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July 5, 2006

EX PARTE

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

Re: MB Docket No. 05-192

Dear Ms. Dortch:

In previous submissions in this proceeding, TCR Sports Broadcasting (“TCR”) has explained that if the Commission is to approve the Comcast/Adelphia transaction, it should impose conditions to curb Comcast’s incentives and ability to discriminate against independent regional sports networks (“RSNs”). We believe the unique facts of this case support a mandatory carriage condition pursuant to which Comcast would be required to carry TCR. As we have explained, the transaction will increase Comcast’s footprint in the Washington DMA, and thereby will increase the downstream profits it would be able to recoup from discriminating against TCR. Comcast has already acted on these incentives – it has refused for more than a year to carry the Nationals or even to negotiate on a good faith basis, despite the fact that it has been offered the same terms to which five other multichannel video programming distributors (“MVPDs”) have already agreed.

As an alternative to a mandatory carriage condition, the Commission also could adopt a commercial arbitration provision, as it did in the Hughes/News Corp. merger. Although that condition was designed to address a slightly different scenario – where an MVPD is denied access to a RSN that is controlled by a competing MVPD – with very slight modifications it could also be applied to the situation here, which is really just the flip side of the same coin. As indicated on the attached press release, a bipartisan group of Congressman representing the Washington, DC metropolitan area – Tom Davis (R-VA-11th), Albert Wynn (D-MD-4th), and Jim Moran (D-VA-8th) – have recently asked the FCC to condition the merger on binding arbitration to settle the controversy concerning the Nationals.

Set forth below are the principal modifications from the conditions imposed by the Commission on the Hughes/News Corp. merger that we believe would be needed to effect this result. For the Commission's convenience, we have also attached a redline of the Hughes/News Corp. conditions that reflects our proposed modifications.

- With respect to the first section of the conditions entitled "Commercial Arbitration Remedy," we believe only once slight change is needed. The conditions should be modified to apply not only to an "aggrieved MVPD," but also to an "aggrieved RSN," and references to News Corp. should be changed to Comcast and Time Warner. These changes should also be replicated throughout the conditions. The mechanics of how a dispute is submitted for arbitration, including the "cooling off" period, the formal filing with the AAA, and the procedures for making final offers could all remain the same.
- The next section, entitled Rules of Arbitration, also requires only slight modification. The core of that provision – setting forth rules for an arbitrator to select a final offer and to determine fair market value – all would work equally well with respect to an aggrieved RSN as they would for an aggrieved MVPD. The only change we would suggest is to impose a time limit for the arbitrator to complete its proceeding – on the order of 90 to 120 days – in order to ensure that these matters are resolved promptly.
- With the exception of the global changes discussed above, no change would be needed to the remaining sections – "Review of Award by the Commission," "Provisions Applicable to Small MVPDs," or "Additional Provisions Concerning Arbitration."

If you should have any questions regarding this submission, please do not hesitate to contact me.

Respectfully submitted,

/s/ David C. Frederick

David C. Frederick

Counsel to TCR Sports Broadcasting, Inc.

Attachments

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III. ADDITIONAL CONDITIONS CONCERNING ACCESS TO AND CARRIAGE OF REGIONAL SPORTS CABLE PROGRAMMING NETWORKS

When negotiations fail to produce a mutually acceptable set of price, terms and conditions for carriage of a regional sports network (“RSN”), an MVPD or RSN may choose to submit a dispute to commercial arbitration in accordance with the following procedures:

Commercial Arbitration Remedy

- An aggrieved MVPD or RSN may submit a dispute with Comcast or Time Warner News Corp. over the terms and conditions of carriage of RSN programming in each region in which Comcast or Time Warner News Corp. owns or holds a controlling interest or manages any non-broadcast RSN.
- Following the expiration of any existing contract, or 90 days after a first time request for carriage, an MVPD or RSN may notify Comcast or Time Warner News Corp. within five business days that it intends to request commercial arbitration to determine the terms of the new affiliation agreement.
- Upon receiving timely notice of the MVPD’s or RSN’s intent to arbitrate, Comcast or Time Warner News Corp. must immediately allow continued carriage of the network under the same terms and conditions of the expired affiliation agreement as long as the MVPD or RSN continues to meet the obligations set forth in this condition.
- Carriage of the disputed programming during the period of arbitration is not required in the case of first time requests for carriage.
- “*Cooling Off Period.*” The period following Comcast or Time Warner News Corp.’s receipt of timely notice of the MVPD’s intent to arbitrate and before the MVPD’s or RSN’s filing for formal arbitration with the American Arbitration Association (“AAA”) shall constitute a “cooling-off” period during which time negotiations are to continue.
- *Formal Filing with the AAA.* The MVPD’s or RSN’s formal demand for arbitration, which shall include the MVPD’s or RSN’s “final offer,” may be filed with the AAA no earlier than the fifteenth business day after the expiration of the RSN contract and no later than the end of the twentieth business day following such expiration. If the MVPD or RSN makes a timely demand, Comcast or Time Warner News Corp. must participate in the arbitration proceeding.
- The AAA will notify Comcast or Time Warner News Corp. and the MVPD or RSN upon receiving the MVPD’s or RSN’s formal filing.
- Comcast or Time Warner News Corp. will file a “final offer” with the AAA within two business days of being notified by the AAA that a formal demand for arbitration has been filed by the MVPD or RSN.
- The MVPD’s or RSN’s final offer may not be disclosed until the AAA has received the final offer from Comcast or Time Warner News Corp.
- The final offers shall be in the form of a contract for the carriage of the programming for a period of at least three years. The final offers may not include any provision to carry any video programming networks or any other service other than the RSN.

Rules of Arbitration

- The arbitration will be decided by a single arbitrator under the expedited procedures of the commercial arbitration rules, then in effect, of the AAA (the “Rules”), excluding the rules relating to large, complex cases, but including the modifications to the Rules set forth in Appendix B.
- The parties may agree to modify any of the time limits set forth above and any of the procedural rules of the arbitration; absent agreement, however, the rules specified herein apply. The parties may not, however, modify the requirement that they engage in final-offer arbitration.
- Unless the parties otherwise agree, the arbitration specified in these conditions shall be completed within 90 [or 120] days.
- The arbitrator is directed to choose the final offer of the party that most closely approximates the fair market value of the programming carriage rights at issue.
- Under no circumstances will the arbitrator choose a final offer that does not permit Comcast or Time Warner News Corp. to recover a reasonable share of the costs of acquiring the programming at issue.
- To determine fair market value, the arbitrator may consider any relevant evidence (and may require the parties to submit such evidence to the extent it is in their possession),¹ including, but not limited to:
 - current or previous contracts between MVPDs and RSNs in which Comcast or Time Warner News Corp. does not have an interest as well as offers made in such negotiations (which may provide evidence of either a floor or a ceiling of fair market value);
 - evidence of the relative value of such programming compared to the RSN programming at issue (*e.g.*, advertising rates, ratings);
 - contracts between MVPDs and RSNs on whose behalf Comcast or Time Warner News Corp. has negotiated ~~before News Corp. acquired control of DirecTV~~;
 - offers made in such negotiations;
 - internal studies or discussions of the imputed value of RSN programming in bundled agreements;
 - other evidence (including internal discussions) of the value of RSN programming;
 - changes in the value of non-Comcast or Time Warner News Corp. RSN programming agreements;
 - changes in the value or costs of Comcast or Time Warner News Corp. RSN programming, or in other prices relevant to the relative value of Comcast or Time Warner News Corp. RSN programming (*e.g.*, advertising rates).
- The arbitrator may not consider offers prior to the arbitration made by the MVPD or RSN and Comcast or Time Warner News Corp. for the programming at issue in determining the fair market value.
- If the arbitrator finds that one party’s conduct, during the course of the arbitration, has been unreasonable, the arbitrator may assess all or a portion of the other party’s costs and expenses (including attorney fees) against the offending party.
- Following resolution of the dispute by the arbitrator, to the extent practicable, the terms of the new affiliation agreement will become retroactive to the expiration date

¹ We clarify that, by “possession,” we mean actual possession or control.

of the previous affiliation agreement. The MVPD or RSN will make an additional payment to Comcast or Time Warner News Corp. in an amount representing the difference, if any, between the amount that is required to be paid under the arbitrator's award and the amount actually paid under the terms of the expired contract during the period of arbitration.

- Judgment upon an award entered by the arbitrator may be entered by any court having competent jurisdiction over the matter, unless one party indicates that it wishes to seek review of the award with the Commission, and does so in a timely manner.

Review of Award by the Commission

- A party aggrieved by the arbitrator's award may file with the Commission a petition seeking de novo review of the award. The petition must be filed within 30 days of the date the award is published.
- The MVPD may elect to carry the programming at issue pending the FCC decision, subject to the terms and conditions of the arbitrator's award.
- In reviewing the award, the Commission will examine the same evidence that was presented to the arbitrator and will choose the final offer of the party that most closely approximates the fair market value of the programming carriage rights at issue.
- The Commission may award the winning party costs and expenses (including reasonable attorney fees) to be paid by the losing party, if it considers the appeal or conduct by the losing party to have been unreasonable. Such an award of costs and expenses may cover both the appeal and the costs and expenses (including reasonable attorneys' fees) of the arbitration.

Provisions Applicable to Small MVPDs

- An MVPD meeting the definition of a "small cable company" may appoint a bargaining agent to bargain collectively on its behalf in negotiating carriage of RSNs with Comcast or Time Warner News Corp. and Comcast or Time Warner News Corp. may not refuse to negotiate carriage of RSN programming with such an entity.² The designated collective bargaining entity will have all the rights and responsibilities granted by these conditions.

Additional Provisions Concerning Arbitration

- No later than 20 business days prior to the expiration of an affiliation agreement with an MVPD or RSN for video programming subject to this condition, Comcast or Time Warner News Corp. must provide the MVPD or RSN with a copy of the conditions imposed in this Order. Comcast or Time Warner News Corp. must provide a copy of the conditions imposed in this Order within 10 business days of receiving a first time request for affiliation.
- This condition will expire six years after the release of the Order.

² The Commission has previously defined small cable companies as those with 400,000 or fewer subscribers. We adopt that definition for the purposes of this condition. See *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992*, 10 FCC Rcd 7393 (1995) ("Sixth Report and Order").

- The Commission will consider a petition for modification of this condition if it can be demonstrated that there has been a material change in circumstance or the conditions have proven unduly burdensome, rendering the condition no longer necessary in the public interest.



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FOR IMMEDIATE RELEASE: July 5, 2006

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Davis, Wynn, Moran Urge FCC to Require Arbitration in Comcast / MASN Dispute

Washington, D.C. - Congressman Tom Davis (R-VA-11th), Albert Wynn (D-MD-4th), and Jim Moran (D-VA-8th) have asked the Federal Communications Commission to make Comcast Communications' proposed merger with Adelphia Cable contingent on Comcast entering into binding arbitration to settle the controversy over airing Washington Nationals baseball games.

Comcast, the Washington region's largest cable provider, has refused to carry the Mid-Atlantic Sports Network (MASN), which has the rights to broadcast all but a handful of Nationals games. This dispute has denied millions of fans the opportunity to follow their team on a day-to-day basis.

Requiring the two sides to enter into binding arbitration would "address both the concern of lack of televised exposure of the Nationals from a fan's perspective, and the concern of the significant expenditure of public funds by the District of Columbia in the hope that a successful team will spur urban revitalization efforts in the Nations' Capital," the Congressmen wrote.

The full text of the letter follows:

The Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Adelphia/Time Warner/Comcast Transaction
MB Docket No. 05-192

Dear Chairman Martin:

The proposed acquisition of Adelphia Cable by Comcast Communications and Time Warner pending before the Commission provides an opportunity to address a major concern we have about carriage of the Washington Nationals baseball games on Comcast cable systems in the Washington, D.C. area. As you know, a controversy between Comcast and the Mid-Atlantic Sports Network (MASN) is preventing 1.3 million Comcast subscribers in this area from viewing 75 percent of this season's Nationals games.

We suggest that any Commission approval of the Adelphia merger be conditioned on requiring Comcast and MASN to submit to binding arbitration to resolve the Nationals carriage controversy. This would address both the concern of lack of televised exposure of the Nationals from a fan's perspective, and the concern of the significant expenditure of public funds by the District of Columbia in the hope that a successful team will spur urban revitalization efforts in the Nations' Capital.

This issue is also subject to a complaint, *In the Matter of TCR Sports Broadcasting Holding, L.L.P., v. Comcast Corporation*, that was filed on June 14, 2005 with the Commission. The complainant, the holder of the rights to the Nationals games, alleges that Comcast is in violation of Section 616 of the Communications Act of 1934 and Section 76.1301 of the Commission's rules by refusing to televise Nationals games. TCR seeks relief in the form of a Commission order that Comcast carry the Nationals games on its cable systems under the same terms and conditions as other multichannel video programming distributors.

The controversy between Comcast and MASN raises additional questions about the posture of Comcast relating to regional sports programming and the resultant adverse effect on the availability of sports programming to cable subscribers throughout the country. Requiring the parties to submit to arbitration in this instance would be a first step by the Commission to address the impact of potential restrictions on the availability of regional sports programming by major cable operators.

On May 25, 2006, we sent a letter to Chairman Martin and copied the other sitting Commissioners in which we expressed concern about the Comcast and MASN controversy regarding carriage of the Nationals games in the context of the Adelphia merger. Enclosed is a copy of that letter.

Thank you for considering our concerns and proposal for resolution of the standoff between Comcast and MASN.

Sincerely,

Tom Davis
Member of Congress

James Moran
Member of Congress

Albert Wynn
Member of Congress
DA

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