

# **Attachment B**

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
	)	
Complainant,	)	
	)	
v.	)	File No. CSR-8801-P
	)	
Comcast Corporation,	)	
	)	
Defendant.	)	
	)	

**WRITTEN TESTIMONY OF DAVID GLUCK**

1. My name is David Gluck. I have been involved in the regional sports network (“RSN”) business since March 1990. From March 1990 through July 2001, I worked for Fox Sports Net and its predecessor Liberty Sports as General Counsel, then as Vice President of Business Affairs/Programming, and then as a consultant to the Chief Operating Officer. Liberty Sports and its successor, Fox Sports Net, owned and operated, and continue to own and operate, numerous RSN’s throughout the country. From October 2001 through mid-2003, I served as Senior Vice President of Business and Legal Affairs for World Satellite Network, Inc., a provider of cable and satellite programming services (including RSNs) to rural cable operators and private cable operators. From December 2003 through March 15, 2005, I was employed by Altitude Sports & Entertainment, an RSN owned by the owner of the National Hockey League’s Colorado Avalanche and the National Basketball Association’s Denver Nuggets, where I served as Senior Vice President of New Business and CLO.
2. Since March 15, 2005, through the present, I have provided legal and business advice as a consultant to Altitude Sports & Entertainment. In 2006, I consulted for the new RSN of the Cleveland Indians, SportsTime Ohio (“STO”), representing STO in its efforts to enter into affiliation agreements with multichannel video programming distributors (“MVPDs”).

From March 2005, through the present date, I have been employed by Mav'rick Entertainment Network, Inc., which owns and operates a national cable and satellite television network known as MavTV. I am the Senior Vice President of New Business for MavTV. In addition, since August 2005, I have provided legal and business advice and consulting services for METelevision, a regional music television network located in Austin, Texas.

3. More recently, I have been providing legal and business advice to, and consulting services for, TCR Sports Broadcasting Holding, L.L.P., d/b/a Mid-Atlantic Sports Network ("MASN").<sup>1</sup> Such services include assisting MASN in its efforts to enter into affiliation agreements with MVPDs, including Comcast, for the 2005 baseball season and beyond within MASN's television territory, which consists of the states of Virginia, Maryland, Delaware, and the District of Columbia in their entirety, and parts of southern Pennsylvania, eastern West Virginia, and a substantial part of North Carolina ("MASN's Territory").

**I. NEGOTIATIONS WITH MVPDs FOR LAUNCHING MASN**

4. Since February 2005, I have negotiated, or assisted in the negotiation of, more than twenty agreements with MVPDs to carry MASN. These included agreements with major MVPDs such as DirecTV in May 2005, Charter in September 2005, Verizon in October 2005 and again in April 2009, Cox in April 2006, and DISH Network in April 2007.
5. Carriage of MASN in the Harrisburg, Roanoke/Lynchburg and Tri-Cities Designated Market Areas ("DMAs") (collectively, "unlaunched DMAs") by other MVPDs is compelling and objective evidence of consumer demand for MASN's programming in those areas. DirecTV and DISH are the two major MVPDs (other than Comcast) that serve MASN's Territory, and they both carry MASN within all of the unlaunched DMAs.
6. In particular, MASN's agreement with DirecTV provides objective evidence of demand for MASN in the unlaunched DMAs. I engaged in vigorous negotiations with DirecTV over the rates that MASN would charge in all six of MASN's regions. During those

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<sup>1</sup> MASN is the registered trade name used by TCR. For convenience, and unless otherwise noted, I use MASN interchangeably to refer to both MASN and TCR.

negotiations, it was clear that, if DirecTV thought there was no demand for MASN's programming in any particular region, it would insist on no carriage or a nominal price for carriage in that region. Ultimately, DirecTV agreed to carry MASN throughout its territory, including within the unlaunched DMAs where Comcast has refused to carry MASN.

7. Other MVPDs, including Cox and Ntelos, carry MASN within the Roanoke/Lynchburg DMA, and Verizon, Armstrong, and Kuhn carry MASN within the Harrisburg DMA. Comcast also carries MASN within certain parts of the Harrisburg DMA.
8. I also participated in the negotiations with Charter to carry MASN in the Fall of 2005. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] MASN periodically communicates with Charter to learn the status of those technological upgrades.
9. In the negotiations with Comcast in 2005 and 2006 for carriage throughout Comcast's systems in MASN's territory, Comcast never mentioned allegedly low demand for MASN's programming in the unlaunched DMAs.
10. Nearly all of the carriage agreements I have negotiated for MASN have involved full carriage on each of the MVPD's systems across MASN's Territory. With respect to other RSNs that I have worked for, many of the carriage agreements have involved full carriage of the RSN. Over more than fifteen years, with one exception, every affiliation agreement I have ever negotiated for carriage of an RSN has involved an open and explicit discussion regarding any systems that an MVPD would not agree to launch. The only exception is Comcast's August 4, 2006 agreement with MASN.

**II. NEGOTIATIONS WITH COMCAST**

11. I first became involved in negotiations with Comcast about carriage of MASN on Comcast's cable systems within MASN's Territory in March 2005, while negotiations were

pending between the Baltimore Orioles and Major League Baseball (“MLB”) over the television rights for a contemplated two-team RSN that would be jointly owned by the Orioles and Washington Nationals. In April 2005, I drafted and sent to Comcast a proposed term sheet setting forth the terms for MASN’s carriage by Comcast. The term sheet contained a map dividing MASN’s Territory into regional zones, assigned subscription fees (on a per-subscriber basis) to each of those zones, and set forth various other basic terms and conditions of carriage. The term sheet also specifically stated that MASN “shall be carried on each Comcast system within the Territory.”

12. On April 14, 2005, I was part of a team of MASN representatives who met with Comcast executives in Philadelphia regarding MASN’s carriage request. The other MASN representatives included Russ Smouse, Mark Wyche, and Joe Foss. During the meeting, the MASN team made a sales pitch to Comcast executives Matt Bond and Alan Dannenbaum. At no point did the parties discuss the possibility of a partial launch or carriage on anything less than all of Comcast’s cable systems within MASN’s Territory.
13. One week after the Philadelphia meeting, on April 21, 2005, Comcast SportsNet Mid-Atlantic filed a lawsuit against MASN in Maryland state court.<sup>2</sup> Approximately two months later, MASN filed a carriage complaint against Comcast with the Federal Communications Commission (“FCC”) and also filed extensive comments concerning Comcast’s request for FCC permission to acquire certain cable systems of the bankrupt Adelphia Communications.<sup>3</sup> As a result of this litigation, negotiations between the two parties were negatively affected for the next sixteen months, and I had only sporadic contact with Mr. Bond and Mr. Dannenbaum during that time period.
14. In June 2005, I exchanged letters with Mr. Bond regarding some questions he had about MASN’s carriage proposal. The parties also held a conference call in mid-July 2005, prompting another letter from me answering certain questions Comcast had regarding

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<sup>2</sup> See *Comcast SportsNet Mid-Atlantic, L.P. v. Baltimore Orioles L.P., TCR Sports Broadcasting Holding, L.L.P., Major League Baseball, Mid-Atlantic Sports Network*, Civil Action No. 260751-V (Montgomery County, Md. Cir. Ct., filed Apr. 21, 2005).

<sup>3</sup> See *Carriage Agreement Complaint, TCR Sports Broadcasting Holding, L.L.P. v. Comcast Corp.*, MB Docket No. 06-148, CSR-6911-N (FCC filed June 14, 2005).

MASN. At no time did the parties discuss the possible exclusion of carriage of MASN from any of Comcast's cable systems.

15. On October 6, 2005, I sent Comcast a revised term sheet along with an email noting the differences between prior versions of the term sheet and the new version. This October 6 term sheet reflected the various changes to MASN's standard affiliation contract necessitated by other carriage agreements MASN had entered into with other MVPDs. That term sheet specifically provided for carriage of MASN on all of Comcast's systems within MASN's Territory and made no provision for the exclusion of MASN from carriage on Comcast systems anywhere within that territory. Similarly, the October 6 term sheet, like previous versions, contained a map dividing MASN's Territory into regional zones and assigned subscription fees (on a per-subscriber basis) to each of those zones.
16. The version of the term sheet I sent to Comcast on October 6 was different from prior versions in that it contained an appendix titled "Schedule A – List of Systems," which was left blank. An RSN like MASN has various sources it can look to in an effort to determine the location of a cable operator's cable systems within its territory, but these sources are not always reliable. Typically the cable operator has the most reliable information about the precise location of each of its cable systems. It has also been my experience in past negotiations between cable carriers and newly launched RSNs that the operator discloses to the RSN the systems, if any, where the carrier intends not to launch that RSN.
17. On July 25, 2006, under correspondence written by counsel David Frederick, Comcast was sent another copy of the October 6, 2005 term sheet identical to the one I had previously sent to Comcast. Again, that term sheet did not provide for the exclusion of any of Comcast's systems from carriage of MASN anywhere within MASN's Territory.
18. On August 2, 2006 – only two days before MASN's ten-day window to file an arbitration demand was set to expire – Comcast's Mr. Bond and I had a telephone conversation in which Mr. Bond indicated that Comcast wanted to get the deal done. That same day, I emailed yet another version of a proposed term sheet to Messrs. Bond and Dannenbaum in preparation for a conference call scheduled for the next day. A few small changes were noted in redline, but the language in the agreement requiring carriage of MASN on all of Comcast's systems throughout MASN's Territory, and also Schedule A's blank List of

**REDACTED, PUBLIC VERSION**

Systems, remained unchanged from the previous version. Once again, MASN's term sheet included a map denoting MASN's Territory and language requiring Comcast to launch "all Comcast systems" within the territory. MASN understood and intended that Comcast would fill in the List of Systems with all of Comcast's cable systems within MASN's Territory. At no time in our telephone conversation on August 2 did we discuss the possible exclusion of any of Comcast's systems from carriage of MASN within MASN's Territory.

19. On August 3, 2006, the parties held multiple conversations by telephone. The parties discussed various aspects of the proposed carriage agreement between MASN and Comcast during these calls.
20. During one of the August 3 calls, Mr. Bond proposed that Comcast would launch MASN on its cable systems within MASN's Territory in two phases. First, Mr. Bond said that Comcast would launch MASN on its cable systems serving [REDACTED] subscribers in Regions 1 and 2, and a portion of Region 4 by September 1, 2006. Second, Mr. Bond proposed that Comcast would launch MASN on systems with [REDACTED] subscribers in Regions 4 and 5 by April 1, 2007. Comcast stated that it could not commit to launching approximately [REDACTED] subscribers in Roanoke/Lynchburg and other Virginia areas who received their cable service through some former Adelphia cable systems that Comcast was acquiring as part of the Adelphia transaction. Mr. Bond stated that, while he was uncertain of many of the details of the former Adelphia systems Comcast was acquiring, he believed that those Adelphia systems currently lacked sufficient capacity to carry MASN. (Later, on August 4, Comcast proposed to launch the [REDACTED] remaining subscribers in Regions 4 and 5 in two phases: [REDACTED] subscribers would launch by April 1, 2007, and [REDACTED] subscribers – a different [REDACTED] from the excluded Adelphia systems – would launch by April 1, 2008.) No mention was made during that conference call or at any other time prior to consummation of the August 4 agreement that any other Comcast systems would not launch MASN.
21. During a telephone conversation with Andrew Rosenberg (a lawyer at Comcast) and/or Mr. Dannenbaum, Comcast explained its reason for inserting language in the draft affiliate term sheet providing that Comcast would carry MASN on those systems "identified on . . .

Schedule A.” Comcast represented that it had struck language providing that it would launch “all Comcast systems” to ensure that the contract reflected the fact that the former Adelphia systems in Roanoke/Lynchburg and other areas of Virginia would not be subject to carriage of MASN on a specified launch date.

22. A number of drafts of the term sheet were circulated between the parties during the time period between August 3 and 4 reflecting the negotiations of the parties. However, it was not until August 4, 2006, at approximately 1:30 p.m., just hours before the ten-day deadline for filing for arbitration under the *Adelphia Order* was to expire, that Comcast emailed to me a version of the term sheet identifying Comcast’s cable systems for the previously blank appendix titled “Schedule A – List of Systems.” The List of Systems consisted of two full pages and listed systems in each of the four geographic regions (Regions 1, 2, 4, and 5) within MASN’s Territory where MASN understood Comcast had systems. The List of Systems also provided the number of estimated subscribers for each system and was divided into two parts, including those systems that the parties agreed would launch on September 1, 2006, and those systems that the parties agreed could delay launch until April 1, 2007. Finally, the List of Systems included an asterisked footnote that stated: “Notwithstanding the foregoing, Comcast may delay the launch of the Service on Systems comprising up to [REDACTED] Service subscribers to not later than April 1, 2008.” (To be clear, this referred to a different [REDACTED] subscriber than those in the excluded Adelphia systems.) Nowhere in Comcast’s proposed edits, whether to the List of Systems or elsewhere within the term sheet, did Comcast expressly state that any of its systems would not carry MASN within its territory except for the former Adelphia systems in the Roanoke-Lynchburg areas of Virginia.
23. The redlined term sheet provided that Comcast would launch MASN on its systems as “identified on the attached Schedule A (List of Systems).” The term sheet further provided that “[a]ny other Comcast systems within the MASN territory may carry the Service in Comcast’s discretion.” The purpose of Comcast’s inclusion of the language about the launch of its systems “at its discretion” was not meant to permit Comcast to exclude carriage of any systems other than those former Adelphia systems in Roanoke/Lynchburg and elsewhere in Virginia that we had specifically discussed as being technically deficient; rather, it was meant to permit Comcast to launch those specific systems when Comcast had

competed upgrades on those systems and was able to launch MASN. That language also permitted Comcast to launch MASN on any systems acquired from other cable operators after the effective date of the term sheet.

24. Importantly, Comcast's email accompanying the redlined term sheet stated that it [REDACTED]  
[REDACTED]  
[REDACTED] The deal that the parties had been discussing is as described in Paragraph 20, above. The parties' earlier discussions had not considered any exclusions other than the former Adelphia systems in Roanoke/Lynchburg and other areas of Virginia, which Comcast told us served approximately [REDACTED] subscribers. Accordingly, I understood – as did the rest of MASN's negotiating team – that the List of Systems encompassed all of Comcast's systems within MASN's Territory other than the aforementioned former Adelphia systems in Roanoke/Lynchburg and other areas of Virginia. We were never given any reason to believe otherwise.
25. MASN did agree to Comcast's proposal to exclude for the time being the former Adelphia systems in Lynchburg/Roanoke and other areas of Virginia from the List of Systems based on Comcast's representation that it was technologically impossible for Comcast to carry MASN on those newly-acquired former Adelphia systems. Comcast did not say it would never launch those systems when they were upgraded.
26. After Comcast transmitted the revisions to the Term Sheet on August 4, 2006, my colleague Mark Wyche performed a necessarily hurried analysis on Comcast's List of Systems in an effort to confirm that the Term Sheet comported with Comcast's representations that its changes did, in fact, [REDACTED] MASN and Comcast had been discussing over the course of the negotiations. Mr. Wyche reported to the other members of the MASN team that, although the names of Comcast's List of Systems did not correspond identically with the information he had, the total number of subscribers on the List of Systems provided by Comcast did compare very favorably to MASN's own internal estimates of the total number of Comcast subscribers within MASN's Territory.
27. After an internal MASN review of Comcast's proposed revisions – just before 4:00 p.m., and a little more than an hour before the ten-day deadline for MASN to file for arbitration against Comcast was set to expire – I responded to Comcast's revisions to the term sheet by

making certain additional cleanup changes. However, relying upon the List of Systems as accurately representing all of Comcast's cable systems within MASN's Territory except the former Adelphia systems containing [REDACTED] subscribers in Roanoke/Lynchburg and other Virginia areas that Mr. Bond had specifically discussed with us (*see* ¶ 20), MASN made no changes to Comcast's List of Systems or to the revised launch language that Comcast had proposed at 1:30 p.m. that afternoon. A little more than a half hour later, and with the 5:00 p.m. deadline fast approaching, the parties executed the agreement.

28. Given our lack of knowledge about which subscribers were served by which Comcast systems at the time – information that is opaque and which we had virtually no time to analyze – I relied upon Comcast to treat us honestly and in good faith, based in part on previous negotiations with Comcast. We had no knowledge that Comcast intended to exclude approximately [REDACTED] Pennsylvania subscribers in locations that readily provide viewers and ticket holders to Orioles games. Nor did we know or have reason to suspect that Comcast would not honor its pledge to the FCC that it would upgrade the former Adelphia cable systems and be in a position to carry MASN on those systems.

### III. MASN's EXTENSIVE EFFORTS TO DETERMINE COVERAGE

29. MASN first learned in or around January 2007 that Comcast had not launched MASN on certain of its cable systems in MASN's Territory. MASN ultimately learned that Comcast had not launched MASN on cable systems within MASN's Territory representing approximately [REDACTED] subscribers.
30. Since that revelation, I have been part of a team of MASN representatives that has discussed the issue with various Comcast representatives, including Alan Dannenbaum and Matt Bond. During those discussions, Comcast has maintained that MASN knew that Comcast had not launched, and was under no obligation to launch, MASN on the unlaunched Comcast systems. Comcast's assertion is incorrect. At no point in any of our negotiations leading up to the August 4, 2006 carriage agreement did anyone from Comcast disclose its intent to exclude a total of approximately [REDACTED] subscribers.
31. Cable operators are continuously acquiring, consolidating, or renaming cable systems. As a result, it is my view that publicly available information has limited utility, often providing only an outdated and inaccurate snapshot of a cable operator's systems at some time in the

past. By far, the best and most accurate source of information regarding an operator's systems is the operator itself.

32. Finally, it took MASN more than a year of painstaking effort *working with Comcast* to get the information necessary to verify which Comcast systems had and had not been launched. Based on that experience, which entailed much back-and-forth between MASN and Comcast officials, there is no way that MASN could have determined prior to signing the August 2006 agreement which systems Comcast had omitted from Schedule A in the time that MASN had, or indeed, even with significantly more time.

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



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David Gluck

May 8, 2009