

REDACTED VERSION

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

In the Matter of)
)
THE TENNIS CHANNEL, INC.) MB Docket No. 10-204
) File No. CSR-8258-P
v.)
)
COMCAST CABLE COMMUNICATIONS, LLC)

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

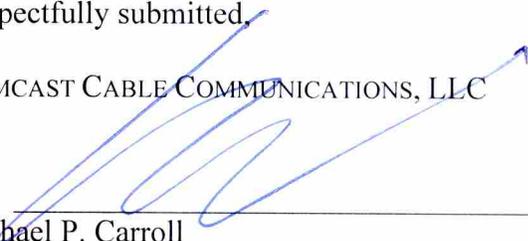
**COMCAST’S SUPPLEMENTAL NOTICE
TO UPDATE CERTAIN RECORD EVIDENCE**

Defendant Comcast Cable Communications, LLC (“Comcast”) respectfully submits this Supplemental Notice to advise the Presiding Judge that certain evidence in the hearing record is no longer accurate. At trial, each side presented exhibits showing the levels at which other MVPDs carry Tennis Channel. *See, e.g.*, Tennis Channel Exs. 110 & 192; Comcast Exs. 659 & 1103. In these exhibits, Verizon FiOS and Cablevision are presented as carrying Tennis Channel at distribution levels of {{ }} and {{ }}, respectively. Both of those figures have now dropped to 0%, however, as Verizon FiOS and Cablevision recently elected not to opt into the latest contract negotiated between Tennis Channel and the National Cable Television Cooperative (“NCTC”). Based on published reports, numerous other MVPDs, including Suddenlink, Mediacom, WOW! (formerly Wide Open West), Knology and GCI, have also elected to drop Tennis Channel. (Attached as Appendix A hereto are sample news articles.) These recent decisions by other MVPDs to drop Tennis Channel reportedly were in response to Tennis Channel’s refusal to permit MVPDs to continue to distribute the network on a sports tier.

For the reasons set forth in our trial and post-trial submissions, we submit that the independent carriage decisions of other MVPDs, including these recent actions by Verizon FiOS, Cablevision and other MVPDs to stop carrying Tennis Channel at all, strongly refute Tennis Channel's discrimination claim against Comcast.

Respectfully submitted,

COMCAST CABLE COMMUNICATIONS, LLC

By: 

Michael P. Carroll
David B. Toscano
Edward N. Moss
DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, New York 10017
(212) 450-4000

James L. Casserly
David P. Murray
Michael Hurwitz
WILLKIE FARR & GALLAGHER LLP
1875 K Street, N.W.
Washington, D.C. 20006
(202) 303-1000

David H. Solomon
J. Wade Lindsay
WILKINSON BARKER KNAUER, LLP
2300 N Street, N.W., Suite 700
Washington, D.C. 20037
(202) 783-4141
Its Attorneys

Dated: September 9, 2011

CERTIFICATE OF SERVICE

I, David B. Toscano, hereby certify that on September 9, 2011, I served a true and correct copy of Comcast's Supplemental Notice to Update Certain Record Evidence on the following individuals by electronic mail:

Stephen A. Weiswasser
Paul W. Schmidt
Robert M. Sherman
Leah E. Pogoriler
Covington & Burling LLP
1201 Pennsylvania Avenue, NW
Washington, DC 20004

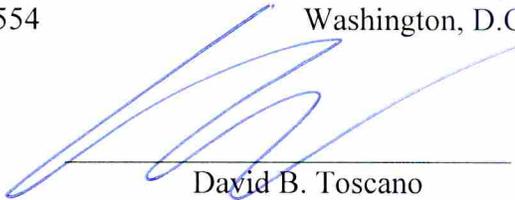
C. William Phillips
Covington & Burling LLP
620 Eighth Avenue
New York, New York 10018

Gary Oshinsky
Investigations and Hearings Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, SW, Suite 4-C330
Washington, DC 20554

William Knowles-Kellet
Investigations and Hearings Division
Enforcement Bureau
Federal Communications Commission
1270 Fairfield Road
Gettysburg, Pennsylvania 17325

The Honorable Richard L. Sippel*
Chief Administrative Law Judge
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Laurel L. Bergold*
Counsel
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554



David B. Toscano

*Courtesy copy

APPENDIX A

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Tennis Channel No Longer On Verizon FiOS, Cablevision's Lineups

By Mike Reynolds -- Multichannel News, September 4, 2011

With its new National Cable Television Cooperative contract going into effect after midnight on Sept. 4, Tennis Channel is no longer part of Cablevision and Verizon FiOS TV's distribution rosters.

As of very early Sunday morning, Tennis, which is in the midst of presenting some 300 hours, including 75 of live match play, from the U.S. Open Tennis Championships, was no longer making its signal available to Cablevision. Sources indicate that the same holds true with the telco.

The NCTC, the Lenexa, Kan.-headquartered outfit that negotiates programming contracts and purchases hardware for nearly 1,000 member companies, and Tennis Channel inked a renewal last month calling for digital-basic positioning. That contract replaced their previous nine-year pact tied to sports tier positioning, which expired with the dawn of Sept. 4. Individual members of NCTC, including Cablevision and Verizon FiOS, had the option to accept or pass on the new affiliate agreement.



FiOS officials couldn't immediately be reached for comment very early Sunday morning.

At approximately 12:05 on Sept. 4 - about five minutes after Cablevision's contract with the NCTC for sports tier carriage concluded - Tennis' screen froze. Subscribers to the New York metro area's predominant cable operator's iO Sports and Entertainment Pack, who had been watching the midnight edition of Tennis' *U.S. Open Tonight*, featuring hosts Lindsay Davenport and Pat O'Brien, saw the screen lock into a Garnier ad that ran during a commercial break in the program.

At around 12:30 a.m., the screen for the network's standard-definition feed showed the following statement over a background of two greenish-yellow tennis balls: "Cablevision's contract with Tennis Channel has expired. Tennis Channel has decided not to renew our agreement and has unfortunately pulled their programming from our customers."

A second screen read: "You can still watch extensive, live coverage of the US Open on CBS, ESPN2 and in 3D on iO TV Ch. 1300. Streaming live matches will also be available free online at usopen.org." A third directed viewers to optimum.com/tennis for more details. (That messaging continued on Sunday at 8:45 a.m.)

Earlier, Cablevision had issued the following statement: "The Tennis Channel appears to have pulled its signal off dozens of cable systems across the country, including Cablevision, after demanding significantly higher fees. Fortunately, viewers can still see every important U.S. Open match on ESPN 2, CBS, in 3D and through the comprehensive free online offerings of the USTA, which can be viewed on the computer or on the television through our Optimum Link service, which allows subscribers to view anything on their PC on their TVs."

Moments later, Television volleyed these remarks: "We regret that Cablevision has elected to no longer carry Tennis Channel under the terms of the network's new agreement with the National Cable Television Cooperative - an organization Cablevision joined a few days before the 2009 US Open seemingly only to get access to Tennis Channel, under terms that the network had agreed to with much smaller operators seven years earlier. By not agreeing to the NCTC guidelines, as many other NCTC members have done, Cablevision has chosen to drop Tennis Channel and no longer offer it to its subscribers."

Tennis officials didn't immediately respond to e-mail queries very early Sunday morning about whether they had elected to pull the standard and high-definition signals, or if negotiations had taken place over the last few days.

Sources familiar with the situation, though, indicate that Tennis and Verizon are expected to resume distribution discussions on Sunday morning. However, there are no new scheduled talks set between the network and Cablevision.

Tennis chairman and CEO Ken Solomon, in an interview Thursday, said the network would "not pull the plug" and expressed hope that Cablevision would "abide by the new NCTC contract."

On Sunday morning, an NCTC spokesman stood by comments that he made on Sept. 1, when he noted that "a significant number of members" had indicated that they would "discontinue" their relationship with Tennis. However, "many more members will renew than will drop," he said, without specifying the systems or the number of subscribers they service. He declined to elaborate on Sept. 4.

Tennis, which for years had been negotiating for better positioning with Cablevision, and later equivalent carriage of the MSO's high school sports service, MSG Varsity, has been part of the operator's sports tier for almost two years. Cablevision became an NCTC member on Aug. 26, 2009, just days before the Open opened that year, opting to place Tennis on its sports pack through NCTC's master affiliate pact.

However, the network said it had legal issues with Cablevision's unilaterally putting out a press release about its wont to launch the service and that it wasn't given a 30-day notification period to make its signal available. As such, Tennis elected not to authorize the signal and none of its 240 hours of coverage from its inaugural presentation of the U.S. Open was available to Cablevision subscribers.

Tennis finally granted the signal authorization on Sept. 24, 10 days after Juan Martin del Potro defeated Roger Federer to end that year's tournament by capturing the men's singles title.

Since then, Tennis has been available as part of the MSO's sports pack on standard-definition channel 399 and HD channel 795. That package, comprising 23 networks, retails for \$6.95 per month. Sources indicate that some 150,000 of Cablevision's 3 million digital-cable customers subscribe to it.

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HEADLINE: No Tiers: Tennis Says Goodbye to Several NCTC Members

BODY:

Tennis Channel is so serious about its no sports tier stance that it has bid adieu to an available universe of 10mln+ homes. Not only did Cablevision and Verizon FiOS lose the net when the previous NCTC contract expired Sun during the US Open, but several other top 25 MVPDs also didn't opt in to the new co-op deal requiring broad distribution. Suddenlink (1.2mln subs, according to SNL Kagan estimates), Mediacom (1.17mln), WOW! (410K), Knology (255K) and GCI (147K) are among the distributors no longer carrying the net. Of course, available homes and actual homes are 2 very different bags. "Every single customer Tennis Channel loses, we're sad to lose. But overall, the number of those who came through that NCTC agreement were a minimal percentage of our total HHs," a Tennis spokesperson said. For example, WOW! carried the net on its sports tier in all markets except Evansville, IN, where it was on digital basic--meaning only about 15K subs were impacted by Tennis going dark, according to estimates from WOW! vp programming Peter Smith. "We felt that it was in the right place where it was. They didn't want that distribution any more," Smith said. "We

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didn't change our minds. They changed their minds." The overbuilder added HRTV to replace Tennis (except in Evansville, which already carries the horse-focused net). NCTC has said a "significant number" of members discontinued carriage, but that the bulk of its members do not carry the net on a tier (thus, the majority of members are keeping the channel). Verizon (3.6mln subs) is the largest NCTC member impacted, but there is hope it will strike a new agreement. Negotiations were continuing between the 2 and an email sent to subs described the drop as "temporary" in the subject line. Time will tell if they can work it out. There was less hope for Cablevision (3.3mln), however. In a statement just after midnight Sun, Tennis only addressed the Cablevision disconnect--singling CVC out, according to a Tennis spokesperson, because it is the only NCTC member who approached the net days before the contract was to expire about continuing carriage on a tier. The rep said Tennis wanted to make it clear that the MSO opted not to be part of the new agreement. "We regret that Cablevision has elected to no longer carry Tennis Channel under the terms of the network's new agreement with the NCTC--an organization Cablevision joined a few days before the 2009 US Open seemingly only to get access to Tennis Channel, under terms that the network had agreed to with much smaller operators 7 years earlier," the net's statement said. "By not agreeing to the NCTC guidelines, as many other NCTC members have done, Cablevision has chosen to drop Tennis Channel and no longer offer it to its subscribers." Cablevision's statement Sun referenced the net pulling its signal "off dozens of cable systems across the country..." after "demanding significantly higher fees" and told viewers to watch US Open coverage on ESPN, CBS and online. Meanwhile, Tennis' no sports tier stance could get a big boost if an FCC administrative law judge takes the recommendation of the agency's Enforcement Bureau that carriage be mandated across Comcast's broadly distributed packages. No word yet on a ruling, but later this month or early Oct is seen as a likely timeframe. Comcast now carries Tennis on a sports tier,

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which the net has argued is discriminatory given the better carriage terms for

Comcast-owned Golf and Versus.

LOAD-DATE: September 7, 2011