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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 09M-46
08010

In the Matter of)	MB Docket No. 08-214
)	
TCR Sports Broadcasting Holding, L.L.P.,)	File No. CSR-8001-P
d/b/a Mid-Atlantic Sports Network,)	
Complainant)	
v.)	
Comcast Corporation,)	
Defendant)	

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ORDER

Issued: June 18, 2009

Released: June 18, 2009

On June 4, 2009, Comcast filed Motion for Leave to Supplement Record with two recently published newspaper articles: "National TV Ratings Supreme, Washington Still Ranks Last in MLB," *Washington Post*, June 2, 2009 and "MLB's Overall Ratings Mostly Steady at Start," *Sports Business Journal*, June 1, 2009. Via these hearsay newspaper reports, Comcast seeks to show post-hearing Nielsen ratings ¹ reflecting low ratings in MASN's core viewing areas of Baltimore Orioles and Washington Nationals games in Baltimore and Washington, D.C. markets. Comcast believes these reports on current programming ratings are "highly relevant" because MASN has itself relied on Nielsen ratings to show demand in the parties' contested areas of Harrisburg, PA and Southwest Virginia which are "niches" outside MASN's "core viewing areas."

MASN objects. See Response to Comcast's Second Motion for Leave to Supplement Record filed on June 5, 2009. MASN argues that the hearsay newspaper reports should be rejected because the newspapers report Nielsen data only for the Washington Nationals in its core market and second-hand commentary regarding the Baltimore Orioles in its core market. The newspapers do not report on Nielsen (or any other) ratings in the contested areas of Harrisburg, PA and Southwest Virginia (Roanoke- Lynchburg and Tri Cities area). There are also objections made by MASN based on equal treatment on hearsay evidentiary rulings ²

Ruling

MASN has made the strongest arguments on the question, particularly with respect to the non-relevance of proffered Nielsen ratings for the Baltimore-Washington D.C. core areas while failing to offer the Nielsen evidence which would have relevance to the subject of this

¹ Nielsen ratings data is for April and May 2009, the first two months of the current MLB season.

² Objections of Comcast on grounds of hearsay to newspaper articles offered by MASN were sustained. With only limited exception a few articles were received "for what they are worth." But hearsay newspaper articles offered by MASN in general were rejected. Cf. *Melody Music, Inc. v. F.C.C.* 345 F.2d 730 (D.C. Cir. 1965), (disparate treatment of parties is unacceptable).

proceeding, the Harrisburg-Virginia niches of MASN's MLB footprint, the niches which are being denied MASN launching by Comcast for alleged reasons of a lack of viewer interest.

Accordingly, IT IS ORDERED that Comcast's Motion for Leave to Supplement Record filed on June 4, 2009, IS DENIED.³

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel
Chief Administrative Law Judge

³ Courtesy copies of this *Order* e-mailed to counsel on issuance.