

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

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 OBJECTIONS TO MOTION TO COMPEL PRODUCTION OF
DOCUMENTS**

TCR Sports Broadcasting Holding, L.L.P., d/b/a Mid-Atlantic Sports Network (“MASN”), by its attorneys, hereby files this Opposition to the Objections to Motion to Compel Production of Documents filed by Sterling Entertainment Enterprises, LLC (t/a SportsNet New York) (“SNY”), Yankees Entertainment and Sports Network, LLC (“YES”), Madison Square Garden, L.P. (“MSG”), and Fox Cable Network Services, LLC (“Fox”) (collectively, “Objecting RSNs”). Affiliate agreements between Comcast Corporation (“Comcast”) and RSNs are critical to MASN’s case-in-chief. For some RSNs, these agreements have already been produced. But the Objecting RSNs claim that producing their agreements would somehow be different. Not so. In light of the expansive protections of the governing Protective Order, the Objecting RSNs will not suffer any prejudice from producing these documents. In fact, affiliate agreements involving *these very same Objecting RSNs* were produced by Time Warner Cable Inc. (“TWC”) to MASN in a separate Commission proceeding approximately one year ago.

In that proceeding, these same Objecting RSNs did not object to producing the same types of affiliate agreements to the same professional firms representing MASN here; did not assert the inadequacy of a similar protective order (that had a substantially shorter cooling off period); did not seek to make redactions to the documents produced (except for Fox, which made only limited redactions); and did not demand to be included in the protective order. If the Objecting RSNs had any claim of prejudice from the TWC matter, they would have asserted it here. But their failure to do so and the adequacy of the TWC procedures argue strongly in favor of treating the Objecting RSNs in this case in precisely the same way.

The Objecting RSNs' untimely objections have no merit and rest on vague and speculative assertions of harm. MASN served the request for Comcast's affiliate agreements on December 5, 2008. The agreements were not produced until more than two months later on February 23, 2009. During that intervening period not one of the Objecting RSNs (or Comcast) ever sought a protective order to stop production of these documents. To the contrary, having failed to receive these documents when they were due, MASN was forced to file a motion to compel on February 25, 2009, which this Tribunal granted later that day. Only then did the Objecting RSNs speak up, asserting unsubstantiated harm. Accordingly, they have waived their rights to object. Nor do these after-the-fact protests square with the Objecting RSNs' decisions to sit on their hands while these requests were pending, and indeed, even after the documents were due. Tellingly, the Objecting RSNs cite no legal authority for denying such relevant and responsive discovery under these facts.

The untimely objections should be denied.

BACKGROUND

On December 5, 2008, MASN requested the production of:

All affiliate agreements, contracts, and related documents for Comcast's carriage of regional sports networks (both affiliated and unaffiliated) in the last ten years, including but not limited to documents sufficient to show the expiration dates of these agreements and contracts, the per-subscriber rates associated with these agreements and contracts, and the quantity of live sports programming telecast on each network for each year covered.¹

Even before December 5, MASN made clear that Comcast's affiliate agreements with other RSNs would form a crucial piece of MASN's case-in-chief, and asked Comcast to prepare to produce those agreements (including by securing any necessary consent of counterparties). None of the Objecting RSNs complained to MASN of this specific request, nor did any RSN contact MASN about seeking any special protections in the governing Protective Order.²

On February 23, 2009, Comcast produced a handful of affiliate agreements. But Comcast withheld the bulk of them. Of the affiliate agreements not produced, Comcast stated that confidentiality provisions required the consent of the counterparties prior to production. Comcast further represented that it had asked for, but was unable to obtain, consent from the Objecting RSNs. Because these affiliate agreements are highly relevant, MASN moved to compel production on February 25, 2009.

¹ Complainant's First Request For the Production of Documents to Defendant Comcast Corporation, File No. CSR-8001-P, Req. No. 2 (served Dec. 5, 2008).

² While it is undisputed that the Objecting RSNs had notice of MASN's request, Comcast has not responded to MASN's request for *when* Comcast provided such notice. With the exception of YES, the Objecting RSNs also refused to answer MASN's request for this information. YES admitted that it received a formal notice letter from Comcast on February 10, 2009 (though YES indicated that there may have been earlier communications as well). *See* Opp'n to Mot. to Compel Prod. of Docs. & Reqs. For Expanded Protective Order at 3 (filed Feb. 26, 2009) ("YES Opp'n"). To the extent the relief sought by the Objecting RSNs is equitable in nature, neither they nor Comcast come with clean hands given their unreasonable delay.

This Tribunal granted MASN's motion. The Tribunal found that the "Affiliate Agreements sought by MASN are relevant to the issues for trial" in light of, among other things, the Commission's *Adelphia Order*, and because MASN has an "immediate need" for these documents.³ The Tribunal further held that, in light of "detailed Protective Orders," the non-disclosure agreements of the parties were not "relevant or related to the case."⁴ For those reasons, the Tribunal "ORDERED" Comcast to produce documents responsive to MASN's Second Request by 3:00 p.m. on February 26, 2009.⁵ In addition, the Tribunal set an 11:00 a.m. deadline on February 26, 2009, for any objections,⁶ which three of the four Objecting RSNs missed.⁷

On February 26, 2009 – long after MASN submitted its document requests to Comcast; after the documents were due; after MASN was forced to file a motion to compel; and after this Tribunal granted an order compelling these highly relevant agreements – the Objecting RSNs made their objections known for the first time. They claim that the affiliate agreements are not relevant – a position that even Comcast does not appear to share, and more importantly, an issue this Tribunal has resolved in compelling production. The Objecting RSNs further state that the agreements contain highly confidential information – a fact acknowledged by all parties, and recognized by this Tribunal in compelling production, but remedied by the expansive Protective Order already issued by this Tribunal. Indeed, Comcast already has produced equally

³ Order at 1, *TCR Sports Broadcasting Holding, L.L.P. d/b/a Mid-Atlantic Sports Network v. Comcast Corp.*, MB Docket No. 08-214, No. CSR-8001-P (FCC 09M-19 rel. Feb. 25, 2009) ("*Production Order*").

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ MSG filed its objection at 10:59 a.m.; the other Objecting RSNs filed after 11:00 a.m.

confidential affiliate agreements from non-objecting RSNs, and MASN had received equally confidential agreements of the exact same type involving the Objecting RSNs in another proceeding. The Objecting RSNs cannot meet their burden of showing why they are entitled to exceptional treatment.⁸

ARGUMENT

I. THE DOCUMENTS THAT MASN SEEKS ARE HIGHLY RELEVANT

A. This Tribunal already has found that the affiliate agreements MASN seeks contain highly relevant information. The rates, terms, and conditions of Comcast's affiliate agreements with other RSNs will be important in determining whether MASN's rates are commercially reasonable, and whether Comcast's refusal to carry MASN in important parts of MASN's Television Territory is consistent with the scope of carriage to which Comcast has agreed with other RSNs. This is true for the Objecting RSNs' affiliate agreements, just as it is true for the agreements (that Comcast produced) of the RSNs that did not object.

As MASN explained in its Motion to Compel, the *Adelphia Order*,⁹ the Media Bureau's *TWC Order*,¹⁰ Comcast's Answer,¹¹ and Comcast's agreement to produce some affiliate

⁸ After Comcast had produced the disputed documents, this Tribunal provided further guidance to the parties on these issues. The Tribunal did not grant the objections of the Objecting RSNs nor did it order MASN to return documents that had been produced despite at least one party's express request that the Tribunal "set aside or modify" the *Production Order*. Opp'n of Fox Cable Network Servs., LLC to Expedited Mot. to Compel Prod. of Docs. at 2 (filed Feb. 26, 2009) ("Fox Opp'n"). Instead, the Tribunal directed all interested parties to confer in an effort to resolve the objections. As MASN explains in its Status Report and below, MASN and the Objecting RSNs were not able to reach agreement.

⁹ Memorandum Opinion and Order, *Applications for Consent to the Assignment and/or Transfer of Control of Licenses; Adelphia Communications Corp. to Time Warner Cable Inc.; Adelphia Communications Corp. to Comcast Corp.; Comcast Corp. to Time Warner Inc.; Time Warner Inc. to Comcast Corp.*, 21 FCC Rcd 8203 (2006) ("*Adelphia Order*").

¹⁰ Order on Review, *TCR Sports Broadcasting Holding, L.L.P. d/b/a Mid-Atlantic Sports Network v. Time Warner Cable Inc.*, DA 08-2441, 2008 WL 4758773, ¶¶ 43, 46 (MB rel. Oct. 30, 2008) ("*TWC Order*").

agreements put beyond question the relevance of the affiliate agreements to this litigation.¹² Indeed, the *TWC Order* expressly relied upon TWC's affiliate agreements with RSNs across TWC's *national* footprint (as analyzed by MASN's experts) – including the affiliate agreements of the very same Objecting RSNs that have filed eleventh-hour objections here. The *TWC Order* similarly confirms the relevance of agreements that do not overlap with MASN's Television Territory. The *TWC Order* credited “a regression analysis that compare[d] MASN's proposed subscriber rates to the rates of RSNs carried by TWC *throughout its national footprint*.”¹³

In sum, the relevance of these documents is crystal clear: the Commission has held that the affiliate agreements *are* relevant to program-carriage proceedings; and this Tribunal has held that the Objecting RSNs agreements are relevant to MASN in this proceeding. Without access to these affiliate agreements, MASN will be prejudiced in its ability to make its case.

B. Despite this compelling precedent, the Objecting RSNs insist that the affiliate agreements are irrelevant. MSG argues (at 3) that “MSG is an established network whose service territory . . . does not overlap in any way with MASN's,” and that MASN is a “relatively new” RSN. Fox similarly maintains (at 5) that affiliate agreements with respect to any market in which MASN does not operate are not “relevant.” Fox further asserts (at 4) that it “does not believe that MASN's programming is comparable” to programming provided by Fox on two RSNs that do overlap with MASN's Television Territory: SportsSouth and FS South. Likewise,

¹¹ Answer of Comcast Corporation, File No. CSR-8001-P, ¶ 11 (FCC filed July 31, 2008).

¹² See MASN Mot. to Compel at 3-4.

¹³ *TWC Order* ¶ 43 (emphasis added); see also *id.* ¶ 46 & n.181 (relying on regression and other analyses of the fair market value of MASN's programming based on data culled from TWC's affiliate agreements with RSNs across TWC's national footprint).

SNY claims (at 1) that it “does not understand the relevance” of its affiliate agreement because “SNY operates in New York, New Jersey, and Connecticut.”

These arguments are without merit. As explained above, MASN and its experts had access to – and complied with a substantially similar protective order protecting – similar affiliate agreements of *each* of the Objecting RSNs with TWC in MASN’s arbitration against TWC. That case involved carriage of MASN in North Carolina – which is even farther from most of the Objecting RSNs’ core markets than the areas at issue here. MASN prevailed before an arbitrator with an important part of its proof being expert analysis (including regression models) that depended on these and other affiliate agreements. Furthermore, the Media Bureau relied heavily on that analysis in affirming the arbitrator’s award in favor of MASN in the *TWC Order*. Importantly, the Media Bureau deemed relevant the rates on which TWC carried RSNs across its *national* footprint, *not* simply in the areas that overlapped with MASN’s Television Territory.¹⁴

That binding authority conclusively settles the Objecting RSNs’ relevancy objections. Not surprisingly, the Objecting RSNs cite no support for their remarkable claims. Indeed, even Comcast has not pressed an objection to the relevance of these agreements.¹⁵

¹⁴ Accordingly, there is no basis for Fox’s claim (at 6), for example, that production of the affiliate agreements should be limited to agreements overlapping with “MASN’s markets” and “agreements entered into since MASN’s formation in 2006.”

¹⁵ Fox also argues (at 5) that MASN has “no valid basis” to ask for “programming agreements entered into in 1999.” That is a strawman. It does not matter when an agreement was signed; what matters is when the agreement was *in effect*. Affiliate agreements *in effect* during the last ten years provide a wealth of information about what constitutes commercially reasonable and commercially unreasonable terms of carriage – whether it was signed in 1992 or 2002 or 2009.

II. THE OBJECTING RSNs' CLAIMS OF HARM ARE UNFOUNDED AND PROVIDE NO BASIS FOR WITHHOLDING THE DOCUMENTS

The Objecting RSNs erroneously contend that the affiliate agreements contain highly confidential information and therefore should not be disclosed. The Protective Order in this case is more than adequate to protect their information. The Objecting RSNs' agreements are no more confidential – and warrant no more special treatment – than volumes of other confidential materials produced by MASN and Comcast (including affiliate agreements with non-objecting RSNs). As set forth below, history, precedent and reason compel rejecting the Objecting RSNs' speculative claims of harm. The Objecting RSNs, on the other hand, provide no legal authority to justify withholding the affiliate agreements or to warrant the extraordinary protections they demand.¹⁶

First, history shows that the Objecting RSNs would suffer no competitive harm from disclosure. MASN and its experts (the very same ones involved in this litigation) reviewed the Objecting RSNs' affiliate agreements with TWC in a previous proceeding.¹⁷ In that case, the Objecting RSNs did not object to disclosure of those agreements to MASN, nor did they insist on being included in the existing Protective Order or demand that it be modified. In objecting here, the Objecting RSNs make no claim that MASN's outside lawyers and consultants have in any

¹⁶ The authority cited by MSG (at 2) does not advance the Objecting RSNs' cause. In Memorandum Opinion and Order, *Falcon First Communications, L.P.*, 14 FCC Rcd 7277 (C.S.B. 1999), a bureau of this Commission simply cautioned franchising authorities charged with rate regulation of cable service that they should be “judicious in their requests for programming contracts” because, among other things, such information may not be “reasonably necessary for [a] rate determination.” *Id.* ¶ 34 (emphasis added). Similarly, in Order, *Comcast Corp.*, 17 FCC Rcd 22633, ¶ 16 (2002), the Commission limited its document requests to “documents that . . . are likely to be necessary for [its] public interest analysis.” (emphasis added). Here, binding Commission precedent and Comcast's Answer render the commercial reasonableness of MASN's rates *directly* relevant to this program-carriage proceeding. Such information is thus “likely” to be relevant to MASN's case-in-chief.

¹⁷ *See supra* pp. 1-2.

way violated the TWC protective order and they assert no basis for any prejudice caused to them by MASN's treatment of the affiliate agreements produced in that case. Because the Objecting RSNs cannot point to a scintilla of harm that resulted from that disclosure (much less how those agreements might be different from the ones disputed here), there is no basis for asserting any harm here. Indeed, those agreements were produced under a protective order that is *less* rigorous than the Protective Order here.

Second, it is a bedrock principle that relevant evidence should be disclosed. "It is well settled that there is no absolute privilege for trade secrets and similar confidential information; the protection afforded is that if the information sought is shown to be relevant and necessary, proper safeguards will attend disclosure."¹⁸ None of the Objecting RSNs provides any reason to believe that their affiliate agreement is so uniquely competitive that it could not be disclosed; instead, each RSN makes vague claims to confidentiality and competitive sensitivity. But crediting these assertions as a basis for withholding production here would render the entire category of RSN agreements non-discoverable. That result would be *directly* contrary to the Commission's recognition in the *Adelphia Order* that these contracts form an important part of the resolution of program-carriage disputes.

Third, the existing Protective Order is more than adequate to protect any legitimate concerns the Objecting RSNs might have. The Protective Order restricts everyone from using

¹⁸ 8 Charles Alan Wright et al., *Federal Practice and Procedure* § 2043 (2008). See generally *Covia P'ship v. River Parish Travel Ctr., Inc.*, No. 90-3023, 1991 WL 264549, at *1 (E.D. La. Dec. 4, 1991) ("Parties may not foreclose discovery by contracting privately for the confidentiality of documents."); *Grumman Aerospace Corp. v. Titanium Metals Corp. of Am.*, 91 F.R.D. 84, 87 (E.D.N.Y. 1981) ("confidentiality agreements . . . do not immunize [reports] or other materials from discovery").

highly confidential information learned in the proceeding.¹⁹ All experts bound under the protective order swear “under penalty of perjury that” that they have “read the protective order and agree to be bound by its terms.” An expert is required to swear, moreover, that he or she “shall not disclose[]” confidential or highly confidential to anyone except in accordance with the terms of the Protective Order. There is simply no reason to conclude that these protections are not sufficiently robust to safeguard the interests of the Objecting RSNs.

Fourth, the Objecting RSNs have waived their rights to contest the production of these documents. In fact, it is precisely because of their delay that the affiliate agreements already have been produced by order of this Tribunal. Having lived through the production of similar documents in the TWC proceeding, the Objecting RSNs well knew of their rights to object in a timely manner. But they did not seek a protective order barring disclosure. *E.g., Drutis v. Rand McNally & Co.*, 236 F.R.D. 325, 337 (E.D. Ky. 2006) (finding waiver where party did not timely object or seek a protective order prior to when production was due). Worse yet, the Objecting RSNs (except for MSG) missed the express deadline set by this Court for receiving last-minute objections. The Objecting RSNs’ provide no explanation, must less good cause, for violating these deadlines.

Finally, the absence of any prejudice to the Objecting RSNs is greatly outweighed by the prejudice MASN would face from these eleventh-hour objections. The Objecting RSNs’ unsubstantiated claims of harm do not square with their decisions to lay in the weeds while MASN’s document requests were pending. That the Objecting RSNs waited to voice any

¹⁹ See Protective Order ¶ 8(d) (“Except as otherwise provided in this paragraph, Confidential Information or Highly Confidential Information shall not be disclosed to any other person. All persons who obtain Confidential Information or Highly Confidential Information in this Proceeding shall ensure that access to that Confidential Information or Highly Confidential Information is strictly limited as prescribed in this Order and is used only as provided in this Order.”).

objection until *after* this Tribunal had issued an Order compelling production casts doubt on the seriousness of these after-the-fact assertions of competitive harm.

The Objecting RSNs last-minute attacks on the sufficiency of the Protective Order approved by this Tribunal must be viewed in a similar light. MASN spent long days negotiating a Protective Order with Comcast. Certainly, Comcast could have sought the input of the Objecting RSNs, if the Objecting RSNs themselves were unaware of it. (As set forth above, MASN asked, but has not been told when the Objecting RSNs were informed of MASN's long-standing request for their affiliate agreements.²⁰) MASN repeatedly requested these affiliate agreements long before the Protective Order was finalized and entered. MASN should not be prejudiced by the decisions of Comcast and the Objecting Parties to remain mute until after the Protective Order was entered.

In any event, complaints about the sufficiency of the Protective Order are groundless. Several of the Objecting RSNs raise alarm about the so-called in-house counsel review provision of the Protective Order in ¶ 8(c). MSG, for example, doubts (at 4) the ability of MASN "to construct meaningful information screens" to prevent its in-house counsel from sharing information with others. Fox (at 3) similarly asserts that MASN's owners might misuse confidential information and thereby "drive up the costs of acquiring sports programming." But MASN is a small company that *does not have* in-house counsel. *No* employee of MASN will have access to Highly Confidential materials. Accordingly, one solution to the Objecting RSNs' concern is to eliminate the in-house counsel provision entirely (indeed, it was added at Comcast's request, not MASN's).

²⁰ See *supra* p. 3 n.2.

Finally, some of the Objecting RSNs complain about the “cooling off period” in ¶ 8(e) for experts who have access to highly confidential information. MSG argues (at 5), for example, that the Protective Order “does not protect the interests of non-party programmers required to produce agreements, since MASN’s experts are free to work for video programming distributors that might seek carriage of such networks.” YES raises (at 3) a similar concern.²¹ But the “cooling off period” (a provision also demanded by Comcast, not MASN) is not even necessary to protect the interests of the Objecting RSNs since the Protective Order already precludes persons having access to the Highly Confidential from using it outside this proceeding.

III. THE CONDITIONS PROPOSED BY THE OBJECTING RSNs ARE UNWORKABLE

A. Several of the Objecting RSNs suggest that the Tribunal impose unreasonable and unnecessary conditions on production of the affiliate agreements. These are unadorned “poison pills” that should be rejected.

Fox requests (at 5-6), for example, that disclosure of the affiliate agreements be limited “only to MASN’s outside counsel.” Such a restriction, of course, would defeat the entire point of production. MASN’s lawyers are not experts in economics or the practices of the RSN industry. MASN’s experts in these areas need access to these affiliate agreements in order to perform analyses of the rates and conditions to which Comcast has agreed with other RSNs

²¹ YES’s speculation that the affiliate agreement might not be exempt from disclosure under the Freedom of Information Act (“FOIA”) is difficult to understand given its emphatic claim that its affiliate agreement *is* “highly proprietary” and *is* a “trade secrete or commercial or financial information privileged or confidential within the meaning of the Trade Secrets exemption . . . of the [FOIA].” YES Opp’n at 2. Assuming that YES’s representations are accurate, Exemption 4 would likely bar disclosure. *See Critical Mass Energy Project v. Nuclear Regulatory Comm’n*, 975 F.2d 871, 878 (D.C. Cir. 1992) (en banc) (information provided to the government under compulsion qualifies for protection under Exemption 4 if disclosure is likely “to cause substantial harm to the competitive position of the person from whom the information was obtained”) (internal quotation marks omitted).

across the nation. Those are the very experts upon whom the Commission has relied in deciding that the Objecting RSNs' affiliate agreements are highly relevant to this carriage dispute.²² Fox's plea to prevent disclosure to the very experts who need it suggests that Fox is less concerned about its confidential documents than simply trying to undermine MASN's case.

Finally, some of the Objecting RSNs request that the cooling off period in ¶ 8(e) should apply to negotiations against the Objecting RSNs. Such a provision is not necessary to protect the Objecting RSNs' interests because the Protective Order already precludes any expert from using the information except in this proceeding. The Objecting RSNs' position would unduly prejudice MASN by limiting its ability to have its experts review the affiliate agreements without being effectively barred from working in the RSN industry for nearly a year. The Objecting RSNs cite no legal authority to support such an onerous restriction and MASN is aware of none. The Tribunal should reject it. In any event, the Objecting RSNs have refused to accept MASN's reasonable attempts to accommodate this concern, as set forth below.²³

B. MASN's good-faith attempts to negotiate a compromise failed. MASN arranged a telephone call on February 27, 2009, with Comcast and the Objecting RSNs. Although the parties were unable to reach agreement during that call, MASN invited the Objecting RSNs to submit proposed changes to the Protective Order that would obviate their objections.

After the call, Fox circulated redlined changes to the Protective Order. MASN reviewed that proposal and prepared a counter-proposal (attached as Exhibit 1 hereto). Specifically, MASN proposed four changes of note:

²² See *supra* pp. 5-6.

²³ See *infra* pp. 13-14.

- The Objecting RSNs proposed language in ¶ 8(e) allowing them to redact information that they deemed confidential and not relevant to the proceeding. This proposal did not provide for any right for MASN to object to redactions or to make an independent determination of whether relevant material was redacted. It also afforded rights to Objecting RSNs that had made no redactions when they produced their affiliate agreements in the TWC arbitration. MASN therefore proposed language that would allow Fox to make redactions consistent with those it had made in the TWC arbitration proceeding, and that MASN could appeal any redactions of relevant information.
- MASN proposed language to ¶ 8(e) making clear that the cooling off period applied only to negotiations and not litigation or testifying expert work. This was the same understanding that Comcast and MASN had reached and the language was intended to avoid any ambiguity, but given that the scope of the cooling off period would be expanded substantially with the inclusion of four new companies, this clarification was crucial for MASN to be able to ensure expert review of the underlying affiliate agreements without compromising the experts' ability to work for one year.
- MASN proposed language to ¶ 8(e) to allow experts who have signed a protective order declaration to have access to some highly confidential information but not to other. The intent of this provision was to ensure that, if an expert reviewed a Fox affiliate agreement but not an MSG affiliate agreement, the cooling off period would not apply to the expert's ability to work on negotiations involving MSG. This limit is fully consistent with the purpose of the cooling off period and entirely reasonable in light of the broad expansion of the cooling off period proposed by the Objecting RSNs.
- MASN proposed the deletion of a sentence from the Protective Order Declaration. The sentence that MASN proposed deleting does not conform to the language of ¶ 8(e), and because the protections of ¶ 8(e) are fully incorporated in the declaration, the inclusion of the sentence would be superfluous and lead to confusion.

The Objecting RSNs rejected MASN's counter-proposal on March 1, 2009. They did not offer counter-revisions to MASN's changes. Nor did they accept MASN's invitation to offer specific redactions of their affiliate agreements for MASN to consider.

* * *

Because negotiations have failed, MASN was forced to file this opposition with the Tribunal. In sum, the documents that MASN seeks are highly relevant (and, indeed, crucial to MASN's case); the Objecting RSNs have identified no concrete risk of competitive harm from disclosure (especially given that very similar agreements were disclosed to MASN in the TWC proceeding); the Objecting RSNs appear to have sat on their rights and waited until the eleventh

hour to interpose their objections to MASN's request; and the existing Protective Order is more than adequate to protect the interests of the Objecting RSNs. The untimely objections to MASN's Motion to Compel should be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D.C. Frederick", written over a horizontal line.

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March 2, 2009

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CERTIFICATE OF SERVICE

I, Kelly P. Dunbar, hereby certify that, on March 2, 2009, copies of the foregoing document were served via electronic mail on the following:

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