

**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	)	
	)	File No. CSR-8001-P
v.	)	
	)	
Comcast Corporation,	)	
	)	
Defendant	)	

To: Marlene H. Dortch, Secretary  
Attn: Hon. Richard L. Sippel  
Chief Administrative Law Judge

**RESPONSE TO COMCAST’S SECOND MOTION  
FOR LEAVE TO SUPPLEMENT RECORD**

TCR Sports Broadcasting Holding, L.L.P., d/b/a Mid-Atlantic Sports Network (“MASN”), by its attorneys, hereby responds to Comcast’s Second Motion for Leave to Supplement Record.

This is an expedited proceeding. Both parties therefore agreed that the record must be closed after the hearing concluded on May 26, 2009 – except for three specific items authorized by this Tribunal. *See* Tr. 7464-65. That bright-line permits the parties to honor the post-trial schedule established by this Tribunal. Nonetheless, Comcast now makes a second request to supplement the record. This request is unwarranted as a matter of process and Comcast should be directed not to make a third, fourth, or fifth request to supplement the record.

Further, Comcast’s second request lacks substance. Comcast tenders two newspaper accounts of Nielsen ratings regarding Washington Nationals (but not Baltimore Orioles)

programming. One of these articles notes that the Nationals “logged the second biggest increase in the majors, rebounding from last year’s dismal ratings” such that “ratings for its games on MASN and MASN2 have increased 56 percent in the first two months of the season.” John Ourand, *MLB’s Overall Ratings Mostly Steady at Start*, SportsBusiness Journal, June 1, 2009. Although this is an impressive one-year increase in Nationals’ viewership – which evidences the important role that carriage plays in increasing viewership – it does not merit untimely insertion into a closed record.

Comcast’s request also is inappropriate for at least four reasons. *First*, Comcast seeks to introduce this new information even though it appears to bear no relation to the unlaunched markets at issue. The articles focus on the Washington, D.C. market, rather than the Harrisburg, Roanoke-Lynchburg, or Tri-Cities markets that contain the bulk of the subscribers on the unlaunched systems at issue in this proceeding.

*Second*, Comcast denied MASN this precise sort of Nielsen information during discovery. MASN made only ten document requests. One sought: “Documents sufficient to show Nielsen ratings by DMA in the last five years for all analog and digital channels carried on Comcast’s Harrisburg, Roanoke-Lynchburg, Tri-Cities, and other unlaunched cable systems.” Complainant’s First Req. for the Prod. of Docs. to Def. Comcast Corporation, Req. No. 5 (Dec. 5, 2008) (attached hereto as Ex. A). But Comcast produced no such information. Comcast cannot have it both ways. Having failed to provide such Nielsen information during the course of discovery, Comcast cannot now selectively seek to introduce newspapers accounts of some Nielsen information (but not the original source materials themselves) after the hearing has concluded, and thereby deny MASN a fair opportunity to respond.

*Third*, Comcast unreasonably delayed in seeking to insert this information into this record. Comcast has long known that MASN would be relying upon Nielsen ratings. This was true since at least December 2008, when MASN specifically requested Nielsen ratings information from Comcast. Long before trial, moreover, Comcast deposed MASN's witnesses about their reliance on Nielsen ratings. *E.g.*, Dep. of James Cuddihy at 98-107 (Apr. 28, 2009). Accordingly, Comcast should have obtained – and produced to MASN – any Nielsen data that it would be presenting to this Tribunal in advance of trial. Indeed, Comcast untimely seeks to introduce second-hand accounts of Nielsen data for periods before the hearing began in late May. *E.g.*, John Ourand, *MLB's Overall Ratings Mostly Steady at Start*, SportsBusiness Journal, June 1, 2009 (reporting about ratings for “two months of the season”).

*Fourth*, Comcast seeks to introduce newspaper accounts of Nielsen ratings, not the ratings themselves. With more than \$35 billion in revenues last year alone, Comcast certainly has the resources to obtain the reliable source material. Those materials would provide context and background for the ratings information reported by the media. It also is noteworthy that Comcast made wholesale objections to the handful of newspaper articles that MASN attempted to introduce at the hearing – after weeks of advance notice to Comcast. *See* Tr. 5499 (“They’re hearsay upon hearsay upon hearsay.”) But Comcast now seeks to introduce newspaper articles to prove certain facts without advance notice to MASN.

In sum, Comcast again simply seeks to get the last word. Because Comcast attempts to do so in an unreliable manner that is contrary to Comcast's discovery obligations, its own arguments seeking to exclude evidence proffered by MASN, and the process established by this Tribunal, MASN respectfully opposes it.

Respectfully submitted,



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June 5, 2009

Attorneys for TCR Sports Broadcasting  
Holding, L.L.P.

**CERTIFICATE OF SERVICE**

I, Kelly P. Dunbar, hereby certify that, on June 5, 2009, copies of the foregoing document were served via electronic mail on the following:

The Honorable Richard L. Sippel  
(richard.sippel@fcc.gov)  
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Federal Communications Commission  
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Mary Gosse (mary.gosse@fcc.gov)  
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Kelly P. Dunbar

# **EXHIBIT A**

**BEFORE THE  
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Complainant,	)	
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v.	)	File No. CSR-8001-P
Comcast Corporation,	)	
	)	
Defendant.	)	
	)	

**COMPLAINANT'S FIRST REQUEST FOR THE PRODUCTION  
OF DOCUMENTS TO DEFENDANT COMCAST CORPORATION**

TCR Sports Broadcasting Holding, L.L.P., pursuant to 47 C.F.R. § 76.7(f)(1) and the Procedural and Hearing Order released December 2, 2008 in the above-captioned docket, hereby requests that Comcast produce the documents listed below for inspection at the offices of Kellogg, Huber, Hansen, Todd, Evans & Figel, 1615 M Street, N.W., Suite 400, Washington, D.C. 20036. Documents shall be produced in accordance with the Joint Case Management Statement between the parties.

**DEFINITIONS AND INSTRUCTIONS**

1. "Comcast" shall mean, individually and collectively, Comcast Corporation, all predecessors and successors in interest, agents, affiliated companies, assigns, parents, related entities, subsidiaries, subdivisions, divisions, officers, employees, representatives (in their individual or representative capacities), affiliates of any kind or nature, or any person or entity acting on their behalf.

2. “CSN-MA” shall mean, individually and collectively, Comcast SportsNet Mid-Atlantic, L.P., all predecessors and successors in interest, agents, affiliated companies, assigns, parents, related entities, subsidiaries, subdivisions, divisions, officers, employees, representatives (in their individual or representative capacities), affiliates of any kind or nature, or any person or entity acting on their behalf.

3. “CSN-Philly” shall mean, individually and collectively, Comcast SportsNet Philadelphia, L.P., all predecessors and successors in interest, agents, affiliated companies, assigns, parents, related entities, subsidiaries, subdivisions, divisions, officers, employees, representatives (in their individual or representative capacities), affiliates of any kind or nature, or any person or entity acting on their behalf.

4. “MLB” shall mean, individually and collectively, Major League Baseball, all predecessors and successors in interest, agents, affiliated companies, assigns, parents, related entities, subsidiaries, subdivisions, divisions, officers, employees, representatives (in their individual or representative capacities), affiliates of any kind or nature, or any person or entity acting on their behalf.

5. “FCC” shall mean the Federal Communications Commission, and any present or former members, employees, agents, or consultants.

6. “You” and “your” shall mean Comcast, all agents, employees, officers, or members, and all persons acting or purporting to act on Comcast’s behalf, including all past or present agents, employees, officers, or members, exercising discretion, discharging duties, making policy, or making decisions with respect to the business of Comcast.

7. “MASN’s television territory” shall mean the region specified in Exhibit 10 to MASN’s Complaint in this proceeding.

8. “Harrisburg cable system” shall mean cable systems owned or controlled by Comcast that are located in whole or in part in the Harrisburg-Lancaster-Lebanon-York DMA.

9. “Tri-cities cable system” shall mean cable systems owned or controlled by Comcast that are located in whole or in part in the Richmond-Petersburg, Charlottesville, and Norfolk-Portsmouth-Newport News DMAs.

10. “Roanoke-Lynchburg cable system” shall mean cable systems owned or controlled by Comcast that are located in whole or in part in the Roanoke-Lynchburg DMA.

11. “Unlaunched cable system” shall mean a cable system owned or controlled by Comcast in MASN’s television territory on which Comcast does not currently carry MASN.

12. “Person” means an individual, corporation, firm, proprietorship, partnership, either limited or general, association, joint venture, or other legal, business, or governmental entity, whether foreign or domestic.

13. “Document” means all writings and documentary materials of any kind whatsoever, both originals and copies, and drafts of such writings and documentary materials, whether printed or recorded, or reproduced by any other mechanical process, or written or produced by hand, or recorded by any electrical or electronic means, including on any magnetic tape, disk, hard disk, computer memory, or optical disk, including, but not limited to, the following items: journals; purchase orders; audio and

video tapes and transcripts thereof; testimony; affidavits; filings of any kind with governmental bodies; agreements; letters; communications, including intra-company communications; electronic mail; correspondence; envelopes; telegrams; telexes; facsimiles; letters; memoranda, including internal memoranda; notes; reports; summaries; transcripts; reviews; analyses; studies; papers; files; message slips; records; books; manuals; guides; guidelines; outlines; abstracts; histories; summaries, notes, or records of telephone conversations; summaries, notes, or records of conversations or interviews; diaries; desk calendars; logs; appointment books; forecasts; statistical statements; tabulations; graphs; indices; charts; tables; plots; minutes, notes, or records of meetings, conferences, or communications; minutes, notes, or records of board meetings; opinions or reports of consultants; appraisals; brochures; pamphlets; periodicals; circulars; trade letters; press releases; contracts; projections; drafts of any documents; recommendations; working papers; worksheets; copies; marginal notations; photographs; film; drawings; slides, samples, and other specimens; computer printouts; tapes; discs; recordings; electronic data; recording sheets; data processing cards; programs; and any other documents or writings of whatever description, whether written, recorded, transcribed, punched, taped, or filmed, however produced or reproduced. The term "document" includes copies of documents that are not identical duplicates of the originals, and copies of documents of which the originals are not in the possession, custody, or control of Comcast, its officers, employees, agents, representatives, or attorneys.

14. "Communication" means every manner or means of disclosure, transfer or exchange, including every disclosure, transfer or exchange of information whether

transmitted orally, face-to-face, by document, telephone, mail, video conference, personal delivery, meeting or otherwise.

15. The terms “relate,” “refer,” “reflect,” “concern,” “relating,” “referring,” “reflecting,” or “concerning” mean constituting or having some bearing on an indicated subject or mentioning the subject, even if only in passing, including but not limited to, any document or communication that constitutes, evidences, contains, embodies, comprises, reflects, identifies, states, refers to, deals with, comments on, responds to, describes, involves or is in any way pertinent to that subject.

### **REQUESTS FOR PRODUCTION**

1. All documents referring or relating to the carriage of MASN or the Orioles or Nationals games on Comcast’s Harrisburg, Roanoke-Lynchburg, Tri-Cities, and all other unlaunched cable systems, including but not limited to documents referring or relating to complaints by Comcast subscribers or potential subscribers about Comcast’s carriage or non-carriage of MASN, or Orioles or Nationals programming, in those areas, individual records of all such complaints, and documents referring or relating to Comcast’s evaluation of consumer appeal of or consumer demand for MASN in the Harrisburg, Roanoke-Lynchburg, Tri-Cities, and unlaunched cable systems.

2. 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.

3. All documents referring or relating to Comcast's deliberations or decisions whether to acquire sports programming for distribution in MASN's television territory.

4. Documents relating to or referring to any channels added to or removed from any analog tier on any cable system in Harrisburg, Roanoke-Lynchburg, the Tri-Cities, or other unlaunched systems in the last five years, including but not limited to ratings and revenue information for such channels.

5. Documents sufficient to show Nielson ratings by DMA in the last five years for all analog and digital channels carried on Comcast's Harrisburg, Roanoke-Lynchburg, Tri-Cities, and other unlaunched cable systems.

6. Documents sufficient to establish the schedule of Comcast's upgrade of former Adelphia cable systems in MASN's television territory and the nature of those upgrades.

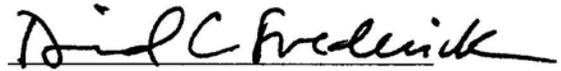
7. All documents referring or relating to Comcast's decision to raise rates for Comcast cable subscribers in 2006 in MASN's television territory

8. All documents referring to or relating to Comcast's decision not to carry CSN-MA on Comcast's Harrisburg cable systems.

9. Documents sufficient to show the number of subscribers that have switched from Comcast to other MVPDs in the past three years, including the MVPDs to which such customers have switched.

10. Documents sufficient to show the rate that CSN-MA has charged on each cable system in MASN's television territory for the past five years, including the reasons for any price increases during that time.

Respectfully submitted,



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December 5, 2008

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