

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

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In the Matter of	)	
	)	
TCR Sports Broadcasting Holding, L.L.P.,	)	MB Docket No. 08-214
	)	
Complainant,	)	
	)	
v.	)	File No. CSR-8001-P
	)	
Comcast Corporation,	)	
	)	
Defendant.	)	
_____	)	

**EXPERT REPORT OF MARK C. WYCHE**

**I. INTRODUCTION**

1. My name is Mark Wyche. My business address is 4582 South Ulster Street, Suite 1340, Denver, Colorado, 80237. I am Managing Director, Bortz Media & Sports Group, Inc. (“Bortz”). Bortz is one of the preeminent sports media consulting firms in the United States and is a leader in providing planning and advisory services and implementation support to clients in the fields of media, sports, and entertainment. I direct the company’s sports practice and oversee media rights assessment and valuation/negotiation efforts. I have worked extensively with professional and collegiate sports teams and leagues to maximize the value of their sports and media rights. This has included working to develop, launch, and market national and regional sports networks (“RSNs”). My clients have included the Mid-Atlantic Sports Network (“MASN”)<sup>1</sup> and numerous other RSNs, Major League Baseball (“MLB”), Major League Soccer, the National Basketball Association (“NBA”), the National Hockey League, NASCAR, the PGA Tour, the Big East Conference, the Big 12 Conference, and more than 40 major professional sports

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<sup>1</sup> MASN is the registered trade name used by TCR Sports Broadcasting Holding, L.L.P. (“TCR”). For convenience, and unless otherwise noted, I use MASN interchangeably to refer to both MASN and TCR.

franchises. In addition, I have advised Comcast Sports Networks on various arbitration issues. I have participated directly in negotiations between RSNs and multi-channel video programming distributors (“MVPDs”), including the negotiations between MASN and Comcast discussed below.

2. MASN has asked me to provide my expert view regarding several topics relating to the above-captioned proceeding, including the demand for MASN’s programming in the areas encompassing the Comcast systems that have not launched MASN, Comcast’s incentives to protect its interests by declining to carry MASN in the unlaunched areas, available methodologies for comparing the license fees charged by MASN and Comcast’s affiliated RSNs within MASN’s Territory, and why the per-subscriber fee at which MASN is requesting carriage on Comcast’s unlaunched systems reflects the fair market value of MASN’s programming. This report sets forth my expert views on each of these topics.

## **II. CONSUMER DEMAND FOR MASN’S PROGRAMMING**

3. It is my understanding that MLB assigns to each of its 30 teams the television rights for certain geographical areas. Television territories are typically assigned by Designated Market Area (“DMA”) – each DMA comprising those counties whose largest share of viewing is to stations located in that same market area. It is my understanding that MLB allocates television territories (i.e., DMAs) to teams based on its determination about the team in which fans in that territory are most likely to show interest. Over the years, MLB has designated certain DMAs as the exclusive television territory of a certain team. In other instances, MLB has designated certain DMAs as a shared television territory of two or more teams.
4. The 30 MLB teams are physically located in 17 states. It is therefore common that fans in one state identify with a “home team” in another state. The television territory assigned to the Orioles by MLB includes DMAs within six states: Maryland, Delaware, Virginia, Pennsylvania, North Carolina, and West Virginia, as well as the District of Columbia. With the decision by MLB to transfer the former Montreal Expos to Washington, D.C., to become the Nationals, the Orioles agreed to share their entire television territory with the Nationals.

5. It is my understanding based on MLB allocated television territories, that the Orioles and Nationals have exclusive television rights, and thus exclusive status as home teams, in the Virginia portions of the Roanoke-Lynchburg (“Roanoke DMA”) and Tri-Cities DMAs (“Tri-Cities DMA”), as well as throughout Virginia. The Harrisburg, Roanoke/Lynchburg, and Tri-Cities DMAs are all within the television territory that MLB assigned to the Orioles and Nationals based on MLB’s determination that there would be considerable fan interest for these teams within these geographic areas.
6. Carriage of MASN in the unlaunched DMAs by MVPDs other than Comcast – as well as Comcast itself – provides further evidence of consumer demand for MASN’s programming in those areas. The other two major MVPDs that serve MASN’s Territory – DirecTV and DISH – both carry MASN within the Harrisburg, Roanoke/Lynchburg, and Tri-Cities DMAs. In addition, MVPDs Cox and Ntelos carry MASN within the Roanoke/Lynchburg DMA, and MVPDs Verizon, Armstrong, Kuhn – and most importantly *Comcast* – carry MASN within the Harrisburg DMA. Comcast carries MASN on a basic or expanded basic tier on its cable systems everywhere within MASN’s Territory, except in these three DMAs and some other scattered areas, which indicates that even Comcast recognizes that there is broad consumer demand for MASN’s programming within its television territory. And, as I mentioned above, Comcast recognizes the consumer demand for MASN’s programming specifically within the Harrisburg DMA by offering MASN on a basic or expanded basic tier to some – but not all – consumers there. I am not aware of any evidence produced by Comcast that indicates that demand for MASN’s programming in (or within portions of) the Harrisburg, Roanoke/Lynchburg, and Tri-Cities DMAs is materially different from demand in adjacent DMAs within MASN’s Territory where Comcast does carry MASN.
7. It is also my understanding that Comcast has a long history of carrying Orioles games in these three DMAs (when those Orioles games were distributed via Comcast’s affiliated RSN Comcast SportsNet Mid-Atlantic), which further demonstrates the high demand for MLB programming of the type MASN offers. As a result of Comcast’s failure to launch MASN in Roanoke/Lynchburg and Tri-Cities DMAs in particular, Comcast subscribers there currently lack access to any regular MLB programming, even though Comcast had a long history of carrying Orioles games in those DMAs when it owned the rights to

televise those games. Comcast's failure to launch MASN on its cable systems there after having carried Orioles games there for many years makes those areas highly unusual, and undermines any assertion by Comcast that its refusal to carry MASN in the Roanoke/Lynchburg and Tri-Cities DMAs is somehow based on a lack of consumer demand.

**III. COMCAST HAS THE INCENTIVE TO PROTECT ITS INTERESTS FROM THE COMPETITIVE THREAT POSED BY MASN**

8. In my opinion, Comcast's refusal to carry MASN on all its systems throughout MASN's television Territory reflects an intent to protect its own competing interests in sports programming. Preventing MASN from establishing a presence in such places as Harrisburg and Roanoke/Lynchburg in particular would benefit Comcast in two ways.
9. First, in Pennsylvania, Comcast has an interest in ensuring that MASN does not compete with Comcast's own affiliated RSN, Comcast SportsNet Philadelphia ("CSN-Philly"), which telecasts the MLB games of the Philadelphia Phillies. By refusing to carry MASN on its Harrisburg DMA systems, Comcast is able to protect CSN-Philly from the competition for advertising and other revenue presented by MASN's broadcasts of Nationals and Orioles games. Such protection inures to the significant financial benefit of Comcast, as it prevents viewers in these locations from a choice between viewing games of the Orioles and Nationals as an alternative to the Phillies. Comcast has similar interests in protecting its affiliated RSN, Comcast SportsNet Mid-Atlantic ("CSN-MA"), which it carries elsewhere in MASN's Territory. Comcast's refusal to carry MASN enables Comcast to depress interest in MASN's sports programming content in those regions. In addition, limiting MASN's reach within its television territory negatively impacts MASN's ability to compete for the telecast rights to existing and future sports programming.
10. Second, Comcast has an interest in protecting its interest in out-of-market MLB games from the home team games of the Nationals and Orioles. Comcast is part of a consortium with two other major cable operators (Time Warner Cable and Cox) that is part owner of

iN DEMAND and the MLB Channel.<sup>2</sup> Comcast recently entered into a deal with MLB pursuant to which Comcast agreed to continue to carry MLB's Extra Innings packages, which is a premium sports package that allows a subscriber to view a wide range of out-of-market MLB games throughout the season.<sup>3</sup> Comcast also recently launched the MLB Channel.

11. The iN DEMAND deal provides substantial incentives for Comcast to limit MASN's subscriber reach where CSN-MA is being carried on Comcast systems in MASN's Territory that have not launched MASN. Comcast subscribers will be less likely to watch the MLB Channel and less willing to pay for Extra Innings if they already have access to 300 games played by the "home team" Orioles and Nationals. In addition, the Orioles and Nationals play, and MASN broadcasts, dozens of games against popular out-of-market teams like the Boston Red Sox, the New York Yankees, the Chicago Cubs, the Atlanta Braves, and the New York Mets. This further erodes the value of the MLB Channel and the Extra Innings package for many subscribers. For both reasons, MASN poses a significant competitive threat to the value that Comcast can hope to extract from its recent Extra Innings/MLB Channel deal.

**IV. A METHODOLOGY FOR COMPARING THE LICENSE FEES OF MASN AND OTHER AFFILIATED AND NON-AFFILIATED RSNS COMCAST CARRIES**

12. I understand that a key issue in this case is whether Comcast is treating MASN differently from the way it treats its own affiliated RSNs, and also whether the rates MASN is proposing to charge in the unlaunched areas are commercially reasonable. This requires a comparison of MASN's proposed rates to the rates that Comcast pays affiliated and unaffiliated RSNs both inside and outside MASN's Territory. Based on my experience, such comparison should be performed using a normalized metric that takes account of the quantity of marquee programming offered by each of the three RSNs. One such measure is the per-subscriber per-major-pro-event ("PSPPE") rate charged by each

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<sup>2</sup> See CBS NEWS, *MLB to Keep 'Extra Innings' on Cable*, available at [http://www.cbsnews.com/stories/2007/04/04/business/main2649774.shtml?source=RSSattr=Entertainment\\_2649774](http://www.cbsnews.com/stories/2007/04/04/business/main2649774.shtml?source=RSSattr=Entertainment_2649774).

<sup>3</sup> See *id.*

RSN for its programming. This conceptual approach to valuing regional sports programming is accepted within the industry and considered objective.

13. The PSPPE measure has a number of virtues. First, it is easily calculated. It can be calculated for any RSN by dividing the RSN's annual per-subscriber license fee (or its monthly per-subscriber license fee multiplied by 12) by the total number of live major professional sporting events that the RSN televises each year. Thus, if an RSN charges \$2.00 per month per subscriber and carries 200 pro events, then its PSPPE fee is \$0.12 (or \$2.00 times 12 months, or \$24.00, divided by 200). The lower the PSPPE, the greater the value proposition offered by the RSN.
14. Second, and relatedly, the PSPPE measure derives from the actual terms of carriage contracts negotiated between MVPDs and the three RSNs at issue here. This is important. As I note more fully below, willingness to pay is the best and most reliable measure of fair market value. It is therefore important to compare RSN license fees using data derived from actual contracts rather than some other means.
15. Third, the PSPPE measure is comparable across RSNs. In my experience, the mix of major professional sports that makes up an RSN's event count is typically drawn from one of the three major professional sports leagues, including Major League Baseball, the National Basketball Association, and the National Hockey League. Moreover, it has been my experience that when calculating an RSN's PSPPE rate, it is reasonable to give the games of each of the three major professional sports leagues equal weighting. Because interest in any one team can vary year-to-year and sport-to-sport, the raw number of live regular season major professional sporting events that an RSN can offer is an important benchmark to industry experts in gauging the value of that RSN's programming.
16. Finally, the PSPPE measure can readily take account of variations in the per-subscriber fees that apply across the different regions or zones within an RSN's geographic programming area. Virtually all RSN carriage contracts provide for a declining fee as the distance between the particular viewing market (or contractual zone) and the team's home stadium increases. Thus, in order to compare the license fees charged by the three RSNs at issue here within the different market areas represented by the Harrisburg,

Roanoke/Lynchburg, and Tri-Cities DMAs, a proper comparison can be made by isolating and comparing the PSPPE rate that each of the RSNs at issue charges in each of the viewing markets.

17. To calculate the PSPPE rate charged by MASN in the Harrisburg, Roanoke/Lynchburg, and Tri-Cities DMAs during 2008, one must divide MASN's annual per-subscriber license fee (or its monthly per-subscriber license fee, or **[Begin Highly Confidential]** **[End Highly Confidential]**, multiplied by 12) for Region 4 (which encompasses each of the unlaunched DMAs) by the 322 live major professional sporting events that MASN televises each year. Thus, MASN's PSPPE score in the Harrisburg, Roanoke/Lynchburg, and Tri-Cities DMAs during 2008 was **[Begin Highly Confidential]** **[End Highly Confidential]**. In other words, MASN charged **[Begin Highly Confidential]** **[End Highly Confidential]** cents for each live major professional sporting event it delivered.
18. Because I have not had access to the per-subscriber fees Comcast charged MVPDs for carriage of its affiliated RSNs CSN-Philly or CSN-MA in each of the three unlaunched DMAs during 2008, I am unable to perform a PSPPE calculation for those RSNs here. However, doing so merely requires implementation of the same methodology outlined above.

**V. MASN'S PROPOSED CARRIAGE TERMS REFLECT FAIR MARKET VALUE**

19. I have carefully reviewed the terms and conditions on which MASN has requested carriage from Comcast on the unlaunched systems throughout MASN's Territory. In my view, MASN's proposed terms and conditions are reasonable in light of industry norms.
20. Willingness to pay in the marketplace is a reliable measure of the fair market value of regional sports programming. Here, Comcast itself has previously agreed to carry MASN on a basic or expanded basic tier on its cable systems elsewhere within MASN's Regions 3, 4 and 5 at the same per-subscriber rate at which MASN is seeking carriage on Comcast's unlaunched systems in the Harrisburg, Roanoke/Lynchburg, and Tri-Cities DMAs. Moreover, every other major MVPD in MASN's Regions 3, 4 and 5 has already agreed to carry MASN on their basic or expanded basic tier (or equivalent) at that rate. **[Begin Highly Confidential]**

**[End Highly Confidential].**

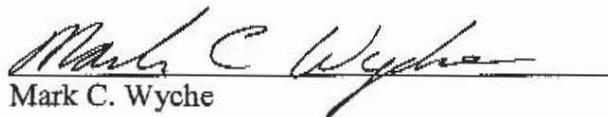
21. My view that MASN's carriage proposal to Comcast reflects the fair market value of MASN's programming is also informed by my involvement in the process by which MASN arrived at the rates it currently charges MVPDs, including Comcast, throughout its territory. Based on my experience in the industry and my extensive knowledge of RSN pricing throughout the country, I assisted in determining the initial rates that MASN should charge MVPDs.
22. It is also important to note that the current per-subscriber rates that MASN charges – and the rate at which MASN is seeking carriage on Comcast's unlaunched systems – are the result of repeated arm's-length bargaining with other MVPDs, including Comcast itself. In fact, during the summer of 2006, Comcast and MASN negotiated vigorously over the rates at which Comcast would carry MASN. **[Begin Highly Confidential]**

**[End Highly Confidential].** The fact that the rate at which MASN is seeking carriage was the result of vigorous arm's-length negotiation with Comcast itself necessarily establishes that those rates reflect fair market value.

23. Finally, in my view, the rate at which MASN is seeking carriage on Comcast's unlaunched systems is comparable, if not more competitive, to what other RSNs charge and MVPDs pay for comparable programming in other markets. **[Begin Highly Confidential]**

**[End Highly Confidential].** RSN programming is often attractive from the perspective of advertisers. Advertising revenue allows an MVPD like Comcast to partially recover the per-subscriber fees that it must pay to programming providers, making it easier to realize a profit.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

  
Mark C. Wyche

March 19, 2009

**CERTIFICATE OF SERVICE**

I, David F. Engstrom, hereby certify that, on March 19, 2009, copies of the foregoing document were served on the following:

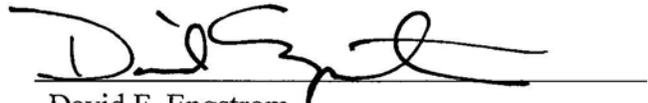
David H. Solomon (dsolomon@wbklaw.com)  
L. Andrew Tollin (atollin@wbklaw.com)  
Wilkinson Barker Knauer, LLP  
2300 N Street, NW, Suite 700  
Washington, D.C. 20037

I further certify that hardcopies of the foregoing will be served by hand on March 20, 2009, on the following.

The Honorable Richard L. Sippel  
(richard.sippel@fcc.gov)  
Chief Administrative Law Judge  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

Mary Gosse (mary.gosse@fcc.gov)  
Office of Administrative Law Judges  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554  
(courtesy copy)

Kris Anne Monteith (kris.monteith@fcc.gov)  
Gary P. Schonmann (gary.schonman@fcc.gov)  
William Davenport (william.davenport@fcc.gov)  
Elizabeth Mumaw (elizabeth.mumaw@fcc.gov)  
Enforcement Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

  
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David F. Engstrom