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May 8, 2006

BY ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Notice of Ex Parte Communication in MB Docket No 05-192

Dear Ms. Dortch:

This is to inform you that, on May 5, 2006, Stacy Fuller and undersigned counsel on behalf of DIRECTV, Inc. ("DIRECTV") met with Rudy Brioché, Legal Advisor to Commissioner Adelstein, to respond to his questions about the evidence DIRECTV has placed in the record that demonstrate the anticompetitive implications of the proposed transactions. We also provided Mr. Brioché with a copy of the attached article from The Washington Post.

In accordance with the Commission's *ex parte* rules, 47 C.F.R. § 1.1206, I am filing a copy of this letter electronically. If you have any questions concerning this letter, please contact me.

Respectfully submitted,

/s/

William M. Wiltshire
Counsel to DIRECTV, Inc.

Attachment

cc: Rudy Brioché

washingtonpost.com

Next on Baseball Agenda: Fix the Nats' TV Problem

By Steven Pearlstein
Friday, May 5, 2006; D01

Now that Major League Baseball has finally signed a stadium agreement with the District and named an ownership group, there's only one thing left on the District's baseball to-do list:

Sue 'em.

It's nothing personal, mind you. In fact, Bud Selig and owners of the other teams might secretly welcome it. After all, they only reluctantly agreed to give Orioles owner Peter Angelos control over the broadcast rights of the Washington Nationals to avoid a messy lawsuit with a man who made his fortune filing messy lawsuits. So there might be a certain rough justice if a federal court were now to order them to unwind the unusual arrangement.

The case would be fairly simple and straightforward. On behalf of city residents, the District's attorney general would sue Major League Baseball and Angelos's broadcast arm, the Mid-Atlantic Sports Network, alleging that their joint television venture -- in which the Angelos-controlled entity owns the local rights to both the Orioles and the Nationals -- amounts to a conspiracy between two franchises not to compete for viewers and advertisers.

The harm caused by this conspiracy is not a matter of mere speculation. Exhibit A would be Angelos's refusal to make Nationals broadcasts available, at a reasonable price, to the 1.3 million customers of Comcast, the Washington region's largest cable company.

Some have wondered aloud whether Angelos's willingness to forgo millions of dollars in revenue from Comcast is part of his strategy to keep Maryland fans from defecting to the Nationals. Others have speculated that Comcast's refusal to strike a deal is part of its strategy in a separate legal battle over who will control future Orioles broadcasts.

We need not figure out whether Angelos, Comcast or Major League Baseball wears the white hat here. In fact, you can be sure that all the parties are behaving like would-be monopolists looking to leverage their market power to the greatest long-term advantage. Consumers and baseball fans are merely pawns in this long-term struggle.

The best way to break the logjam is not to urge the parties to get together in yet another joint venture, as some have proposed, but to restore competition by seeking the return of the Nats' television rights to the Nats' owners, to be auctioned off as they should have been in the first place, to the highest bidder. In pursuing an antitrust action, the city would certainly have the silent support of the Lerner family, the team's new owners. And it might even get some legal help from Comcast.

Major League Baseball, of course, would respond to such a suit by waving around its tattered copy of a 1922 Supreme Court decision that it would say exempts it from ever being sued on antitrust grounds for any reason. But a number of legal scholars suggest that this might be just the time and case to give the courts a chance to draw a tight circle around an exemption that predates the invention of television.

As it happens, the Federal Communications Commission is reconsidering the anti-competitive effects of regional sports networks. The logic behind such networks is that consumers and sports teams all benefit from the operational and marketing efficiencies of having one enterprise broadcast all the professional sports events in a region. But as we are finding out with Angelos, things can get a bit more complicated when one or more of the teams has a controlling interest in the network, or when the network is owned by a dominant cable company or satellite TV company, or when the cable company owns both the sports networks and interests in some of the teams.

Sometimes the arrangements work out just fine for everyone. But to the degree that they are based on exclusive distribution rights for what consumers view as "must have" programming, they raise the risk of anti-competitive behavior by dominant cable companies, team owners or both.

Congress has begun to weigh in on this issue, as has the FCC, in its lengthy, ongoing consideration of the proposed sale of Adelphia's cable franchise to Time Warner and Comcast. The effect of the Adelphia sale would be to increase both Time Warner's and Comcast's market shares in regional cable markets, but also tighten their control and leverage over regional sports networks.

Two members of the Federal Trade Commission who also reviewed the Adelphia deal -- Jon Leibowitz and Pamela Jones Harbour -- argued that such concentration and such interlocking relationships could easily lead to higher prices and fewer choices for consumers while making it more difficult for new competitors, like regional phone companies, from entering the market.

It may already be happening. To hear it from Comcast executives, Angelos is "massively overcharging" for the rights to carry the Nats games. But according to DirecTV, in a letter to a House committee, Comcast's regional sports networks in New York, Chicago and Sacramento charge DirecTV two and three times what Angelos charges DirecTV for Nats games, on a per-game, per-subscriber basis.

Again, the point here is not to try to identify which of the parties is the good guy. Rather, it is to show that, given the chance, each of them would try to gain market power and use "must have" regional sports programming to raise prices and undercut competitors. Given that reality, the FCC, in its Adelphia ruling, needs to set down clear rules requiring that regional sports networks make programming available at a reasonable price to any distributor on a nondiscriminatory basis.

Otherwise, sports fans can expect plenty more games to be blacked out in the future.

Steven Pearlstein can be reached atpearlsteins@washpost.com.