

**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

**REPLY IN SUPPORT OF EXPEDITED MOTION TO
COMPEL PRODUCTION OF DOCUMENTS**

Comcast does not dispute that the documents MASN seeks – affiliate agreements between Comcast and various regional sports networks (“RSNs”) – are highly relevant to this case. Nor does Comcast seriously dispute that it can easily locate and produce those documents. These points are dispositive. Denying MASN such highly relevant materials would impede MASN’s ability to present its case-in-chief and to rebut Comcast’s expected defense.

1. Because Comcast cannot dispute that its agreements are central to this case, it instead erroneously argues (at 2) that the affiliate agreements it has already produced to MASN “are more than enough to enable MASN to prepare its case in chief.” Comcast’s speculation about MASN’s proofs and its effort to deprive MASN of highly probative evidence should be rejected.¹

¹ Comcast’s agreements with both affiliated and unaffiliated RSNs are highly relevant to MASN’s required proof about Comcast’s discriminatory treatment of MASN as an unaffiliated RSN and MASN’s commercially reasonable rates. Agreements with Comcast’s affiliated RSNs provide key evidence that Comcast is treating its affiliates better than MASN (e.g., by granting these RSNs carriage throughout their entire television territory rather than leaving pockets of non-carriage as MASN is challenging here). Comcast’s agreements with both affiliated and unaffiliated RSNs also are directly relevant to determining the fair market value of MASN’s programming.

The two largest operators of RSNs in the country are Comcast itself and Fox. Although Comcast owns and operates (in whole or in part) at least ten RSNs throughout the country, it has produced agreements for only three: Comcast SportsNet Mid-Atlantic, Comcast SportsNet Philadelphia, and MountainWest Sports Network. Comcast has produced affiliate agreements for approximately 15 RSNs that are controlled by Fox, but MASN has not yet shared those documents with its experts because of Fox's untimely objections. Comcast also has refused to provide affiliate agreements for a dozen or more additional RSNs that Fox operates, despite MASN's specific request.

Comcast insists that it should not be required to produce the agreements with its other affiliated RSNs or the other Fox RSNs because (1) these RSNs operate outside MASN's television territory, and/or (2) the agreements were entered into prior to January 1, 2004. Neither claim withstands scrutiny.

First, Comcast's agreements with RSNs outside of MASN's television territory are highly relevant to determining the appropriate rates it should pay MASN. This case involves the carriage of MASN in "extended inner" markets (*i.e.*, markets outside of MASN's "core" Baltimore/Washington market). Determining the appropriate rate for carriage of MASN in these extended inner markets is best gauged by analyzing the "core" and "extended inner" market rates Comcast pays to other RSNs throughout the country – whether inside or outside MASN's television territory.² Indeed, the arbitrator and Media Bureau found that type of analysis highly

² Comcast is therefore mistaken to claim (at 7) that "RSN rates set by market forces on the West Coast . . . are simply not relevant to the RSN rates set by market forces in the Mid-Atlantic region of the East Coast." To analyze core and extended-inner market rates in these agreements, moreover, it is critical to obtain as large a set of agreements as possible, as only some agreements contain enough information on their face for such an analysis. As Comcast concedes (at 7), RSNs telecast a variety of sports and teams, and finding the appropriate analogs requires careful comparative analysis. For example, an RSN in Los Angeles that shows baseball games

persuasive in resolving MASN's carriage dispute against Time Warner Cable in North Carolina.³ Second, affiliate agreements in force during the past four years are highly relevant to this proceeding – even if they were entered into before January 1, 2004. Comcast offers no support for its argument (at 6) that some of the agreements it has withheld are too old to be relevant. Affiliate agreements are typically negotiated for a period of five to ten years, and they often have escalator provisions that increase rates annually and clauses that further modify that rate (e.g., upon the addition or subtraction of professional sporting events). Thus, a ten-year agreement entered into in 2000 is just as relevant to this case as a three-year agreement that began in 2005.⁴

2. Comcast is left to argue (at 6) that “given the breadth of MASN’s new request, it would be unduly burdensome and time consuming to identify and obtain all of the RSN agreements requested.” Yet two paragraphs later Comcast acknowledges (at 7) that these very agreements “are considered the crown jewels . . . of cable companies such as Comcast.” Comcast would thus have this Tribunal believe that its crown jewels are not kept someplace akin to the

in Nevada may be more relevant to gauging the fair market value of MASN in Harrisburg and Roanoke than an RSN telecasting primarily basketball or hockey games in those markets.

³ 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, ¶¶ 43, 46 (MB rel. Oct. 30, 2008) (relying on economists’ analyses of the fair market value of MASN’s programming based on data culled from Time Warner Cable’s affiliate agreements with other RSNs).

⁴ MASN never agreed that Comcast would only produce agreements entered into between January 1, 2004 and August 22, 2008. The parties’ Joint Case Discovery Management Statement specified (at ¶ 5) a presumptive date range (“[t]he parties agree to produce documents from January 1, 2004 through August 22, 2008”), but expressly provided that “both parties agree to search for and produce specifically identified documents otherwise within the scope of the document requests created outside of that range upon reasonable request, if such documents are highly likely to contain relevant information.” MASN requested the Comcast and Fox RSN agreements pursuant to this provision, but Comcast refused that request without explanation. See Comcast Opp., Exhs. 1 & 3. In any event, the presumptive date range includes affiliate agreements that were in effect during that recent time period and not, as Comcast suggests, only agreements entered into during that period. MASN had no knowledge of when Comcast executed those agreements, which is why it never agreed blindly to exclude current and recent agreements that Comcast just happened to have entered into before 2004 or after August 2008.

Tower of London, but are instead strewn out in unknown and difficult-to-find locations throughout the country. This not only strains credulity (Comcast provides no affiant to attest that these documents would be hard to find), but is also irrelevant given that Comcast has been on notice for more than ten weeks that MASN would be seeking some or all of these agreements. Although Comcast claims (at 6 n.13) that it is not prepared to produce these documents because it relied in “good faith” on the parties’ Joint Discovery Statement, Comcast neglects to mention that MASN disputed Comcast’s unreasonable interpretation of that agreement many weeks ago, and put Comcast on notice that it would request additional agreements if, as has turned out to be the case, Comcast failed to live up to its obligations through an inadequate production.

There is also no merit to Comcast’s request (at 7) that it “be allowed a reasonable amount of time to notify all the RSNs that would be subject to an order compelling production.” Apart from the three Objecting RSNs whose agreements have already been produced, MASN is seeking agreements only for Comcast’s own affiliated RSNs and for Fox’s RSNs. Comcast does not need notice for itself, and Fox chose to participate in this proceeding as an objector and has accordingly received more than adequate notice that its documents have been requested.

3. Next, Comcast offers a red herring (at 7-9) by stating that MASN has not yet submitted a signed declaration for its expert, Mark Wyche. Anyone who fails to sign the declaration, as required by the governing Protective Order, may not review Highly Confidential materials. But that provides no basis to withhold production. Indeed, it should encourage production by proving that the Protective Order will fully protect confidential materials.

In any event, because the Protective Order would require Mr. Wyche to sacrifice his livelihood for one year to see the affiliate agreements at issue, MASN has not requested that Mr. Wyche submit to such an onerous condition unless and until Comcast’s production provides suf-

ficient information for Mr. Wyche to conduct the type of analysis contemplated from a full production of affiliate agreements. MASN's second expert – Dr. Hal Singer – has submitted a signed declaration and will analyze the relevant agreements as part of his expert report. Given that expert reports are due in just two days and MASN still has not received a significant number of improperly withheld affiliate agreements, MASN renews its request that the Tribunal extend the dates for the submission of expert reports by two weeks.⁵

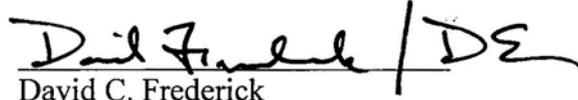
4. Finally, the Tribunal ordered Comcast to produce documents related to its affiliated agreements that show “the quantity of live sports programming telecast on each network for each year covered,” February 25, 2009 Order, such as financial statements or other documents showing the actual number of professional events and revenue generated under the contracts. Comcast's production excluded these documents, prompting MASN specifically to request them in its February 27 Letter. *See* Comcast Opp., Exh. 1. Notwithstanding the Tribunal's order, Comcast refuses to provide these documents and offers no explanation for that refusal. Because Comcast's action is contrary to this Tribunal's order and significantly prejudices MASN, MASN's requested relief should be granted.

CONCLUSION

The Tribunal should compel production of all affiliate agreements and related documents responsive to MASN's requests and should extend the deadline for expert reports until two weeks after the date on which Comcast produces such documents.

⁵ Comcast suggests (at 9) that MASN should be faulted for this request given the “tight schedule in this proceeding.” But Comcast, not MASN, failed to produce highly relevant materials when they were due, waited until the eleventh-hour even to notify the other RSNs of MASN's request, and offers no explanation for its dilatoriness in producing its own affiliate agreements. MASN's request seeks only to preserve the time that it should have had to prepare expert reports.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David C. Frederick / DE". The signature is written in a cursive style with a vertical line separating the name from the initials.

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CERTIFICATE OF SERVICE

I, David F. Engstrom, hereby certify that, on March 3, 2009, copies of the foregoing document were served via electronic mail on the following:

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