

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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| In the Matter of |) | |
| |) | |
| TCR Sports Broadcasting Holding, L.L.P. |) | MB Docket No. 08-214 |
| d/b/a Mid-Atlantic Sports Network, |) | |
| Complainant |) | |
| |) | |
| v. |) | |
| |) | |
| Comcast Corporation, |) | File No. CSR-8001-P |
| Defendant |) | |

To: Marlene H. Dortch, Secretary

Attn: Hon. Richard L. Sippel
Chief Administrative Law Judge

**OPPOSITION TO MOTION TO COMPEL PRODUCTION OF DOCUMENTS
AND REQUEST FOR EXPANDED PROTECTIVE ORDER**

Yankees Entertainment and Sports Network, LLC (“YES”), pursuant to Sections 1.225 and 1.311 *et seq.* of the Commission’s rules, hereby opposes the order issued February 25, 2009 by the presiding Administrative Law Judge (“ALJ”) in this proceeding and respectfully requests that the ALJ order that the Affiliation Agreement between YES and Comcast Corporation (Comcast) be excluded from those documents which Comcast has been ordered to produce. Alternatively, if the ALJ does not exclude that Agreement from disclosure, then YES requests that the ALJ impose such additional provisions in the Protective Order previously issued in this proceeding as necessary in order to protect from improper disclosure highly confidential and competitively sensitive trade secrets and business information of YES.

YES is a party to an affiliation agreement (“Agreement”) with defendant Comcast. That Agreement contains the terms pursuant to which Comcast has acquired rights to carry the “YES Network” television programming service over Comcast’s cable television systems. The

provisions of that Agreement, including the pricing and other terms governing program carriage rights, are highly proprietary in that they constitute trade secret or commercial or financial information privileged or confidential within the meaning the Trade Secrets exemption (Exemption 4) of the Freedom of Information Act, 5 U.S.C. § 552(b)(4). Indeed, it is important for the ALJ to recognize that YES's programming and the contracts between YES and the entities who acquire rights to carry YES's programming are YES's most valuable asset and indeed are the essence of YES's business. All such agreements, including YES's Agreement with Comcast, are the result of arm's length negotiations -- negotiations which occur in a highly competitive marketplace for video programming services. Any disclosure of the terms of such agreements, including financial terms, to existing or potential purchasers of YES programming carriage rights or to competing program providers, would cause severe competitive harm to YES -- harm which could not easily be rectified or compensated through award of monetary damages.

Notwithstanding the fact that the ALJ has issued a Protective Order and despite the fact that Comcast has indicated to YES that it would seek to have the agreement designated as "Highly Confidential" within the meaning of that term in the Protective Order, there are no assurances that the ALJ would concur with that designation or that such a designation would withstand a Freedom of Information Act request or an appeal of a discovery ruling in the instant proceeding by the ALJ.

Moreover, the Protective Order allows access to protected material to several categories of persons, including "[i]n-house counsel engaged in the conduct of this proceeding and their associated clerical staff"¹ Nothing in the Protective Order addresses other duties of such in-house counsel and clerical staff which might render it inappropriate for such persons to have

¹ Protective Order at 2(a)(ii).

access to the information contained in the Agreement. In a letter to YES from Comcast dated February 10, 2009 requesting YES's consent to the disclosure of the Agreement, Comcast indicated that such in-house counsel would be someone "who is not primarily involved in negotiating programming or carriage agreements."² Unfortunately, this limitation on in-house counsel access is not found anywhere in the Protective Order itself. While counsel who are "primarily" involved in negotiating programming or carriage agreements might be restricted, counsel who are secondarily or peripherally involved in such agreements would not be restricted. There does not appear to be any test or standard either in the Protective Order or elsewhere which provides any explanation as to which MASN employees would be allowed access to the Agreement.

The Protective Order also allows MASN's retained outside consultants or experts to have access to the Agreement. Those outside consultants or experts are independent third parties who are not themselves parties to the instant litigation and are not otherwise subject to the jurisdiction of the ALJ or of the Commission. The Protective Order does impose certain conditions on such consultants'/experts' access to the Agreement. For example, the Protective Order states that for a period through February 13, 2010, those consultants "will not work for any Regional Sports Network or any other network that primarily distributes sports programming in connection with securing distribution on a Comcast system, with the exception of MASN."³ Nowhere does the Protective Order address what obligation/limitation may be applicable to those consultants/experts on February 14, 2010 -- or any date thereafter. It is possible, perhaps even likely, that those consultants/experts will continue to provide services and expertise to others in

² Letter to Matthew Cacciato, Senior Vice President, Affiliate Sales, YES, from Sarah L. Gitchell, Senior Counsel, Comcast.

³ Protective Order at 8(e).

the sports television programming business beyond February 13, 2010. Their knowledge of the highly proprietary and competitively sensitive details of the Agreement and the potential to share that knowledge with others could be damaging to YES's interests and its competitive position in the video programming marketplace. Yet, the Protective Order contains no provisions which would provide YES with any protections against such improper utilization by those experts/consultants of information regarding the Agreement which they obtain as a direct and proximate result of an order compelling production of the Agreement to those consultants/experts.

For those reasons, YES is constrained to conclude that its ability to prevent disclosure of its Agreement with Comcast in accordance with the confidentiality provision contained in that Agreement could be gravely compromised if Comcast is compelled to produce the Agreement. While complainant MASN has self-servingly characterized the legitimate objections to disclosure of such agreements as the "whims of non-parties,"⁴ in fact, such objections are necessary and appropriate to ensure protection of the trade secret and other confidential business and financial information contained in those agreements, including YES's Agreement with Comcast.⁵

Conspicuously absent from the Protective Order is any remedy provision applicable to non-parties, such as YES, whose trade secrets would be produced pursuant to that Protective Order. Unless and until the ALJ provides the necessary assurances that the trade secrets and

⁴ Expedited Motion to Compel Production of Documents, filed by TCR Sports Broadcasting Holding, L.L.P. d/b/a Mid-Atlantic Sports Network February 25, 2009, at 4.

⁵ The ALJ is reminded that YES is owned, in part, by the New York Yankees baseball club, while MASN is owned by the owner of the Baltimore Orioles baseball club -- a team which competes with the New York Yankees for players, in the American League East standings, and for media revenues. That is another factor relevant to the potential competitive damage to YES and its owners which could result from improper disclosure of the Agreement.

other competitively sensitive business information regarding YES contained in the Agreement would be sufficiently protected from improper disclosure, YES deems it necessary to object to such disclosure. Accordingly, YES opposes that aspect of the ALJ's February 25 order which compels Comcast to produce its Agreement with YES.

Respectfully submitted,

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February 26, 2009

CERTIFICATE OF SERVICE

I, Raymond Lee, hereby certify that, on February 26, 2009, copies of the foregoing document were served via electronic mail on the following:

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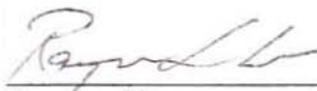
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