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

FCC 09M-49
08073

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)

MASN
AUG -5 2009
FCC

ORDER

Issued: July 30, 2009

Released: July 30, 2009

In the evening of July 27, 2009, MASN filed a Motion to Amend Scheduling Order to require the Enforcement Bureau to file ten days late its Comment on the merits of this case. In its Motion, MASN represented that the Bureau has authorized representation that it has no objection to the relief requested. In the same evening, Comcast filed its Opposition.

The Motion asks for no relief that would directly benefit MASN, but only a delay of the filing of Bureau Comments on the merits of the parties' opposing positions. The reason stated by MASN is "to advance the prospect of productive settlement negotiations."¹ Indeed, it is an excellent development that on August 4, 2009, principals, counsel and experts from MASN and Comcast will meet to negotiate settlement. MASN suggests that the timely filing of Bureau Comments that are due on July 31, 2009 "may hamper [or] undermine those negotiations."²

However, Comcast sees no reason for deferring the receipt of Bureau Comments before the August 4 negotiations. Comcast even suggests that the Comments may prove helpful – "if a settlement is possible" – by providing additional information that might sharpen the parties' settlement positions.³ While Comcast acknowledges that "the parties are continuing settlement negotiations,"⁴ Comcast does not contend that there has been achieved an agreement in principle that would justify freezing a pleading cycle. Rather, Comcast turns to what clearly is the heart of the matter, "*pursuing a reasonable business solution.*"⁵ Certainly the parties have superior knowledge of their programming and cable operations, as well as superior means to reach an

¹ MASN Motion at 1.

² *Id.*

³ Comcast Opposition at 2.

⁴ *Id.*

⁵ *Id.* (Emphasis added.)

optimum business resolution of MASN's complaint. Therefore, it will be a less efficient and perhaps a less desirable outcome if the parties fail to settle and rely on agency decision makers to allocate the parties' business interests.⁶ None of these defining business factors are likely to be affected by Bureau Comments on the merits of this litigation. In short, for settlement purposes the Bureau has little to bring to the table.

To help concretize the whimsy in MASN's Motion, the Presiding Judge required a Reply pleading from MASN and Comments from the Bureau.⁷ MASN's Reply argues the obvious fact that Comcast has no knowledge of how the Bureau Comments could assist in settlement since those Comments would be limited to the Bureau's opinion on the merits of this case. MASN argues further that the Bureau might be commenting on credibility of witnesses who will be involved in negotiations and those comments could lessen productivity of negotiators whose credibility could be questioned. That concern is without merit since it is the Presiding Judge who will make findings on credibility, if credibility is properly called into question.

Finally, MASN argues its concern that Comcast has made "repeated efforts to get the Enforcement Bureau . . . in the settlement negotiations,"⁸ citing Comcast requests for "Bureau-sponsored mediation" as precedent for arguing a speculative hope of Comcast that somehow "the Bureau will put its thumb on Comcast's side of the scale."⁹ MASN does state a genuine concern that Comcast considers the parties to be "far apart" on settlement.¹⁰ MASN sees the settlement picture much more optimistically and, hopefully, MASN will prove to be correct on that score. MASN and Comcast are urged to settle and to file a joint motion to dismiss this proceeding as soon as practicable.¹¹

Ruling

In view of these considerations, MASN has failed to show that a delay in the filing of the Bureau's Comments, a delay that the Bureau itself has not requested, would facilitate settlement. Nor has MASN convinced the Presiding Judge that if the Bureau files timely Comments, a settlement could be jeopardized, particularly in light of the Bureau's statement that "the Bureau has no knowledge or understanding of the extent to which [MASN and Comcast] are and have been engaged in settlement negotiations."¹² The Bureau does "agree in principle with a limited extension of time" that might accommodate settlement and that would not delay an expedited

⁶ Besides, whichever party loses at the Commission can appeal directly to a Circuit Court of Appeals which will further displace the best possible business decision.

⁷ To expedite ruling the Presiding Judge sent his directive on filings *via* e-mail on July 28, 2009, setting return dates of July 29, 2009 at 11:00 am for MASN and 1:00 pm for the Bureau. Both parties timely complied.

⁸ MASN Reply at 2.

⁹ *Id.*

¹⁰ *Id.* at 3.

¹¹ See *NFL v. Comcast*, FCC 09M-42 (released May 19, 2009).

¹² Bureau Comments at 1.

recommended decision by the Presiding Judge.¹³ Still, the Bureau gives no concrete reason, such as needing more time to complete its Comments, for a grant of MASN's motion.

Order

Accordingly, IT IS ORDERED that the Motion to Amend Scheduling Order filed by MASN on July 27, 2009, IS DENIED.¹⁴

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Richard L. Sippel". The signature is written in a cursive style with a large initial "R".

Richard L. Sippel
Chief Administrative Law Judge

¹³ *Id.* at 2.

¹⁴ Courtesy copies of this *Order* are e-mailed to counsel on issuance.