

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

In the Matter of)
)
THE TENNIS CHANNEL, INC.)
)
v.)
)
COMCAST CABLE COMMUNICATIONS, LLC)

MB Docket No. 10-204
File No. CSR-8258-P
FILED/ACCEPTED

SEP 23 2011

To: Marlene H. Dortch, Secretary
Attn: Hon. Richard L. Sippel, Chief Administrative Law Judge Federal Communications Commission
Office of the Secretary

TENNIS CHANNEL'S RESPONSE
TO COMCAST'S SUPPLEMENTAL NOTICE

Comcast's September 9, 2011 submission claims that two distributors — Verizon and Cablevision — no longer carry Tennis Channel because of their decisions not to accept NCTC's recent agreement with Tennis Channel. Comcast suggests that these changes disprove Tennis Channel's showing at trial that Comcast falls well below the market in its limited carriage of Tennis Channel.

Comcast's submission does not support that conclusion and, indeed, omits highly relevant facts about Tennis Channel's carriage arrangement with the National Cable Television Cooperative ("NCTC") and its members. Comcast's argument from these facts is misleading and its conclusion inaccurate.¹

First, it is not surprising that the facts of carriage have changed after the hearing concluded: Carriage negotiations and decisions are made all the time, and therefore the particular percentages vary over time. The facts remain, however, that Comcast's carriage of

¹ Further, because the Presiding Judge has not authorized reopening of the record in this case, Comcast's submission is untimely and should be stricken. If the Presiding Judge accepts Comcast's submission, however, Tennis Channel respectfully requests that this response also be considered.

Tennis Channel is nowhere close to that of its competitors — which was the point of the proof that Tennis Channel produced at trial that Comcast claims is now inaccurate.

More important, the conclusion that Comcast asks the Presiding Judge to draw is plainly wrong. In fact, the NCTC re-negotiation that Comcast cites is strong evidence of how Comcast continues to carry Tennis Channel far below the market. In that regard, Comcast minimizes the critical fact that, as a part of NCTC's renewal of its contract with Tennis Channel, NCTC agreed to *expand* the network's carriage on participating systems — not to reduce it — by committing its members to carry Tennis Channel [REDACTED]. Comcast also fails to mention that some [REDACTED] NCTC members agreed to carry Tennis Channel [REDACTED] [REDACTED] at around the same time that the handful of carriage changes highlighted by Comcast occurred.² These developments underscore the ultimate conclusion established by the record: Comcast's decision with regard to Tennis Channel is fundamentally out of step with the market.

Further, Comcast's argument based on its claim that Verizon — which Comcast admits is one of its "chief competitors"³ — has "elected not to opt into" Tennis Channel's new NCTC contract⁴ is patently misleading. Verizon carried Tennis Channel broadly before the new NCTC contract was executed, and Tennis Channel and Verizon are now negotiating a multi-year agreement — outside of the NCTC framework — at many times the distribution level that Comcast affords Tennis Channel. As Comcast is well aware, it is not uncommon for distributors to suspend carriage of a network when there is a gap between expiration of an old agreement and execution of a new one. Indeed, Comcast itself recently experienced such an interruption when

² The [REDACTED] members who made this commitment include RCN, with which Comcast competes directly for subscribers in Washington, D.C.

³ Orszag Tr. 1370:16-1371:16 [REDACTED].

⁴ See Comcast Supplemental Notice at 1.

DIRECTV dropped Versus for over six months.⁵ Unlike the DIRECTV-Versus situation, though, Verizon was clear in its public announcements that the interruption in its Tennis Channel carriage between the expiration of the NCTC contract and the execution of the new agreement would be only “temporary.”

As Comcast admits in its submission, Verizon was distributing Tennis Channel to about [REDACTED] of its subscribers — far overshadowing Comcast’s decision to afford Tennis Channel penetration of only [REDACTED]. Verizon’s willingness to participate in direct negotiations with Tennis Channel hardly supports Comcast’s insistence that it acted reasonably in giving Tennis Channel such sparse distribution; to the contrary, Verizon’s carriage decision — including its ongoing negotiation to distribute Tennis Channel [REDACTED] [REDACTED] when it already far surpassed Comcast — further exposes Comcast’s discrimination against Tennis Channel in favor of its own sports channels, Golf Channel and Versus.

As to Cablevision, Tennis Channel CEO Ken Solomon has testified that “Tennis Channel was unwittingly included in a deal with Cablevision” when Cablevision opted into Tennis Channel’s NCTC agreement against Tennis Channel’s wishes, a fact that Tennis Channel found “frustrating.”⁶ The only change since the hearing is that Tennis Channel has used the occasion of its NCTC contract renewal to terminate this involuntary relationship.

* * *

⁵ See Mike Reynolds, “Versus, DirecTV Finally Reconnect On Carriage Accord,” *Multichannel News* (Mar. 15, 2010).

⁶ Solomon Dep. 154:9-13; 205:16-206:11.

Nothing in Comcast's submission offers the Presiding Judge any reason why he should not promptly issue an order compelling Comcast to carry Tennis Channel on non-discriminatory terms.

Respectfully submitted,



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September 23, 2011

CERTIFICATE OF SERVICE

I, Robert M. Sherman, hereby certify that on this 23rd day of September, 2011, I caused a true and correct copy of the foregoing Response to Comcast's Supplemental Notice to be served by electronic mail upon:

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