

Transcript

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

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In the Matter of:	:
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TCR SPORTS BROADCASTING	: MB Docket No.
HOLDING, L.L.P., D/B/A	: 08-214
MID-ATLANTIC SPORTS	:
NETWORK,	: File No.
	: CSR-8001-P

Complainant,	:
	:
v.	:
	:
COMCAST CORPORATION,	:
	:
Defendant.	:

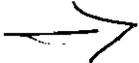
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Volume 20

Federal Communications Commission
445 12th Street, SW

Washington, D.C. 20554

Hearing Room TW-A363



Tuesday, May 19, 2009
9:30 a.m.

BEFORE:

RICHARD L. SIPPEL,
Chief Administrative Law Judge

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L.L.P., d/b/a Mid-Atlantic Sports Network:

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1 P-R-O-C-E-E-D-I-N-G-S

2 (9:36 a.m.)

3 JUDGE SIPPEL: Good morning.

4 Second day of proceedings, hearings.

5 Let's see, Mr. Frederick, you're

6 still up. You have two choices, sir.

7 Settlement or the next witness. Which will it

8 be?

9 MR. FREDERICK: At this time,

10 sir, it will be the next witness.

11 JUDGE SIPPEL: That's a good

12 answer.

13 MR. FREDERICK: Mr. Mark Wyche.

14 JUDGE SIPPEL: Sir, Mr. Wyche,

15 please come forward.

16 Whereupon,

17 MARK WYCHE

18 was called as a witness by counsel for Mid-

19 Atlantic and, after having been first duly

20 sworn, was examined and testified as follows:

21 JUDGE SIPPEL: Do you want some

22 water?

1 THE WITNESS: I'm good for now.

2 JUDGE SIPPEL: Blackberries off?

3 I do have one request before we go
4 forward, and that is, if anybody has an extra
5 pitcher, let me have it. Because we're in
6 desperate need of a pitcher. So if MASN has
7 pitching or Comcast pitching (Laughter).

8 Go ahead, sir. I'm sorry.

9 MR. FREDERICK: Thank you, Your
10 Honor.

11 DIRECT EXAMINATION BY COUNSEL FOR MID-ATLANTIC

12 BY MR. FREDERICK:

13 Q Mr. Wyche, could you please
14 introduce yourself to the Court?

15 A My name is Mark Wyche.

16 Q And where do you work, sir?

17 A I work at a firm called Bortz
18 Media and Sports Group in Denver, Colorado.

19 Q Are you a consultant for MASN?

20 A Yes, I am.

21 Q What is the type of work that you
22 do for MASN?

1 A I advise them on their television
2 strategies and assisted them on guiding them
3 in certain aspects of MASN's operations, and
4 I helped with the initial launch.

5 Q Have you been involved in
6 negotiating carriage agreements?

7 A Yes, I have.

8 Q About how many carriage agreements
9 have you negotiated in your career?

10 A I have negotiated over 100
11 different subscription television carriage
12 agreements with various professional teams and
13 leagues.

14 Q What has been the particular
15 subject matter of those television agreements?

16 A Well, we advise them on how to
17 maximize their media rights values. So we do
18 a lot of analysis of the marketplace figuring
19 out how much money they should receive for
20 their program.

21 Q So your experience is
22 predominantly in sports television?

1 A Yes, it is.

2 Q How long have you been involved in
3 valuing sports programming rights?

4 A I got involved in it in probably
5 since early 1980s.

6 Q And you have been doing that
7 continuously more or less since that time?

8 A Yes, I have.

9 Q Were you involved in formulating
10 MASN's rate card?

11 A Yes, I was.

12 Q How did you determine the rate
13 that MASN would charge MVPDs?

14 A Well, we looked at first of all
15 what was going to be the amount of major
16 professional sports programming that MASN
17 would have on, in this case baseball. And
18 about 300 baseball games. So a fairly large
19 amount of programming.

20 And then we also took a look at
21 what other regional sports networks charge
22 across the country. And I have through my

1 experience in working with a lot of different
2 RSNs, and various teams and leagues, I have a
3 lot of information on that, and that helped us
4 formulate what we believed would be a
5 reasonable fee for MASN.

6 We also talked to certain people
7 in the marketplace to get some ideas as well
8 of where demand was, and we had to price out
9 the zones, and we look at how other zones are.

10 Q Now in your direct testimony you
11 have used a concept known as PSPPE. Could you
12 explain to the court what that is an acronym
13 for, and what that is a calculation of?

14 A Yeah, that is an acronym for
15 professional per subscriber per pro event, and
16 what it is is a normalized metric that is used
17 in the industry. And it takes a look at the
18 number of professional sporting events which
19 is the marquee programming, includes MBS,
20 major league baseball and national hockey
21 league is the basis of the programming that we
22 are looking at.

1 so an example of how that works is
2 if you had an RSN that say had 200 major
3 professional sporting events on it, be it
4 baseball -- combination of baseball,
5 basketball, hockey -- and that RSN was
6 charging \$2 per sub per month, the affiliate
7 fee. You would annualize that affiliate fee;
8 that would be \$24. Then you would take the
9 number of events, the pro events that I've
10 just mentioned, the 200, divide that into
11 there, and you would come up with the PSPPE of
12 12 cents. And that number is the normalized
13 metric I was just speaking of. And it allows
14 you to compare across RSNs how they're priced,
15 and you can do that by the various zones that
16 RSN has.

17 Q So that calculation would enable
18 you to quantify what each subscriber would pay
19 for each professional event telecast by that
20 network?

21 A Yes, that is exactly right. It
22 helps formulate what the fee will be.

1 Q So the subscriber would pay in
2 your hypothetical 12 cents to watch a
3 Nationals game on television if the Nationals
4 were televised by your hypothetical RSN?

5 A Yes.

6 Q Okay. Why is the concept of PSPPE
7 important in valuing sports programming?

8 A Well, it accurately reflects what
9 the most valuable programming is on an RSN,
10 which is the major professional sports
11 product. That is the must-have programming on
12 a network, which is in this case major league
13 -- in RSN's case, major league baseball, NBA
14 and NHL, and allows the operator to understand
15 how it's valued, and they look at it that way
16 with respect to understanding the fair market
17 value of an RSN.

18 Q Now why isn't the NFL included in
19 that calculation?

20 A The NFL with respect to what it
21 televises on RSN is pre-season games only, so
22 we don't include that into the formula. It

1 would be -- we would put the NFL pre-season
2 game programming in the category of the other
3 types of programming that an RSN has, such as
4 college product, coaches shows, et cetera.

5 Q Why do regional sports networks
6 care about maximizing carriage on the MVPDs
7 and their footprint?

8 A It's very important to understand
9 that, because when an RSN comes to a
10 professional sports team and they want to
11 televise their games, the teams' major
12 objective here is not only to get the highest
13 rights fee you can, but it also wants to be
14 able to get its product distributed throughout
15 its territory, the territory that the league
16 has defined for it.

17 So when an RSN comes to the team,
18 he wants to be able to show he can do that.
19 It's important for the team to get -- be
20 exposed throughout the territory so all of its
21 fans can see it, and develops fan interest and
22 so forth; so that is a very important part.

1 Q How many carriage agreements have
2 you negotiated for MASN?

3 A I've negotiated the majority of
4 them, primarily the larger ones as well as the
5 mid-sized ones.

6 Q In your experience is it unusual
7 for an RSN to be launched in 100 percent of
8 the systems of an MVPD?

9 A It depends on the RSN, it depends
10 on the affiliates, et cetera. In my
11 experience, let's take MASN for example, we
12 have several of our affiliates that launched
13 us 100 percent throughout their subscribers.

14 Q Which ones would those be?

15 A Well, we have Cox that did it. We
16 have Verizon. We got DIRECTV and Dish.

17 Q And those were on 100 percent of
18 their systems?

19 A That's correct.

20 Q In your experience has an MVPD
21 ever not disclosed the systems they would not
22 launch?

1 A No, not in my experience. My
2 experience has been that when you are
3 discussing with the prospective affiliate,
4 carriage, they will tell you where they are
5 going to launch you and they will tell you
6 where they are not going to launch you. So
7 they will disclose what systems, what areas,
8 that they are not going to launch, and how
9 many subs they are talking about.

10 Q So I want to be clear on your
11 testimony. You have never been in a situation
12 where you found out later that the MVPD didn't
13 launch on systems that they didn't talk about
14 with you?

15 A Not in my experience.

16 Q Were you involved in negotiating
17 the deal between the MASN and Comcast in
18 August of 2006?

19 A Yes, I was.

20 Q Did they ever mention excluding
21 any particular systems from the initial
22 launch?

1 A What they mentioned was they were
2 going to launch -- the proposal was they were
3 going to launch us to 1.6 million subscribers
4 in what they called the core area, which would
5 be regions one and two at that time on a zone,
6 a rate card. And that they would also launch
7 -- part of that would be in Salisbury as well,
8 that 1.6 million. And then they said that
9 they had approximately 750,000 remaining
10 subscribers throughout our territory of which
11 they would launch 600,000 of those.

12 JUDGE SIPPEL: Is that -- are you
13 referring to region numbers by this here?

14 THE WITNESS: Yes, exactly.

15 JUDGE SIPPEL: He's looking at,
16 what's the number down there, 239.

17 MR. FREDERICK: Yes, Your Honor.

18 THE WITNESS: Okay, and so we
19 said that they had approximately 750,000
20 subscribers remaining the rest of our
21 territory, and that they would launch 600,000
22 of those, and that they would not be able to

1 launch approximately 150,000 subscribers, that
2 to categorize it that are on Adelphia systems
3 that were low bandwidth. That was the only
4 system that they -- or systems that they said
5 they were not going to launch.

6 BY MR. FREDERICK:

7 Q Did they identify the region where
8 those Adelphia low bandwidth systems were
9 located?

10 A Yeah, what I remember is they said
11 it was located in the Roanoke-Lynchburg area
12 and other Virginia areas where these systems
13 were.

14 Q So except for those 150,000 former
15 Adelphia subscribers, did you believe that
16 every other Comcast system within MASN's
17 footprint was going to be launched?

18 A Yes, absolutely.

19 Q And when did you first find out
20 that wasn't what happened?

21 A It was like January, '07, I was
22 contacted by MASN saying that there appears to

1 be certain systems that Comcast has not
2 launched. So what I remember is I had a call,
3 I think it was with Alan Dannenbaum, as I
4 remember. And we discussed it. We said there
5 are some systems here we thought you were
6 going to launch us on, and you're not going to
7 launch us on. And he said, okay, we will get
8 back to you on that; let me check it out.

9 Q And just so the record is clear
10 for the court, could you identify Alan
11 Dannenbaum, please.

12 A He worked for Comcast. And he was
13 part of the team that I remember that we
14 helped negotiate the deal in August of '06.

15 Q When was the first time that you
16 heard Comcast mention low demand as a reason
17 for not carrying MASN?

18 A Well, several months after that we
19 had a meeting in Philadelphia, I think it was
20 in April or May, I'm not quite sure of the
21 exact date. We discussed the issue of the
22 unlaunched, and that was the first time they

1 had said to us that they said that they had
 2 told us they weren't going to launch these
 3 other systems over and above the Adelphia
 4 150,000 subscriber count, and they said at
 5 that point they were on the fringe, and that
 6 so many of these systems, the reason they
 7 weren't going to launch them is because of low
 8 demand. That is the first time we ever heard
 9 anything with respect to that.

10 Q Now when was the first time that
 11 you heard Comcast mention low bandwidth other
 12 than these former Adelphia systems in Roanoke,
 13 Lynchburg and the other Virginia areas?

14 A We hadn't heard anything about low
 15 bandwidth or I hadn't with respect to --
 16 except the 150,000 of Adelphia systems. I
 17 hadn't heard that as an issue until we had
 18 come into that meeting.

19 Q Do you believe that Comcast is
 20 discriminating against MASN?

21 A Yeah, the issue is -- yes, I do,
 22 because there -- where they haven't launched

1 MASN is in areas where they have an affiliate
2 RSN, either CSN MA, or CSN Philly. And it's
3 my understanding that they used to carry
4 Orioles on CSN MA, in these areas that are
5 currently not launched. So showing that there
6 was demand for it because they used to carry
7 it for years on all of these areas. So now
8 they are not; but yet they still have their
9 own affiliate networks there, and therefore
10 that would be to me discrimination, not
11 carrying my product.

12 We would be competing now with CSN
13 Philly up in the Harrisburg area for both
14 viewers and advertising, and then down in the
15 Roanoke, Lynchburg and other Virginia areas
16 we're not carried on their systems, we would -
17 - you know, it hurts MASN's ability to
18 eventually currently and in the future compete
19 for other sports programming.

20 So for example CSN MA carries the
21 Wizards and the Capitals. And we, MASN, would
22 like to eventually bid on that, but if we

1 don't have full coverage it's a disadvantage,
2 a major disadvantage, when you are out there
3 bidding for programming as I said before, for
4 a team, if you cannot provide full coverage of
5 their territory, especially when another
6 network can.

7 Q Have you ever been turned down by
8 a cable operator? Can you give me a specific
9 instance when you were actually harmed by not
10 having that access to those territories in
11 Virginia, those markets in Virginia?

12 A Well, I think that I'm not -- I
13 think it probably is hardest with respect to
14 the Redskins' programming. I think it's
15 affected our problems with -- we do have the
16 Ravens, but what I've heard is that there
17 complaints because they are not carried all
18 the way down there.

19 I think the major issue --

20 JUDGE SIPPPEL: What kind of a
21 complaint is that? I mean if you have them --
22 I mean this is just kind of -- certainly I'm

1 going to hear -- in an industry that tight I
2 would think you are going to hear things like
3 that. But have you actually lost a business
4 opportunity, something that you know? We are
5 not dealing with you because you don't have
6 those areas down there in Virginia.

7 THE WITNESS: What I can tell you
8 is that the major issue I see with this is I'm
9 focusing on the major professional sports
10 programming that is going to the Capitals and
11 the Wizards.

12 JUDGE SIPPEL: So that's the
13 future.

14 THE WITNESS: Yeah, that's the
15 future, but the future is coming and it's
16 coming very quickly. You can have these
17 rights renegotiated very quickly. It just
18 depends on when the teams decide -- if and
19 when they can offer their rights up.

20 So if you don't have full
21 coverage, then you are going to be at a
22 disadvantage for those rights.

1 JUDGE SIPPEL: Why are they
2 hesitating, or why are they not coming forward
3 right now? In other words it sounds to me
4 like there is something that needs to happen
5 before the Wizards and the Capitals can talk
6 to you?

7 THE WITNESS: Well, they are
8 currently under, you know, have a contract
9 with CSM MA. I'm not sure when that contract
10 is up.

11 JUDGE SIPPEL: Is that not
12 public?

13 THE WITNESS: I'm not aware of
14 it. I'm not aware of it.

15 JUDGE SIPPEL: You could find out
16 if you wanted to?

17 THE WITNESS: You'd have to get
18 it from the Wizards and the Caps if they
19 wanted to disclose that. I don't know when
20 their contract terminates with CSM MA. It's
21 just been my experience that when you have
22 these contracts have terms on them, the

1 professional sports teams, they vary all over
2 the map from five years, six years, seven
3 years, 10 years. And who knows, they don't
4 always have to come up -- they start
5 negotiating at the end of the term, sometimes
6 they can renegotiate early. There are all
7 kinds of different clauses in the contracts
8 that provide the availability to when the
9 programming comes up.

10 In this case you want to be ready
11 for it.

12 JUDGE SIPPEL: But that's
13 speculative. If you don't know any more than
14 their contract exists and when it expires,
15 apparently you wouldn't have access to the
16 agreements either, find out exactly what's
17 going on. And apparently you are not talking
18 to these -- to people who know.

19 THE WITNESS: There's people in
20 MASN that would be able to answer that
21 question as far as with respect to what the
22 timing is.

1 JUDGE SIPPEL: But you would be
2 the one, you would be the lead on it. If
3 there was --

4 THE WITNESS: I could be the lead
5 on it depending on what happens, yes. I would
6 say that there -- my understanding is that the
7 contracts may be up in three to five years.
8 I'm not sure.

9 JUDGE SIPPEL: Is it conceivably
10 possible that when they do come up that you
11 could also be negotiating with Comcast on a
12 three-way negotiation?

13 THE WITNESS: You mean would we
14 be competing with CSM mid-Atlantic?

15 JUDGE SIPPEL: Well, I guess you
16 probably would be, right?

17 THE WITNESS: Yes, we would.

18 JUDGE SIPPEL: They want to renew
19 and you want to move in, and three of you --
20 there could be a joint venture, there could be
21 all kinds of things.

22 THE WITNESS: Possibly.

1 JUDGE SIPPEL: I know, I'm not
2 asking you to predict anything like that, but
3 it could happen.

4 THE WITNESS: It could happen.

5 JUDGE SIPPEL: All right, I'm
6 sorry.

7 MR. FREDERICK: No, Your Honor,
8 if I could approach the witness to offer as an
9 exhibit No. 71.

10 JUDGE SIPPEL: Absolutely. Sure,
11 thank you.

12 MR. FREDERICK: Which has been
13 admitted.

14 JUDGE SIPPEL: This is in as MASN
15 Exhibit No. 71.

16 MR. FREDERICK: And I would note
17 that the document has been nominated
18 confidential. Not a highly confidential
19 document, but it is a confidential document.

20 JUDGE SIPPEL: And you want to
21 leave it that way?

22 MR. FREDERICK: Yes, sir.