PM	Chicago White Sox at Seattle	FSNW
775	10:00PM	Colorado at San Diego	FSRM
776	10:00PM	Houston at LA Dodgers	FSSW

Sunday August 28

Channel	Start (eastern time)	Title	Carrier
771	12:30PM	Cleveland at Toronto	FSOH
772	1:00PM	Kansas city at NY Yankees	YES
773	1:30PM	Cincinnati at Pittsburgh	FSP
774	1:30PM	Oakland at Baltimore	FSBA
775	2:00PM	Atlanta at Milwaukee	FSNO-W
776	2:00PM	Detroit at Boston	NESN
777	2:00PM	Florida at Chicago Cubs	FSFL
778	4:00PM	Chicago White Sox at Seattle	FSNW
MB09	4:00PM	Houston at LA Dodgers	FSW2

Monday August 29

Channel	Start (eastern time)	Title	Carrier
771	7:00PM	Detroit at Cleveland	FSOH
772	7:00PM	St. Louis at Florida	FSMW
773	7:00PM	Tampa Bay at Boston	NESN
774	7:30PM	Washington at Atlanta	MASN
775	8:00PM	LA Dodgers at Chicago Cubs	CSN-C
776	8:00PM	Chicago White Sox at Texas	FSSW
777	8:00PM	Minnesota at Kansas City	FSNO-M
778	10:00PM	Colorado at San Francisco	FSBA
MB09	10:00PM	NY Yankees at Seattle	FSNW

Tuesday August 30

Channel	Start (eastern time)	Title	Carrier
771	5:00PM	Chicago White Sox at Texas	CSN-C
772	7:00PM	Detroit at Cleveland	FSOH
773	7:00PM	St. Louis at Florida	FSFL

MLB EXTRA INNINGS

774	7:00PM	Tampa Bay at Boston	NESN
775	7:00PM	Baltimore at Toronto	CSN-B
776	7:00PM	Philadelphia at NY Mets	MSG
777	7:30PM	Washington at Atlanta	TSS
771	8:00PM	Chicago White Sox at Texas	CSN-C
778	8:00PM	Cincinnati at Houston	FSSW
MB09	8:00PM	LA Dodgers at Chicago Cubs	FSW2
MB10	8:00PM	Pittsburgh at Milwaukee	FSNO-W
772	10:00PM	NY Yankees at Seattle	FSNW
773	10:00PM	Oakland at LA Angels	FSW
774	10:00PM	Colorado at San Francisco	FSBA

Wednesday August 31

Channel	Start (eastern time)	Title	Carrier
771	2:00PM	Chicago White Sox at Texas	FSSW
772	2:00PM	LA Dodgers at Chicago Cubs	FSW2
773	3:30PM	Colorado at San Francisco	FSBA
774	7:00PM	Detroit at Cleveland	FSOH
775	7:00PM	St. Louis at Florida	FSMW
776	7:00PM	Tampa Bay at Boston	NESN
777	7:00PM	Washington at Atlanta	FSSW
778	7:00PM	Baltimore at Toronto	CSN-B
MB09	7:00PM	Philadelphia at NY Mets	MSG
MB10	8:00PM	Cincinnati at Houston	FSSW
771	10:00PM	NY Yankees at Seattle	FSNW
772	10:00PM	Oakland at LA Angels	FSW

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EXHIBIT 15

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Sacramento Bee

September 13, 2004, Monday METRO FINAL EDITION

SECTION: MAIN NEWS; Pg. A1; MONDAY MORNING - A look at people and issues shaping the news

LENGTH: 1313 words

HEADLINE: Kings reach out to Valley Comcast TV deal sets the stage for acquiring new fans in one of the fastest-growing regions of the state.

BYLINE: Clint Swett and J. Freedom du Lac Bee Staff Writers

BODY:

When most people look north and south from Sacramento, they see a broad valley dotted with farms and orchards.

But from the third-floor suites at Arco Arena, executives at Maloof Sports & Entertainment see a potential bumper crop - new Kings fans who could help bolster the team's bottom line for years to come.

By cementing a deal last week with Comcast Cable to broadcast 58 games from Chico to Fresno on a new sports network, the Kings achieved a number of goals. They restarted a revenue stream that was cut off when the team's cable deal with Fox Sports expired after the 2002-03 NBA season. They pacified their local fans frustrated by a paltry TV schedule last season.

Perhaps most importantly, the Kings laid the foundation for what they hope will be a rabid fan base in what is expected to be California's fastest-growing region during coming decades.

"The further you go from Arco Arena, the fewer people can attend games," said John Thomas, president of Maloof Sports.

"So TV is an extension of the arena. Instead of having 17,317 fans see a game, we can have 1,017,317."

He may be understating the case.

According to the California Department of Finance, by 2020 the 19-county Central Valley will be more populous than the Bay Area.

By 2050, the population of the Central Valley will grow to 11.4 million, said Richard Cummings, communications director for the Great Valley Center, a Modesto-based public policy organization.

"The (TV deal) is a recognition of the Valley's growing prominence," Cummings said. "There are plenty of opportunities for the Kings if they want to build fan loyalty."

Maloof Sports certainly sees it that way. The Kings' radio network has included a Fresno station for the past two years, and Thomas said the team hopes to expand its Spanish-language broadcasts to stations up and down the Valley this season.

In a further nod to the Valley, the team will play a preseason game against the Los Angeles Lakers at Fresno's new Save Mart Center next month.

While few of the newly converted fans would buy tickets for the already sold-out games at Arco, their enthusiasm could pay off in other ways.

The Kings will get an undisclosed fee from Comcast to broadcast the games as part of a new regional sports network.

Kings merchandise - from \$12 lanyards to \$79 Mike Bibby jerseys - might become hot items along the Highway 99 corridor.

More fans might trek to Sacramento to attend concerts or other events at Arco.

But the biggest dividends likely will come from "partner" companies like Pepsi, McDonald's, Southwest Airlines and the Maloofs' own Palms Casino Resort, which pay hefty sums for ads on Kings television and radio broadcasts, signs at Arco Arena and various in-store promotions with the team.

By extending their reach from Chico to Fresno, the Kings potentially can charge more for these partnerships.

"Our belief is that if we can get fans to feel closer to the team (via television), then our partners can interact with the fans and turn them into customers," Thomas said.

Some might wonder how difficult it will be to woo fans wedded to Bay Area or Southern California teams.

That shouldn't be a major issue, said Perry Wong, who follows Central Valley issues as a senior economist at the Milken Institute.

"People in the Valley lean more toward Sacramento than they do L.A. They feel more connected to Sacramento," Wong said. "The Valley is a natural extension for the franchise. It's almost a perfect place to build a base."

The Valley presents its challenges, too. Largely rural and heavily populated by seasonal farm workers, the Stockton, Modesto, Merced and Fresno areas have lower per-capita incomes than Appalachia, said Cummings of the Great Valley Center.

But Joel Kotkin, a senior fellow at the New America Foundation who studies and writes about Valley issues, said the region is slowly becoming more urbanized with a rapidly growing middle class. "It's smart of the Kings to try to establish a presence there," he said.

It's also a sensible move by the Kings to have inked a deal with Comcast after the team's cable rights collected nothing but dust for a full season, said John Higgins, deputy editor at Broadcasting & Cable.

"Television rights are lifeblood for pro teams," he said. "They're vital. It's a make-or-break financial deal in a business that's not much of a business."

The deal may not be quite so critical for Comcast, whose corporate president had publicly poo-pooed the idea of a regional Sacramento sports network as recently as six months ago. But the cable giant still stands to gain plenty from its new partnership - and not just in advertising revenue and the branding bump that business analysts say is sure to come.

For one thing, Comcast's new network will offer Kings home games in high definition, which could inspire a significant percentage of Comcast's 770,000 Valley customers to upgrade from analog cable to the more expensive digital service. (Starting early next year, digital Comcast subscribers will also be able to use a video-on-demand feature to replay all or parts of recent games.)

"The money is to be made by having these games in high definition so people will upgrade to digital and pay a higher fee," said John Mansell, a TV sports analyst at Kagan Research.

There are also the programming fees, which could be worth several million dollars in each of the 10 years of Comcast's contract with the Kings.

While the Valley's dominant pay-TV provider won't actually charge itself to carry the new sports network - which doesn't yet have a channel position, a start date or even a name - it will make its competitors pay for the privilege.

Joseph Gamble, Comcast's regional vice president, wouldn't say what the company plans to charge for the channel, which is expected to include zoned high school and college sports (meaning Fresno-area viewers might see Fresno State athletics at the same time that Stockton viewers are watching the University of the Pacific).

But Broadcasting & Cable's Higgins said regional sports network fees - paid by the cable and satellite companies - are generally between \$1.60 and \$2.50 per subscriber per month. And according to Daily Variety, Comcast is charging about \$3 per subscriber for the new regional sports network launching Oct. 1 in Chicago.

While neither DirecTV nor DISH Network has signed a deal to add Comcast SportsNet Chicago, representatives for the two major satellite operators said last week that they were still negotiating to pick up the programming.

Both DISH Network and DirecTV already carry Comcast's Washington, D.C.-Baltimore sports network; along with the cable operators competing with Comcast here, both are eyeing the Central Valley channel, too.

"We're interested in the channel and would like to invite a proposal on reasonable economic terms," said Kelley Baca, spokeswoman for DISH Network.

Said Bob Marsocci of DirecTV: "We look forward to the opportunity to sit down with Comcast and see if we can come to an agreement that we think is fair and reasonable."

Marsocci said it was "likely" that DirecTV would offer the Comcast channel, but added, "It really is premature for me to say whether we definitively will."

If they do, Broadcasting & Cable's Higgins doubts that DirecTV will pay Comcast anything close to what the cable giant is likely to receive for its Chicago channel.

In that market, Comcast is carrying four major pro teams - the Cubs, Bulls, White Sox and Blackhawks.

In this market, where ratings are concerned, it's likely to be the Kings ... followed by a long, quiet summer.

"This is basically a part-time network with one good pro sport - and that's it," Higgins said. "It will be hard for Comcast to get full dollar for this thing."

The Bee's Clint Swett can be reached at (916) 321-1976 or cswett@sacbee.com.

LOAD-DATE: September 14, 2004

EXHIBIT 16

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NEW YORK POST

Yes, No Yanks

August 3, 2002

By Thomas Hazlett

THE dog days of summer bring a last championship dream for die-hard Cubs fans, a desperate World Series fantasy for Red Sox boosters - and a familiar test pattern for Yankee partisans subscribing to Cablevision. The YES Network-Cablevision brawl has emptied both dugouts, spilling over to a federal bench with the Sherman Antitrust suit filed by the Bronx Bombers' off-season power-hitting acquisition, David Boies. The fight will not end, however, until government policies allow new media onto the field of play.

Last season, most Yankee games were televised on the MSG Network, available to every basic cable or satellite subscriber. Yankee ownership did not renew the MSG contract this year, but created its own channel for Yankee games - the YES Network. YES cut a deal with every New York area cable operator except one, placing the new channel on basic cable for \$2 per (every) subscriber per month.

The lone holdout is Cablevision, the single largest N.Y. metro video provider, serving nearly 3 million households, and the owner of MSG. Cablevision offered to make YES available as a premium service, like HBO. Those who want the programming pay an extra \$10 a month. Those terms are a "no sale" to the Yankees; Cablevision subscribers have already missed well over half of the 2002 season.

Some fans will be rooting for YES in its anti-monopoly suit, but - as team loyalists learned the hard way last October - even dramatic ninth-inning rallies don't guarantee ultimate victory. Antitrust law has a difficult task in umpiring a tug of war between two parties with significant market power. Moreover, the jury will be spun by each side, getting dizzy before finally tossing a dart.

The Yankees will argue that padding the Cablevision subscriber's bill by two bucks won't reduce demand when additional Yankee games are factored in. They'll note that Time Warner, Comcast and DirecTV have all gone along and that Cablevision, owner of MSG, is a sore loser whose aim is to stifle a rival's programs.

Cablevision will counter that it protects customers by refusing to foist Yankee games (and fees) on subscribers. The fact that EchoStar, the second largest satellite TV firm, declined to carry the Yankee net could be a prime exhibit. Boies' complaint alleges that it was for "purely anticompetitive reasons" that Cablevision said "no" to YES, but EchoStar, without any power to hold New York TV viewers hostage, did the same thing.

Even if a court were to order that YES be carried on Cablevision's basic service, some consumers would object - the underlying conflict would remain. The long-term solution is to subject both of the disputatious parties to enhanced market discipline. Policymakers could do at least three things right now to promote competitive rivalry.

First, the federal government could rev up cable's leading rival by approving the EchoStar takeover of DirecTV. By combining channel capacity, the merged satellite firm could offer cable customers scores of additional reasons to switch, turning up the pressure on cable systems to pack line-ups with better programs (including local sports).

And EchoStar could provide YES at DirecTV's price, which it says it would do. Today it refuses to pay the higher rates demanded of its smaller system. With more subscribers to bargain with, the new operator could counter Yankee pricing power.

Second, the FCC could expedite fresh competition from satellite, fixed broadband and "third generation" wireless. For instance, low-power TV licensees (with virtually zero audience share) are barred from offering high-speed Internet service in lieu of television.

Granting flexible use of assigned airwaves could revitalize the broadband market, challenging DSL and cable-modem providers, igniting development of streaming video. That would be a competition-policy home run. When ballgames are available to Palm Pilots, notebooks and desktop PCs, cable TV holdouts are best seen on The History Channel.

Third, local governments could actively court competition between cable providers. In New York City, where AOL/TimeWarner faces direct competition from rival cable carrier RCN, both firms jumped on the Yankee TV deal. Suburban authorities ought to reduce cable franchise burdens and eliminate bureaucratic delays to help launch more cable rivalry.

Are the benefits of competition speculative? Not if the experience in deregulating cable TV is a guide. In 1984, the average U.S. household received fewer than 15 TV channels; today, it receives more than 58. Deregulation of cable - blocked in the 1960s and 1970s to protect the old broadcasting triopoly from rivalry - opened the spigots to viewer choice and so ushered in a Golden Age for programmers.

ESPN, CNN, A&E, MTV, C-SPAN, Fox News and - yes - YES are just some of what you get when you get more channels. Policies promoting more broadband competition today pave the way to yet stubbier program niches, including those bringing Yankee lovers all their baseball, all the time.

Thomas W. Hazlett is a senior fellow at the Manhattan Institute and a former chief economist of the Federal Communications Commission.

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Late Edition - Final

SECTION: Section D; Column 6; Sports Desk; BASEBALL; Pg. 2

LENGTH: 761 words

HEADLINE: Cable Dispute Over Mets Is Settled

BYLINE: By RICHARD SANDOMIR

BODY:

On the 63rd day of a dispute that had kept almost a third of the local television market from watching most Mets games this season, the MSG Network and Fox Sports New York were restored to Time Warner Cable's systems in time for last night's game against the Cubs. (The game was delayed by rain and ended at 12:52 a.m.)

The agreement between Time Warner and Cablevision will last until 2008. No other details were announced, and officials from each side declined to discuss the settlement.

Executives for Time Warner and Cablevision, which owns MSG and FSNY, met through the day in the Manhattan office of Attorney General Eliot Spitzer.

"They understood that denying the public access to the ballgames wasn't a good, healthy thing in terms of their civic responsibility," Spitzer said. "It would have been nice if they had compromised sooner, but we got there today. All credit goes to them."

Spitzer said he had been monitoring the negotiations, which had stalled often. They resumed last week but had not yielded an agreement.

"I made a judgment call that they had exhausted what they could do, and I thought there was some upside to getting them together today," Spitzer said. "I gave them some coffee and cookies, and maybe that helped."

He said he and other staff members sat in on the session yesterday.

This is familiar territory for Spitzer. In 2003, he brokered the deal that put the YES Network on Cablevision's systems after a lengthy blackout. And last year, he intervened to help end the 10-day blackout of Mets games on MSG and FSNY on Time Warner's systems, the first major flare-up in their dispute.

The impasse had affected Mets, Knicks and MetroStars fans among Time Warner's 2.4 million subscribers. It restricted them to viewing Mets games on Channel 11. Ratings surged on Channel 11 for its nine games, by 29 percent over last year; MSG and FSNY's combined rating for 22 games had fallen 39 percent over the comparable number of games in 2004, largely because of the blackout on Time Warner. One game was also carried by ESPN.

"It's been frustrating," said Jay Kim, a lawyer in Manhattan who posted an online petition, which grew to 2,341 names and called on Spitzer to get involved. "This is the most promising team they've had in years, but I hardly know them. I watch games on weeknights; my weekends are too busy. So I've read about them, caught some highlights, but these players are still strangers to me."

The two sides battled over the price Cablevision wanted Time Warner to pay to renew the channels. They had been without a contract since the end of 2003.

Cablevision had said since March that a settlement could be reached only through binding arbitration. Time Warner rejected the offer, seeking a resolution through mediation or one-on-one talks. "The resolution today came through negotiations, not arbitration," said Mark Harrad, a Time Warner spokesman.

Time Warner insisted that it should not pay increased monthly subscriber fees for MSG and FSNY, which have lost the rights to the Yankees and the Nets to YES, and will lose the Mets to the team's network after this season. Time Warner and Comcast are partners with the Mets in the network.

According to Kagan Research, an industry analysis research firm, the combined subscriber fee for MSG and FSNY is \$3.80 a month.

The fee that the Mets will charge next season is not known. Spitzer said he was not worried that a similar dispute might arise next year between Cablevision and the Mets' channel, but he said the public's continued access to sports and other programming was "something that policymakers must think about."

Tony Avella, chairman of the City Council's zoning and franchise committee, said he believed two recent hearings he held brought the quarrelling sides together. The sessions "politely embarrassed them by holding their franchise renewals over their heads," he said. Time Warner and Cablevision's cable franchises in New York expire in 2008, but negotiations can start this fall.

Avella added, "Under existing cable law, we have limited power in terms of content and rates, so we can only apply public pressure."

The standoff prompted Assemblyman Michael N. Gianaris, a Queens Democrat, to co-sponsor a bill in the state legislature that would have imposed a penalty of 10 cents per subscriber on Time Warner and Cablevision for each day the Mets were off the air. The levies would have amounted to \$14 million a month.

"Two days after our announcement, they started talking again, and a week later, they had a deal," he said.

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Document 1 of 1.

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October 13, 2004 Wednesday
Late Edition - Final

SECTION: Section D; Column 5; Sports Desk; BASEBALL; Pg. 4

LENGTH: 938 words

HEADLINE: Mets' Cable Channel Will Make 2006 Debut

BYLINE: By RICHARD SANDOMIR

BODY:

The Mets loved the idea of the Yankees' YES Network so much that they will start their own regional sports channel in 2006.

The Mets announced yesterday that their partners will be Time Warner and Comcast, the country's largest cable operators, which will guarantee the fledgling network distribution to 3.1 million cable households in the New York metropolitan area.

The deal was set in motion last June, when the Mets paid \$54 million to make an early escape from their television deal with Cablevision's MSG Network and Fox Sports New York.

The Mets had contemplated making a new deal with Cablevision for substantially more than the \$47 million they were paid this year and making a deal with YES.

But Fred Wilpon, the Mets' principal owner, learned from George Steinbrenner, his Yankees counterpart, that owning a network offers potential riches, greater control over what its announcers say and a way to market his games, tickets, players, and merchandise 365 days a year.

"Fred's been thinking about this for years," said Bob Gutkowski, the chairman of Criterion Sports and Entertainment, a consulting firm that has YES as a client. "Ten years ago, I went to Fred and George Steinbrenner and told them to create the New York Baseball Network."

The partners in the Mets' network, including Wilpon, refused yesterday to discuss the deal, the investments by Time Warner and Comcast and the stakes each side will own. But two people briefed on the investments by the partners said the Mets would own 60 percent and Time Warner would own most of the rest. Comcast will operate the network.

At YES, Goldman Sachs and Providence Equity, which paid \$340 million to be investors, own 40 percent; Yankee Global Enterprises owns 35 percent; and some former Nets and current

Devils owners own the rest.

It was not immediately known how much of the \$54 million the Mets borrowed to buy out Cablevision, and the \$135 million that was borrowed to buy out the former co-owner in the Mets, Nelson Doubleday, will be repaid by the investors.

At the very least, said Lee Berke, who has helped start several team-owned cable sports networks, Wilpon "wouldn't have spent the money to buy out Cablevision if he didn't think he'd get it back."

The Mets' network will carry 125 regular-season games, which means that 25 fewer games will be available on a broadcast station.

The Mets' decision to start a network echoes similar choices made recently by the Charlotte Bobcats, the Memphis Grizzlies, the jointly owned Colorado Avalanche and Denver Nuggets and other teams to start their own channels, usually in partnership with a cable network. Even the Dallas Cowboys have started one, and their network cannot show regular-season games.

Comcast has been particularly aggressive, most prominently creating a regional network in partnership with the Chicago Cubs, the White Sox, the Blackhawks and the Bulls that spirited those teams away from the existing Fox Sports Chicago network.

"This is the endgame of where sports television is heading," Berke said. "As many teams as possible will develop their own networks."

For the Mets' network, having Time Warner and Comcast as partners will eliminate some of the contentiousness that has historically existed between regional sports channels and cable operators. But it will still have to face an undoubtedly reluctant Cablevision, which, having lost the rights to carry the Mets on its channels, may resist the financial terms required to carry a new rival network.

Cablevision, the largest cable operator in the region, refused to make YES available to its nearly three million customers in 2002 because it said the channel was overpriced. It agreed to carry YES in 2003 because of a deal brokered by New York's attorney general, Eliot Spitzer, and will keep offering it as a basic cable channel through early 2009 because of a binding arbitration ruling.

The Yankees have been far more successful than the Mets on the field, and this season their 4.6 cable rating (or 339,309 TV households) was 147 percent greater than the Mets' 1.86 cable rating (133,920 households).

That difference, and the fact that the Mets' network will have only one professional sports team when it starts negotiations, could lead Cablevision to resist any effort to pay nearly the same \$2.08 monthly subscriber fee that cable operators will spend in 2006 to carry YES, which also has the Nets. That fee was set this year by arbitrators who also mandated that YES be carried on basic-cable tiers.

"History shows that Cablevision might resist, but this will be different because it will already be on Time Warner and Comcast," Gutkowski said. "The arbitrators' decision certainly set a tone, that regional sports should be on basic, and should have a pretty good value."

Meanwhile, Cablevision's regional sports television empire is shrinking. Through 2001, it dominated the market, with MSG and FSNY. But then it lost the Yankees and the Nets, and after 2005, the Mets will be gone.

Without those teams, Cablevision will be left with the Knicks, the Rangers, the Islanders and the Devils -- all playing winter sports -- and no baseball, the highest-rated sport on most regional sports networks. FSNY could lose the Devils after the 2006-7 season to YES, which has some owners in common with the hockey team, or to the Mets' network, which may be willing to pay more for the low-rated team.

Cablevision refused to speculate about an eventual merger of MSG and FSNY, which would reduce subscribers' fees. In a statement, Cablevision said that it would "continue to carefully monitor the situation."

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Buffalo News (New York)

January 22, 2005 Saturday
FINAL EDITION

SECTION: SPORTS; Pg. B4

LENGTH: 749 words

HEADLINE: WAS EMPIRE'S DEMISE NECESSARY?

BYLINE: By Alan Pergament

BODY:

Once again, we've been told that Western New York can't financially support a professional sports team.

Josh Mora, Jason Bristol, Bob Trimble and the behind-the-scenes professionals who worked at the Empire Sports Network didn't approach the popularity of former Buffalo Braves Bob McAdoo or Ernie DiGregorio.

And the fall of Empire doesn't have the same emotional blow to the community as the loss of the Braves 27 years ago. But in some ways it will have more of an impact.

Empire lived off coverage of the Buffalo Bills and Buffalo Sabres, but the regional sports network also covered college and high schools extensively at a time the local network affiliates are cutting back their sportscasts to a few minutes.

Empire's major league coverage of the so-called minor sports was, as the advertisement says, priceless.

Unfortunately, Adelphia said it came at too big a price for a cable company in bankruptcy. Without seeing a balance sheet, it's hard to debate the economics of Adelphia's decision this week to immediately shut down Empire's local coverage and take the network off the air in 45 days after fulfilling legal requirements. We're essentially being asked to take Adelphia's word on what local executive Tom Haywood said was "millions and millions in losses." Not everyone is buying that and some wonder if Adelphia set it up to fail over the last year.

"I don't see how they could lose that much," County Executive Joel A. Giambra said. "It doesn't make any sense. I asked them to prove it and show me (the books) and they wouldn't do it."

Empire generated money two ways -- with advertising and with subscriber fees that cable systems pay per subscriber. It used this money to offset its payroll and the cost of programming

such as Buffalo Sabres games.

Empire had made it work by expanding the Sabres broadcasts and other programming into Binghamton, Albany, Syracuse and Rochester. Empire didn't provide the same local coverage to those areas as it did in Western New York and it was less valuable there. When those systems dropped Empire or put them on a tier with fewer subscribers, Empire is believed to have lost a few million dollars in subscriber revenue. When it cut its sales staff down to one person and dropped weekend editions of the Empire Sports Report, its advertising revenue plummeted as much as its reason for being.

And it needs every penny it can get because of the rights deal it pays the Sabres when they play. The rights fee had been inflated when Adelphia owned the Sabres because it was used to reduce the team's losses. Now that Adelphia no longer owns the Sabres, industry experts suggest the \$9 million annual deal may be three times the actual market value.

Adelphia made a deal to pass the games over the final two-plus seasons of the contract to a regional network it carries, MSG, that will now have a local attraction once it loses the rights to New York Mets games. It is unknown if MSG will pay any of Adelphia's rights fee. Adelphia gets to sell advertising time on the Sabres games to cut its losses.

Haywood said Adelphia has no intention of giving rebates for the money that it had been paying Empire per subscriber each month, which is believed to be between \$1.25 and \$1.50. With about 500,000 subscribers, we're talking a minimum of \$625,000 monthly, \$7.5 million annually.

Giambra would like Adelphia to give customers some money back and said, "I might be talking to the attorney general about a rebate."

Adelphia has said it is going to use that money to pay for other programming, including the NFL Network, which is on a digital tier now and will go on Empire's channel March 7. According to a December report on Variety.com, Adelphia is paying 22 cents per subscriber nationally for an eight-year deal that will increase by a penny every year. That's at least \$1 lower than it pays Empire.

Even if one were to grant Adelphia its claims of heavy losses, one still has to ask the million-dollar question: Could Empire have been profitable in three years once Adelphia paid a market value rights fee for the Sabres in the next deal?

If its annual loss claims are legitimate, you can understand why Adelphia wouldn't want to wait that long to find out.

But sadly, like many sports questions that haunt the area -- Would St. Bonaventure have won a national title if Bob Lanier hadn't gotten injured? Would the Bills have gone on a Super Bowl roll if Scott Norwood had made his 47-yarder? -- we'll never know the answer.

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HEADLINE: Area Baseball Network Must Form Quickly;
Giant Comcast Likely to Have Significant Say in an Expos-Orioles Channel

BYLINE: Frank Ahrens, Washington Post Staff Writer

BODY:

One of the key elements that enabled Washington to land the Montreal Expos -- the creation of a regional sports network that would televise Expos and Baltimore Orioles games and funnel most of the revenue to Orioles owner Peter G. Angelos -- does not exist yet.

None of the principals has disclosed what such a network would look like, even though it must be up and running in time to broadcast Expos spring training games in March. During a conference call yesterday, Major League Baseball Commissioner Bud Selig said the terms of the deal "would remain between us."

Angelos's cut is likely to be healthy: The Orioles would receive the majority of the new network's revenue, according to sources familiar with the discussions who spoke on the condition of anonymity. Typical regional sports networks return a profit margin of 30 to 40 percent annually on revenues in the tens of millions of dollars, industry experts said.

Regional sports networks are usually owned either by cable companies and broadcasters or by the teams themselves, such as the Dallas Cowboys, which just launched its own network.

The networks often feature a year-round roster of professional and college sports and tend to be anchored by a Major League Baseball franchise, which provides programming for half the year. In the Washington area, Comcast Corp. controls the rights to the Capitals and Wizards (each through 2012), strengthening its hand in any negotiations to establish a network for the city's new baseball team, industry analysts said.

The arrangements can be lucrative. The teams make money by either selling their broadcast rights to a cable company or network or by running the network itself and charging the cable company a fee to carry the games. The broadcasters and cable companies make money from subscription fees and advertising sold on the regional network.

The Orioles, for example, sold the rights to Comcast to show 87 games this season -- and the rest to local stations, such as WDCA-TV. Such rights are expensive. Fox Sports Net pays the Seattle Mariners \$30 million per year to broadcast the team's games, said Lee Berke, who has advised several teams on the creation of regional sports networks.

Comcast -- the cable industry's largest company with 22 million customers, including about 2 million in the Washington area -- already has Comcast SportsNet channels in the Washington-Baltimore region. It also runs networks in its home city of Philadelphia and one set to be launched in Chicago on Friday.

Some industry experts said what may emerge in the Washington area is a hybrid network that would be part-owned by the teams and part by Comcast, a model similar to the one in place in Chicago. That network was created by Jerry Reinsdorf, owner of the Chicago Bulls and White Sox.

Reinsdorf is the head of Major League Baseball's relocation committee, which chose Washington for the Expos. Reinsdorf also is co-owner with Comcast in the company's new SportsNet Chicago, which will show 100 of Reinsdorf's White Sox games and 48 of his Bulls games.

Comcast has not revealed its Washington plans.

"While we pride ourselves on providing quality sports programming for our customers," Jack Williams, president of Comcast SportsNet, said in a statement, "the decision to bring the team here has just been finalized and we have not yet held any discussions regarding carriage of the new team's games."

Comcast's contract to broadcast Orioles games expires after the 2006 season, leaving the team free to join a regional sports network created for the Expos. Such a network would likely need Comcast's participation, given the cable company's dominance in the Washington area.

"Comcast controls a lot of subscribers" in the Expos-Orioles market, Berke said. "In order to make the network successful, you have to have Comcast as a major distribution partner."

The other major cable providers in the Washington area are Cox Communications Inc. and Starpower Communications LLC, both of which said they would like to broadcast next year's Expos games.

Broadcaster-owned regional sports networks have been the standard in the industry. When the NBA moved the Charlotte Hornets to New Orleans in 2002, the city worked with Cox, that city's largest cable provider, to build a regional sports network.

But team-owned networks are the new trend, Berke said; about 25 major league teams now run their own network. In Dallas, the Cowboys put together a channel that shows preseason games, press conferences with head coach Bill Parcells and other fare, but no regular-season Cowboys

games, because the NFL controls those rights.

If owned by the team, the networks typically charge cable companies, such as Comcast and Cox, about \$1.20 per subscriber per month, Berke said. That cost is passed along to the cable subscriber. The cost of sports programming has been a thorny issue between teams, and sports channels and cable operators. Last year, Cox balked at ESPN's proposed price hike to more than \$2 per subscriber before the sides eventually settled.

The Yankees Entertainment & Sports Network, considered the gold standard of team-owned networks, is worth \$1.2 billion, said Berke, one of the co-authors of YES's original business plan.

If the regional network is owned by an entity other than the cable company, it can become a source of tension with the local cable provider.

In Minnesota earlier this year, the Twins owners started their own regional sports network, called Victory One Sports, but Time Warner and other cable operators refused to carry it, saying the Twins were charging too much -- dooming the venture and keeping Twins games off the air for a time last spring, angering fans. The Twins pulled the plug on the nascent network and re-upped with Fox's regional sports network in May.

Staff writer Thomas Heath contributed to this report.

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