

**OUT AT HOME: WHY MOST NATS FANS CAN'T SEE  
THEIR TEAM ON TV**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON  
GOVERNMENT REFORM**  
**HOUSE OF REPRESENTATIVES**  
ONE HUNDRED NINTH CONGRESS  
SECOND SESSION

APRIL 7, 2006

**Serial No. 109-152**

Printed for the use of the Committee on Government Reform



Available via the World Wide Web: <http://www.gpoaccess.gov/congress/index.html>  
<http://www.house.gov/reform>

U.S. GOVERNMENT PRINTING OFFICE

28-227 PDF

WASHINGTON : 2006

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## **OUT AT HOME: WHY MOST NATS FANS CAN'T SEE THEIR TEAM ON TV**

**FRIDAY, APRIL 7, 2006**

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON GOVERNMENT REFORM,  
*Washington, DC.*

The committee met, pursuant to notice, in room 2154, Rayburn House Office Building, Hon. Tom Davis (chairman of the committee) presiding.

Present: Representatives Tom Davis, Burton, Issa, Cummings, Van Hollen, Ruppertsberger, and Norton.

Also present: Representative Moran.

Staff present: David Marin, staff director; Keith Ausbrook, chief counsel; Jennifer Safavian, chief counsel for oversight and investigations; Howie Denis, John Hunter, and Steve Castor, counsels; Rob White, communications director; Andrea LeBlanc, deputy director of communications; Teresa Austin, chief clerk; Sarah D'Orsie, deputy clerk; Leneal Scott, computer systems manager; Brian Cohen, minority senior investigator and policy advisor; Kim Trinca, minority counsel; Earley Green, minority chief clerk; and Jean Gosa, minority assistant clerk.

Chairman TOM DAVIS. Good afternoon. Welcome, and a quorum being present, the Committee on Government Reform will come to order. I want to welcome everybody to today's hearing. Today, the committee will examine the dispute that is preventing the Washington Nationals games from being widely available on cable television. Nationals fans deserve to understand why they can't watch 75 percent of their team's games on the region's dominant cable provider—Comcast, with its 1.3 million subscribers.

Being able to watch the Nats on TV has been a problem ever since the team came to Washington. Last season, before an agreement was reached with DirecTV, the lack of access to Nationals games was so bad that play-by-play man Mel Proctor actually gave out his cell phone number and asked anyone watching the game to call him. He got one call—from a technician in the production truck outside.

As any fan knows, part of following your home team is watching the games on TV. For some, this means trying to watch every game. For others, it means flipping the ball game on at night to check the score. This past Wednesday night, if you flipped the game on in the ninth, you would have found the Nats down by one. Next thing you know, Ryan Zimmerman homers off Bill Wagner to tie the score, and then they go on to win the game in extra innings. Having all the games on TV means you can tune in when the Nats

are in the midst of a winning streak, when a superstar opponent is in town, or when you find out that a no-hitter is in progress. I can't imagine how frustrated I would be if I found out Livan Hernandez had a no-hitter going in the seventh and I couldn't flip on the TV set to see it. Having all the games on TV allows folks to jump on the Nationals bandwagon, to have those water cooler conversations, and to make the Nationals part of the fabric of the community. If you air it, they will come.

I am disappointed that the sophisticated businessmen involved in this dispute have failed to strike a deal. There should be enough money and good sense to make a deal work for everyone. The only people hurt by this dispute are the fans.

I should also note at the outset that I'm not personally affected by this. As a Cox customer, my house will be receiving just about all the Nationals games, and, Gary McCollum, thank you very much. I intend to watch as many as I can, that is, when I can't be at RFK myself. Nothing against sports bars, but I prefer my own sofa.

For more than 30 years, area fans waited for the national pastime to return to the Nation's Capital. Despite the favorable demographics of the Washington, DC, market, baseball was reluctant to move a team to Washington because of the close proximity of the Baltimore Orioles.

As part of the deal to bring baseball back to the district, MLB—Major League Baseball—made a series of valuable concessions to the Orioles ball club; one granted the Orioles television rights to the Washington team. Armed with the TV rights to the Nationals, the Orioles formed a regional sports network called Mid-Atlantic Sports Network [MASN]. If viable, MASN will compete directly with Comcast SportsNet for the right to carry the Wizards, capitals, and other live sports events.

By any measure, baseball's return to Washington last season was a huge success. Besting 19 other teams, the Nationals had the 11th highest attendance in baseball, averaging almost 34,000 a game. In all, 2.7 million people went to Nationals home last year. RFK was rocking once again.

Part of the Nationals' success has to do with the serious effort made by the Government of the District of Columbia and Mayor Anthony Williams. The District of Columbia has made a substantial financial commitment to the Nationals. A \$600 million publicly financed stadium is set to break ground. Expected to open for the 2008 season, it will be the keystone of the economic redevelopment of the Anacostia Waterfront section of the District. The presence of the stadium along with residential, office, and retail space in the surrounding area is projected to create a cumulative 30-year tax benefit of \$2.5 billion.

This committee, with its oversight responsibility of the District, believes that the Nationals and the District need and deserve every chance to succeed. Ensuring that the games are widely available on television is an important component of that.

With its 1.3 million subscribers, Comcast dominates the cable market in Washington. Other video programming suppliers in the area include Cox, RCN Cable, DirecTV, Dish Network, Charter Cable, Verizon, and Adelphia.

MASN has reached an agreement to have their network and the Nationals games carried with five of those suppliers. MASN has demonstrated an ability to make a deal happen. Not so, however, when it comes to a deal with Comcast. This committee—and Nationals fans across the region—want to understand why. Is MASN asking for too much money or imposing unreasonable conditions? Is Comcast trying to prevent a competitor from getting its legs? Or is it some combination of factors?

Today, the committee will try to get some answers. We look forward to hearing from officials of Comcast, Cox, Major League Baseball, the Orioles, and MASN. In addition, we will hear from local officials in the Washington area, whose constituents are adversely affected by the standoff between Comcast and MASN.

[The prepared statement of Chairman Tom Davis follows:]

**Chairman Tom Davis  
Government Reform Committee Hearing, "Out at Home:  
Why Most Nats Fans Can't See Their Team on TV"  
Friday, April 7, 2006  
12:30 p.m.  
Room 2154 Rayburn House Office Building**

**Opening Statement**

Good afternoon and welcome. A quorum being present, the Committee on Government Reform will come to order. I would like to welcome everyone to today's hearing. Today the Committee will examine the dispute that is preventing Washington Nationals games from being widely available on cable television. Nationals fans deserve to understand why they can't watch 75 percent of their team's games on the region's dominant cable provider – Comcast, with its 1.3 million subscribers.

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Chairman TOM DAVIS. I would now recognize Mr. Cummings from Baltimore for his opening statement, and I would ask unanimous consent that my colleague from Virginia, Mr. Moran, and the gentleman from Maryland, Mr. Wynn, be able to participate in the hearing today. Without objection, so ordered.

Mr. CUMMINGS. Mr. Chairman, thank you for calling this very important hearing to examine why 75 percent of the Washington Nationals games this season will be unavailable for viewing to over 1 million households who reside in the Washington area.

After a three-decade-long absence, Major League Baseball returned to the Nation's Capital in 2005 with the Montreal Expos becoming the Washington Nationals. Despite the success of the Nationals' debut 2005 season in which they attracted 2.7 million people to their home stadium, secured over half a billion dollars in funding for a new stadium, and made a competitive playoff bid, Nats fans continue to endure limited television access to a considerable portion of their games.

During the 2005 season, free over-the-air television broadcast 80 of the Nationals' games. The Mid-Atlantic Sports Network, which is owned by the Baltimore Orioles owner, Peter Angelos, televised the outstanding 120 games on cable. Unfortunately for the Nat fans, only a handful of cable providers carried the Mid-Atlantic Sports Network at the time. This in turn left many in the region unable to watch on television a majority of the Nats' 2005 season.

Last Monday marked the beginning of the Nationals' second season. While the number of games scheduled to be broadcast on over-the-air television dropped from 80 to 40 games, cable providers representing 60 percent of Washington households have agreed to carry MASN. Specifically, the Mid-Atlantic Sports Network is now under contract with Cox Cable, Charter Cable, DirecTV, RCN Cable, and VerizonFIOS. Fortunately, these contractual obligations between MASN and cable providers will permit the 120 remaining games that are not available on free television to be aired on cable. Comcast, however, the cable operator representing the remaining 40 percent of the region's households, has refused to carry the Mid-Atlantic Sports Network. Consequently, the 1.3 million Comcast subscribers in the region are due once again to not have the option of viewing 120 games slated for cable.

An enduring dispute between the Mid-Atlantic Sports Network and Comcast continues to deny over a million Comcast cable subscribers the ability to watch a majority of the Nationals season. Mr. Chairman, regardless of who is at fault for this impasse, we would do well by the fans of the Washington region if we recognized that no one wins if this needless situation continues. Fans in my district from Howard County to Baltimore City continue to contact me, interested not in assigning fault but achieving a reasonable resolution that ensures a majority of the season's games are available for Comcast subscribers.

We should ask why five out of six cable providers in the Washington region have been able to reach a contractual agreement with the Mid-Atlantic Sports Network but Comcast has refused. What impact has Major League Baseball's antitrust exemption had in creating this situation? Finally, as a baseball fan all my life, no fan of a team, be it my beloved Orioles or the Washington Nationals,

should be denied the opportunity to watch the game they love, our national pastime.

And with that, Mr. Chairman, I yield back.

Chairman TOM DAVIS. The gentleman from Indiana, Mr. Burton.

Mr. BURTON. You will have to forgive me, Mr. Chairman. I thought we were here to talk about the Indianapolis Indians being on.

Chairman TOM DAVIS. We can throw that in at the next hearing.

Mr. BURTON. The Indianapolis Indians is a minor league team from my city of Indianapolis, so I apologize for the misinformation.

That is supposed to be joke, folks. I thought it would lighten the thing up a little bit. [Laughter.]

I am here not as an advocate on either side, but what I wanted to do is I wanted to make sure that the facts, as both sides see them, are well represented. I know there is a gentleman here from Comcast, and I have been given some information from Comcast that I think needs to be read into the record, so I am going to do that. This situation is currently under litigation. It has gone from the primary court—it is under appeal right now, which I understand is going to be heard sometime in June, and hopefully this thing will be resolved. I understand also that Comcast has put an offer on the table as a compromise, and maybe this hearing can serve as a catalyst to get everybody together to try to work out their differences so that the court doesn't have to pursue this through the appellate process and maybe even beyond.

Let me read to you the facts as I have received them from Comcast and at least the record will reflect that. And once again, I would like to say I hope this thing can be worked out before it goes further in the courts.

Peter Angelos opposed the return of baseball to the Washington area because he feared that a Washington team would divert his fan base and deprive him of revenue. When Major League Baseball relocated the Montreal Expos to Washington, DC, Angelos was the only owner to oppose that move.

To appease Angelos, Major League Baseball gave him a sweetheart deal, according to my sources. It sold the Nationals television rights to Angelos for \$21 million, which is a bargain basement price given that television revenue of baseball teams in smaller markets is \$30 million or more. Published reports have valued the Nats TV rights at an estimated \$750 million, and if that is true, getting \$750 million for \$21 is a pretty good deal.

Angelos intends to use the Nationals television rights to create a second regional sports network, the Mid-Atlantic Sports Network, which a majority of is owned by Angelos, and Major League Baseball owns one-third of Mid-Atlantic Sports Network, which is likely to be conferred to the new owners of the Nationals when the team is sold. But because such regional sports networks are typically unlikely to survive with the television rights to only one major league team, Mr. Angelos intends to package these Nationals rights with the Orioles television rights. The only problem is that the Orioles television rights have been contracted to Comcast Sports Network through the 2006 season. Comcast Sports Network also has the rights of first refusal thereafter, the rights to match any offer after the 2006 from a third party.

The suit centers on the definition of a third party. Comcast SportsNet sued the Baltimore Orioles for breaching the contract with respect to the third-party match provision. Because Mid-Atlantic Sports Network is jointly owned by both the Orioles and Major League Baseball, Mid-Atlantic Sports Network is clearly a third party subject to the third-party match provisions of the contract.

In 1996, Comcast Sports Network, then Home Team Sports, paid a premium in increased license fees for this provision in the contract. Comcast believes that Mr. Angelos triggered the third-party provision in partnering with Major League Baseball to form Mid-Atlantic Sports Network.

In late 2005, a Maryland trial court granted the defendant's motions to dismiss the case. Comcast, as I said earlier, has appealed this decision, and that appeal is now pending in the Maryland intermediate appellate court. The Orioles have moved to bypass the intermediate appeal, petitioning the Maryland Supreme Court to accept the case directly to expedite its resolution. That petition is also pending. The schedule in the Maryland intermediate appellate court provides for a hearing on Comcast's appeal in June 2006.

The Orioles have, among other things, complained to the Federal Communications Commission that Comcast's refusal to carry Mid-Atlantic Sports Network is a violation of program carriage rules. While program carriage rules forbid discrimination based on the fact that the programmer is unaffiliated, Comcast has refused to carry Mid-Atlantic Sports Network because it is utilizing what Comcast regards as illegal content.

Comcast has made it clear that it will not air Mid-Atlantic Sports Network because the network was created through a breach of contract, in their opinion, with Comcast. No cable carrier has ever been asked to reward a party that breaches a contract with it by carrying its content. And so I would just like to say I hope this thing is resolved very clearly, very quickly, and it appears to me that all parties would be best served if they could sit down at a negotiating table and work this thing out without it going further in the courts.

Nevertheless, I was asked to read this into the record, Mr. Chairman, and I have done so, and I wish you well with the rest of the hearing.

[The prepared statement of Hon. Dan Burton follows:]

Opening Statement  
Hon. Dan Burton  
Committee on Government Reform  
Hearing: "Out at Home: Why Most Nats Fans Can't See Their Team on TV"  
Friday, April 7, 2006

Mr. Chairman, thank you for holding this hearing today. Like many of my colleagues on the Committee I understand the frustration and anxiety of Washington Nationals fans over the possibility that they may not be able to watch their team on television this season. Even so, I'm personally not entirely sure that this Committee has an appropriate role to play in this dispute. A few short years ago, the New York Yankees and Cablevision Systems Corp., the New York area's largest cable television operator, were embroiled in a bitter contract dispute which kept the Yankees from being seen by Cablevision's customers during the 2002 season. But I don't recall this Committee hauling Cablevision's CEO Jim Dolan up here to Capitol Hill to explain himself.

That got me to thinking that there must be more to this dispute than meets the eye. So I read the news reports and I contacted some colleagues in the telecommunications industry. Now it's not my intent nor is it appropriate for me to take sides in what is essentially a contract dispute between two private parties. But I would like to share with this Committee what I learned.

That Mr. Peter Angelos - owner of the Baltimore Orioles - opposed the return of baseball to the Washington, D.C. area because he feared that a Washington-based team would divert his fan base and deprive him of revenue. As Major League Baseball worked to relocate the old Montreal Expos to Washington D.C., Mr. Angelos was the only owner to oppose the deal but because of the proximity of the two cities, his objection carried significant weight.

In order to appease Mr. Angelos and get him to drop his opposition, Major League Baseball gave him a sweetheart deal: it sold the Washington Nationals' television rights to Mr. Angelos for approximately \$21 million. That is a bargain basement price given that the television revenue of baseball teams in smaller markets is generally estimated at \$30 million or more, and published reports have valued the Nationals TV rights at an estimated \$750 million.

It is my understanding that Mr. Angelos decided to use the Nationals television rights as the foundation for a new regional sports network - Mid Atlantic Sports Network, which is majority owned by Mr. Angelos. I believe that Major League Baseball also owns 1/3 of Mid-Atlantic Sports Network, which is likely to be conferred to the new owners of the Nationals when the team is finally sold.

While I am not an expert in the business of sports television, I understand that regional sports networks - like Mid-Atlantic Sports Network - have historically been unsuccessful when they try to survive on the television rights of only one major league sports team. Consequently, I understand that Mr. Angelos intends to package the Nationals television rights with the Orioles television rights and show both teams on his new sports network.

I have been told that the only problem with Mr. Angelos' plan is that the Orioles' television rights have already been contracted to Comcast SportsNet through the 2006 season. Furthermore, I understand that Comcast SportsNet has the right of first refusal thereafter - in other words the right to "match" any offer after the 2006 season offered by a third party. In fact, I understand that in 1996 Comcast SportsNet (then Home Team Sports) paid a premium in increased licensing fees in order to get this provision into the contract.

Now we come to the heart of the matter, the definition of what constitutes a "third party." Because Mid-Atlantic Sports Network is jointly owned by Mr. Angelos and Major League Baseball, Comcast made the determination that Mid-Atlantic Sports Network operated as a third party and therefore was subject to the third party match provisions of the existing Orioles TV contract.

In response, Comcast SportsNet sued the Baltimore Orioles for breaching the contract with respect to the "third party" match provision. Furthermore, because the network was created in their opinion because of a breach of contract with Comcast, Comcast decided they could not air the Mid-Atlantic Sports Network until the dispute was resolved.

I think it's clear to everyone here today that this decision was very controversial. But again in the interests of fairness, if we consider that, so far as I know, no cable carrier has ever been asked to reward a party that breaches a contract with it by carrying its content, the decision not to air the Mid-Atlantic Sports Network was probably an appropriate business decision.

I believe that in late 2005, a Maryland trial court granted the defendants' motions to dismiss the case; Comcast has appealed this decision and I understand that the appeal is now pending before the Maryland intermediate appellate court.

I believe that the Orioles have moved to expedite the resolution of this lawsuit by bypassing the intermediate appeal and petitioning the Maryland Supreme Court to accept the case directly. So far as I am aware, that petition is still pending. In the meantime, the Maryland intermediate Appellate Court is planning for a hearing on Comcast's appeal in June 2006.

In the meantime, I understand that the Orioles have – among other things – filed a complaint with the Federal Communications Commission alleging that Comcast's refusal to carry Mid-Atlantic Sports Network is a violation of program carriage rules. The matter is still pending before the FCC but again, in the interests of fairness, its important to note that while program carriage rules forbid discrimination based on the fact that the programmer is unaffiliated; Comcast's refusal to carry Mid-Atlantic Sports Network stems from the fact that, in their opinion, Mid-Atlantic Sports Network is utilizing illegal content.

Mr. Chairman, I would like to reiterate again that it's not my intent to take sides in this dispute nor do I have a vested interest in the outcome. My point in this exercise is to show that there are two sides to every story and while this impasse may at first seem like a petty squabble between millionaires, it is in fact the result of a very complex contract dispute. Even so, I saw in today's *Washington Post* that Comcast has put a new offer on the table to break the deadlock and carry Nationals baseball. I want to see Nationals baseball on Comcast as soon as possible, and I hope that this hearing today will be a frank discussion of the issues surrounding this impasse and perhaps give everyone involved a chance to step back from the brink and get some much needed perspective. In the end, I hope that today's hearing will at least help bring all of the parties back to the negotiating table to hammer out a final agreement. I look forward to hearing from our witnesses.

Chairman TOM DAVIS. Thank you very much, Mr. Burton.  
Mr. Van Hollen.

Mr. VAN HOLLEN. Well, thank you, Mr. Chairman. Thank you for holding this hearing, and welcome to all the witnesses here today. And as you said, Mr. Chairman, at the outset, the purpose of this hearing is to try and make sure that the fans are not the losers in this upcoming season or seasons beyond. And we thought it important to get the major players together to ask and shine the light on the facts in the open in the hopes that would help bring a reconciliation to this issue. And I am pleased that we have representatives from all the major parties involved in this, and I am sure you will be able to very ably speak for yourselves in this hearing, and we welcome all of you to do that.

Let me just say that, as Mr. Davis has said, we are very excited in the Washington region to have the Nationals back, and this is a region that can accommodate two teams, obviously. We had a lot of Oriole fans before and continue to have Oriole fans. Our family continues to enjoy going to Orioles games. We have now a National League team and an American League team in the same region, and I think there is definitely room for both, and I believe everybody here testifying today believes that there is room for both.

But as we have heard, while tonight we are going to be able to watch the Orioles game on Sports Net, we are going to only be able to see the Nationals game viewing over the air on UPN 20. But for the rest of the season, we are not going to have the opportunity to watch many Nationals games in this region. And the fans are the big losers.

I have three children, all baseball fans. My boys asked me just yesterday, as we talked about this hearing, they want to know about how Alfonso Soriano is going to perform this year. They want to see how the starter John Patterson and the great closer Chad Cordero are going to do, rookie Ryan Zimmerman—the whole team. I mean, they are excited about how the whole team is going to perform under the legendary manager Frank Robinson. And they want to be able to both go to the ball park but also watch it on television.

And so the purpose of today's hearing is pretty simple. We would like to see as expeditious a resolution of this issue as possible so the fans can watch their team and continue to enjoy the Orioles at the same time they enjoy the new team here in Washington, the Nationals. And I hope that out of today's hearing will come some progress in that effort.

Thank you, Mr. Chairman.

Chairman TOM DAVIS. Thank you very much.

Mr. Ruppertsberger.

Mr. RUPPERSBERGER. Thank you, Mr. Chairman.

There is no question we have a problem. Many people here in Maryland, Virginia, and the District of Columbia cannot see the Nationals, their hometown team, on TV. I have been a Baltimore Orioles fan all my life. I love going to Camden Yards to watch the games, and when I cannot see them, I enjoy watching them on TV.

As we know now, many Nat fans cannot do that right now. And if you are a baseball fan, that is just not right.

I am not sure what Congress can do about this problem, but I applaud Chairman Davis for having this hearing. Now, you have



to understand this. Chairman Davis is an avid baseball fan. He used to be a Baltimore Oriole fan, and now he is a big-time Nationals fan.

Chairman TOM DAVIS. I still like the Orioles.

Mr. RUPPERSBERGER. Well, that is good to know. But let me say this, and I am going to stop for a second. I have three Nationals hats up here. Mr. Angelos, do you have a Baltimore Orioles hat that I can use?

Mr. ANGELOS. It is close.

Mr. RUPPERSBERGER. OK. Now, I now have both sides involved in this dispute. As a former Baltimore County executive, I work closely with Comcast, and probably Comcast more than any other company that I know has done more to put in Baltimore County when I was executive. They wired all of our schools for Internet. Their employees volunteer hours of time in community service. And Comcast sponsors all sorts of community projects. And when you call on Comcast to sponsor a community event, they never said no. They were always there for you, for their community.

I have also known Peter Angelos ever since I was a prosecutor before I got into public office. That was about 30 years ago. We have aged a little bit, Peter.

Peter Angelos is all about Baltimore. He grew up in Baltimore. He went to school in Baltimore. He loves Baltimore. He is a very successful, self-made attorney and businessman. He bought the Orioles because he wanted the team to be owned locally. And he is a good friend, a good lawyer, and one of the toughest negotiators that you will ever face. But deep, deep down, he does have a really good heart. And like Comcast, he and the Baltimore Orioles give back to the community.

Now, with all this being said, Nats fans don't care who is right, who is wrong, and who has paid for what. They want to see their team on TV. And I hope we can find out in this hearing some issues, for instance, if the fee that Mid-Atlantic Sports Network is charging is reasonable in the region and on a national basis. Almost everything comes down to money, and that is what this is all about. But this issue must be resolved. The two sides must come together to work it out.

Now, the Baltimore Orioles, of which I am an Oriole fan, the contract with Comcast is up in 2007. And I don't want the same thing to happen to the Baltimore Oriole fans that has happened to the Nationals fans right now. As an avid Orioles fan, believe me, I always want to see my team on TV. And I would hate a year from now to have another hearing about the Orioles not being on TV in Baltimore.

Now, hopefully this hearing will bring the two sides together so we can get this worked out. We want the Nats fans to be able to see their team on TV this season, and we do not want to have the same problem with the Baltimore Orioles a year from now.

Now let the games begin.

Chairman TOM DAVIS. Thank you very much.

Mr. Moran.

Mr. MORAN. Thank you very much, Mr. Chairman. If Ms. Norton would like to speak first—I do have an opening statement, but if you want to go first, Eleanor, it is fine.

[No response.]

Mr. MORAN. The public may ask, What business is it of the Congress' to get involved in this? But last night, ESPN announced that it was going to show the Nationals game, beginning of the season, a whole lot of fans wanted to tune in, turn on, and the game comes on, it is blacked out for the vast majority of television sets in my district. Tom's district is a little more fortunate. They have Cox, and Cox has decided to show them.

The cable providers have a symbiotic relationship, if you will, with the local community. The local community has a certain amount of leverage, as does the cable provider have a lot of influence upon the ability of households to enjoy themselves and to take advantage of technology. So we have a disconnect.

And there is something unique about sports. It is a unifying element that is, in fact, important to our community. Tom and I were just in a parade out in Fairfax City. I cannot believe we made it back in time, but, of course, Tom had arranged for one of Fairfax City's finest to drive us back, and we got back just in time. But, boy, I am glad we made the parade. Those George Mason basketball players and the community, even more importantly, wanted an opportunity to say thanks—thanks for all that entertainment, thanks for making us feel good. The Redskins achieve that and the Nationals will as well.

Now, I have a lot of misgivings over a situation where the owner of a competitive team controls the broadcast rights for Washington's team. I understand that a quarter of a century ago, 25 years ago, there was a deal, and the country was carved up and the Washington-Baltimore area was assigned to Mr. Angelos. Although Washington had had a team, I don't think they objected when the Baltimore Orioles were established and the Washington Senators were still here.

But that is a big problem, and I don't think it is fair to the owners when broadcast revenue is as important as real estate, both of which are a more important source of revenue than actual ticket sales. So it is an issue that our constituents are very much concerned about.

On the other hand, Cox has reached a deal. They will tell us about their perspective and whether it is a fair deal or not, and they are providing these games in the only way that they can be provided to Fairfax County. Comcast has chosen not to. I assume it is all about the bottom line, but it could also be about principle, about feeling as though they did not get a fair shake from Major League Baseball, and that is why Major League Baseball is here.

But something has to give. This is too important to our community and the Washington metropolitan area. And if the Nationals are going to succeed—and it is important to use that they succeed—the owner not only has to have enough revenue that they can buy competitive players, but they have to be able to sustain that fan base, and to do so they have to be able to show the games on television.

So that is the objective of this hearing, and I know that Chairman Davis' objective is that the four of you who can make it work—the three of you, really, because Mr. McCollum is making it work in Fairfax County. The three of you have to figure out a way

how it can work for the benefit of fans because that ought to be the bottom line, not the dollars and cents, the ability of the Nationals fans to enjoy themselves and make this America's pastime within the Washington area.

So thanks for having the hearing, Mr. Chairman.

Chairman TOM DAVIS. Ms. Norton.

Ms. NORTON. Thank you, Mr. Chairman. Thank you for your important leadership on yet another important issue.

Mr. Chairman, you are known as a baseball maniac who memorizes baseball statistics. But I can attest to the fact that when you have focused on baseball in our committee, as with our hearings on cheating in baseball by the use of steroids and other drugs, you have always focused us on a very serious concern. That is what you are doing this afternoon.

There is joy in the city at the return of baseball after 35 years, especially among Washingtonians like me. We remember life in Washington as kids when the city had almost 800,000 people and the suburbs were the hinterland. We remember Griffith Stadium and the Washington Senators, whose ineptness at the game was matched by the team's inapt name in a city that did not have a mayor or a city council, much less Members of the House and Senate.

Nevertheless, even in segregated Washington, the Senators gave the city an identity distinct from official Washington, an identity to which all could relate.

As D.C.'s Congresswoman, I particularly welcomed baseball's return to Washington because when baseball left, it took something away from the District's place among great American cities. D.C. could not retain its place among the Nation's big cities that mattered without reclaiming the sport identified with the Nation itself. Although most major sports teams had long understood that Washington is a mandatory location, baseball was a very slow learned in coming to grips with this reality.

Sad to say the return of baseball is something of a counterfeit slogan, with 75 percent of the games blacked out by a lose-lose dispute that turns its back on the region that has already demonstrated its allegiance to the team and lined the pockets of baseball. Baseball and much of the region gave the Bronx cheer to the city council, which is footing the bill for the big party, because the council did not simply fall in line and pay whatever it took. However, the council proceedings were typical of elected officials and expected of the democratic process, especially one involving the city's resources.

However, what are we to think of baseball and Comcast, who are caught in a deadlock more typical of the public's view of silly politicians? When business interests see that each is losing money or not maximizing profits, we are told they focus on the bottom line. Nationally, local and regional TV and radio contribute about half of all its broadcast revenue to baseball, far more than other sports. The A list team of baseball—New York, Los Angeles, and Chicago—are all located in major media markets where the teams have used TV to grow their fan bases, and with them their own revenue.

So why are baseball, which finally got the sense to move a long-suffering team from Montreal to a platinum major market, and Comcast, this region's regional network provider, leaving money on the table and the fans with dark screens? Is MASN, the startup fledgling network, even talking with Comcast? The public is clamoring for answers and deserves better than the silent treatment and dark screens.

That is why this hearing is particularly important. Today's hearing may be the first time all the relevant actors have been in the same room or have sat at the same table. If they are as good at business as their putative reputations, perhaps somebody will strike up a conversation that leads to striking a deal.

Thank you, Mr. Chairman.

Chairman TOM DAVIS. Well, thank you very much.

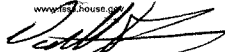
[The prepared statement of Hon. Darrell E. Issa follows:]

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**Congress of the United States**  
**House of Representatives**  
Washington, DC 20515-0549

COMMITTEE ON GOVERNMENT REFORM  
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IMMIGRATION, BORDER SECURITY & CLAIMS

HOUSE POLICY COMMITTEE

Opening remarks by Congressman Darrell Issa to the House Committee on Government Reform for April 7, 2006

Thank you Mr. Chairman and Ranking Member Waxman for holding this important hearing on the Washington Nationals cable television rights dispute. I also want to thank the witnesses for taking time out of their busy schedules to testify before the full Committee. I welcome the opportunity to discuss this issue facing Major League Baseball and the Washington Nationals.

I am concerned about the process which granted the Nationals' TV rights to an owner of a separate Major League Baseball franchise, thus limiting Washington-area residents' ability to view Nationals games on TV. It is unfortunate that a majority of Washington-area viewers will not be able to see their home team's games broadcast on cable because of disputes between their cable provider and another network backed by Major League Baseball.

Major League Baseball's anti-trust exemption appears to have led to something that should not have occurred, limiting the games that Washington-area Nationals fans can watch on television. This would not have happened in other cities, as the relationship between Major League Baseball, the Washington Nationals and the Baltimore Orioles is unique.

I support a blackout provision, which blocks a game from being broadcast locally unless a certain amount of tickets to that game are sold. Many professional sports franchises have similar agreements with local cable operators, including the San Diego Chargers football team near my district. I do not support agreements that summarily block games from being broadcast locally regardless of tickets sold.

It is my sincere hope that all parties involved in this dispute will reconsider and come to an agreement that will be in the best interest of the fans, allowing them to watch games played by their home team, the Washington Nationals, locally on TV.

Chairman TOM DAVIS. We are now going to get to the panel. Let me just note for the record everybody is appearing here voluntarily. We appreciate it. Mr. Cohen, I know you have an engagement out of the area later in the day, and hopefully our schedule will let you get out at a reasonable time. In this committee, we always swear everyone in before you testify, so if you would just rise and raise your right hands.

[Witnesses sworn.]

Chairman TOM DAVIS. We have Mr. Bob Dupuy, the president and chief operating officer for Major League Baseball; Mr. Peter Angelos, the president of the Baltimore Orioles, which is the general partner of the entity known as the Mid-Atlantic Sports Network; Mr. David Cohen, the executive vice president of Comcast Corp.; and Garry McCollum, the vice president and regional manager for Cox northern Virginia.

Mr. Dupuy, we will start with you give you as much time as you need. Your entire statement is in the record, but take what you need to make your points, and then as soon as you are through, we will get to questions. Thank you for being with us. You need to push your button there.

**STATEMENTS OF ROBERT A. DUPUY, PRESIDENT AND CHIEF OPERATING OFFICER, MAJOR LEAGUE BASEBALL; PETER G. ANGELOS, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, BALTIMORE ORIOLES; DAVID L. COHEN, EXECUTIVE VICE PRESIDENT, COMCAST CORP.; AND GARY McCOLLUM, VICE PRESIDENT AND REGIONAL MANAGER, COX NORTHERN VIRGINIA**

**STATEMENT OF ROBERT A. DUPUY**

Mr. DUPUY. Thank you, Mr. Chairman. Good afternoon. My name is Bob Dupuy. I am the president and chief operating officer of Major League Baseball, and I appreciate the opportunity to appear before you and the committee this afternoon.

Major League Baseball understands the concerns of this committee over the lack of full telecast distribution of Washington Nationals games because we share that concern. One of the primary responsibilities of baseball's central offices is to maintain and increase the high level of interest and enthusiasm in our sport. One way we have done that for over half a century is to make large numbers of game telecasts available to our fans, both nationally and locally. Today we are very proud of how well we serve the television viewing public through a combination of national telecasts, regional telecasts, out-of-market telecasts for displaced fans, and games and highlights streamed on the Internet. Virtually all of our 2,400 games are available in the local markets through a combination of over-the-air, cable, and satellite distribution, and increasingly, games and highlights are being distributed through new technology platforms such as cell phones, PDAs, and other wireless devices.

We, too, are delighted at the return of baseball to our Nation's Capital and also delighted that we finally have a lease and MOU in place after a year of negotiation. We would like to see the Nationals' telecasts made available to all of their fans, and that was

our expectation a year ago when we entered into the television arrangements involving MASN. The MASN agreement resulted from a long and difficult process intended to find the best new home for the Montreal Expos. That team had almost completely lost its local following in Montreal where none or only a handful of games were broadcast. After a long and competitive process, the commissioner and owners settled on the District of Columbia as the new home for the Expos. However, Major League Baseball's responsibility to grow fan interest applies to all 30 of our teams, and the commissioner felt strongly that any relocation of the Expos had to be done in a manner that was consistent with the goal of maximizing the viability and popularity of all our teams, including the Baltimore Orioles.

After baseball decided upon Washington as the Expos' new home, Mr. Angelos and I entered into lengthy discussions and negotiations over the best and fairest way to move the team here, less than 50 miles from Camden Yards. Many of our discussions focused on the Nationals' local telecast rights, and we entered into a deal that we believe was fair for all parties. That deal has been frequently misunderstood and misreported, although I would like to indicate that there was a fair and balanced report of the deal written by Mayor Anthony Williams and Councilmember Jack Evans that appeared in the Washington Post on April 14, 2005, and I would respectfully request that the Chair allow me to make this part of the record.

Chairman TOM DAVIS. Without objection, that will be part of the record. Thank you.

Mr. DUPUY. Thank you, sir.

[The information referred to follows:]

**The Washington Post**  
washingtonpost.com

The Washington Post

April 14, 2005 Thursday  
Final Edition

**SECTION:** Editorial; A27

**LENGTH:** 585 words

**HEADLINE:** A Good TV Deal for the Nats

**BYLINE:** Anthony A. Williams and Jack Evans

**BODY:**

In the two weeks since Major League Baseball struck a broadcast deal for our fledgling Washington Nationals, critics have complained that the package is skewed toward Baltimore Orioles owner Peter Angelos and doesn't allow enough Nats game to be shown on the air. We say they're wrong on both counts.

In fact, although the deal offers some advantages to the Orioles, it's structured in a way that benefits the Nationals immediately and ensures that this young team is competitive from the start. The team gets \$21 million -- guaranteed. Almost no other team has such a certain stream of revenue.

More important for fans: The number of games scheduled for over-the-air television this season is 79 -- more than almost any other team. By comparison, the New York Yankees will show just 21 games over the air, while the Boston Red Sox plan to air 28 and the Los Angeles Dodgers 25.

To fully appreciate this deal, it's important to understand how the new regional sports network will work. Under the terms of the arrangement negotiated between MLB and Peter Angelos, the **Mid-Atlantic Sports Network** is to pay the Nationals \$21 million to \$25 million a year in fees, even if Mid-Atlantic Sports doesn't earn a dime in profits. Those payments begin immediately and are guaranteed by Major League Baseball.

While Angelos does own the largest share of this new network, he also is exposed to most of the risk. Think about it: It's a brand-new sports network. If it tanks, it is Angelos who is liable, not the Nationals, who, under the contract, get their share no matter what the network brings in.

Some skeptics say Angelos got a better deal. We don't think so. Aside from the guaranteed revenue, most of the important operating, scheduling or quality disputes that arise between the Nats and the Orioles are to be appealed to Major League Baseball under this deal. And the Nats will also select their own broadcasters.

Finally, as several columnists have noted, Angelos's large stake in Mid-Atlantic Sports won't harm the Nats; at most, he'll bring in a few million dollars more each year, but ticket sales will always be the primary source of revenue for the Nationals -- as they are for any team.

4/4/2006



The truth is, Angelos has owned broadcast rights for this entire region since 1993. To try to unilaterally shoehorn the Nationals into the Orioles' Washington and Maryland TV market would certainly have brought a lawsuit -- an outcome that would have made fans the losers.

As it stands, the \$21 million due the Nationals is more than what's earned by 17 other teams -- not bad when you consider that the Nats were at rock bottom just 12 months ago: In Montreal, where they last played, they didn't even have a TV deal.

Consider the Arizona Diamondbacks -- the team playing our Nationals tonight at RFK Stadium. Their broadcast deal calls for \$70 million over 10 years -- that's just \$7 million a year.

One of the overriding goals of the sports network negotiations was to ensure that any new owner -- there are several prospective bidders -- would not have to take on the uncertainty of the new network. This deal accomplishes that, while maximizing the number of free over-the-air games and bringing in a good cash flow.

We hope the baseball fans in this area will join us in looking ahead to an exciting season and the prospects of a team whose fortunes can only go up.

Anthony A. Williams is mayor of the District of Columbia. Jack Evans represents Ward 2 on the D.C. Council.

Mr. DUPUY. What the deal does do is provide for a guaranteed market rate annual revenue stream to the Nationals for their telecast rights, which should obviate the concerns of Congressman Burton that somehow this was a sweetheart deal for the Orioles. In addition, the number that the Congressman quoted, I would note for the record, of \$750 million is a multiple of more than 10 higher than any team in Major League Baseball receives for their local rights. So where the number of \$750 million came from is, frankly, beyond me.

It was also intended to provide broad distribution of both Nationals' and Orioles' telecasts. For example, rather than carve up the two teams' territories—as could have been done—we chose to distribute both teams across the entire territory, allowing existing Orioles fans to retain their allegiance and allowing new National League and Nationals fans to emerge from the entire geographical reach.

As you know, as technology and distribution platforms have developed and evolved, a number of our teams have recently created their own regional sports networks, as has been done here. And full distribution of those networks has typically taken some time, as it has here. Mr. Angelos' testimony will cover the details of MASN's attempt to reach a distribution deal with Comcast. Let me say that baseball is disappointed that there has been litigation over this matter. We share the frustration of Nationals fans and the feeling that a business deal here should replace a court or administrative fight.

While we have not been involved directly in the MASN negotiations with Comcast, our office has been in contact with both parties to urge them to resolve their differences. We would also note, as members of the committee have, that MASN does have deals in place for Nationals games with Charter, Cox, DirecTV, Verizon, and RCN.

For the benefit of Nationals fans who are Comcast subscribers, we urge that an agreement quickly be reached for the carriage of Nationals' telecasts.

Thank you.

[The prepared statement of Mr. Dupuy follows.]

**STATEMENT OF ROBERT A. DUPUY  
PRESIDENT AND CHIEF OPERATING OFFICER  
MAJOR LEAGUE BASEBALL  
BEFORE THE HOUSE GOVERNMENT REFORM COMMITTEE**

**April 7, 2006**

Good afternoon, Mr. Chairman. My name is Robert DuPuy and I am the President and Chief Operating Officer of Major League Baseball. I appreciate the opportunity to appear before you and this Committee today.

Major League Baseball understands the concern of this Committee over the lack of full telecast distribution of Washington Nationals' games, because we share that concern. One of the primary responsibilities of Baseball's central offices is to maintain and increase the high level of interest and enthusiasm in our sport. One way we have done that for over half a century is to make large numbers of game telecasts available to our fans, both nationally and locally. Today, we are very proud of how well we serve the television viewing public through a combination of national telecasts, regional telecasts, out-of-market telecasts for displaced fans, and games and highlights streamed on the Internet. Virtually all of our 2,400 games are available in the local markets through a combination of over-the-air, cable and satellite distribution, and increasingly games and highlights are being distributed through new technology platforms such as cell phones, PDA's and other wireless devices.

We would like to see Nationals' telecasts made available to all of their fans, and that was our expectation a year ago when we entered into the television arrangements involving MASN. The MASN agreement resulted from a long and difficult process intended to find the best new home for the Montreal Expos. That team had almost completely lost its local following in Montreal where none or only a handful of games were broadcast. After a long and competitive process, the Commissioner and owners settled on D.C. as the new home for the Expos. However, Major League Baseball's responsibility to grow fan interest applies to all 30 of our teams, and the Commissioner felt strongly that any relocation of the Expos had to be done in a manner that was consistent with the goal of maximizing the viability and popularity of all teams, including the Orioles.

After baseball decided upon Washington as the Expos' new home, Mr. Angelos and I entered into lengthy discussions over the best and fairest way to move the team here, less than 50 miles from Camden Yards. Many of our discussions focused on the Nationals' local telecast rights, and we entered into a deal that we believe was fair for all parties. That deal has been frequently misunderstood and misreported. What the deal does do is provide for a guaranteed market rate annual revenue stream to the Nationals for their local telecast rights, and it was also intended to provide broad distribution of both Nationals' and Orioles' telecasts. For example, rather than carve up the two teams' territories – as could have been done – we chose to distribute both teams across the entire territory, allowing existing Orioles' fans to retain their allegiance and allowing new National League Nationals' fans to emerge from the entire geographical reach.

As you know, a number of our teams have recently created their own regional sports networks, and full distribution of those networks has typically taken some time, as it has here. Mr. Angelos's testimony covers the details of MASN's attempt to reach a distribution deal with Comcast. Let me say that Baseball is disappointed that there is litigation over this matter. We share the frustration of Nationals' fans and the feeling that a business deal should replace the court or administrative fight. While we have not been involved directly in MASN's negotiations, our office has been in contact with both MASN and Comcast to urge them to resolve their differences. We would also note that MASN does have deals in place for Nationals' games with Charter, Cox, DirecTV, Verizon and RCN.

For the benefit of Nationals' fans who are Comcast subscribers, we urge that an agreement quickly be reached for the carriage of Nationals' telecasts.

Thank you, Mr. Chairman.

*Office of the Commissioner*  
**MAJOR LEAGUE BASEBALL**



April 14, 2006

Chairman Tom Davis  
Committee on Government Reform  
U.S. House of Representatives  
2157 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Davis:

On behalf of Major League Baseball, I appreciate the opportunity to have appeared before your Committee last week. The purpose of this letter is to clarify one matter that arose during questioning.

There appeared to be some confusion among Committee members as to the form of the relationship between Major League Baseball, the Orioles and the Nationals as it relates to the Mid-Atlantic Sports Network. This is not a new venture. While Major League Baseball was not involved at that time, the Orioles established TCR Sports Broadcasting Holding, LLP ("TCR") in 1996. TCR has been in operation for almost a decade and has been producing and telecasting a number of the Orioles' over-the-air games for distribution since 2001. Last year, Major League Baseball negotiated the arrangement by which a related entity, on behalf of the Nationals, acquired a minority partnership interest in TCR. TCR now operates under the tradename of the Mid-Atlantic Sports Network ("MASN") and, since the start of the 2005 season, MASN has produced for telecast the Nationals' games.

I would appreciate it if the record would reflect that any reference to MLB's investment in TCR as a "joint venture" was merely intended as a shorthand description of that investment, and was not intended to refer to the formal legal structure.

Thank you for allowing me to clarify the record.

Sincerely,

A handwritten signature in black ink, appearing to read "R. DuPuy", written over a horizontal line.

Robert A. DuPuy

MILW\_1983292.1

777 E. Wisconsin Avenue  
Suite 3060  
Milwaukee, WI 53202  
(414) 225-8900 / Fax (414) 225-8910

**REDACTED VERSION****AGREEMENT BY AND AMONG THE OFFICE OF THE COMMISSIONER OF BASEBALL D/B/A MAJOR LEAGUE BASEBALL, TCR SPORTS BROADCASTING HOLDING, L.L.P., BASEBALL EXPOS, L.P. D/B/A WASHINGTON NATIONALS BASEBALL CLUB, AND THE BALTIMORE ORIOLES LIMITED PARTNERSHIP**

This Agreement ("Agreement"), is made as of the **[28<sup>th</sup>]** day of March, 2005 (the "Effective Date"), by and among the Office of the Commissioner of Baseball d/b/a Major League Baseball (hereinafter "Major League Baseball" or "MLB"), TCR Sports Broadcasting Holding, L.L.P. (hereinafter "TCR" or "RSN"), Baseball Expos, L.P. d/b/a Washington Nationals Baseball Club ("Nationals"), and the Baltimore Orioles Limited Partnership ("BOLP") to provide for the unified telecast of Orioles' and Nationals' baseball games within the defined Television Territory; to guarantee BOLP a minimum franchise sales price; and other agreements; and

WHEREAS, the Orioles' home television territory, as recognized by the parties to this Agreement, is geographically defined and includes the entire states of Maryland, Virginia, Delaware, the District of Columbia and certain counties in West Virginia, Central Pennsylvania and Eastern North Carolina as more particularly set forth in Exhibit A ("Television Territory"); and

WHEREAS, in 2001, the Orioles and TCR established the Orioles' Television Network ("O's TV") as a platform for the Orioles' regional sports network to serve the Orioles' Television Territory; and

WHEREAS, in December 2004, the MLB Clubs approved, over the objection of BOLP, the relocation of the Montreal Expos Baseball Club to Washington, D.C., pursuant to a vote of the member Clubs, and

WHEREAS, the parties hereto desire to resolve various issues and to provide for the presentation and telecast of all available Nationals' baseball games in the Television Territory through a regional sports network along with all available Orioles' baseball games, unifying the games of both Clubs for telecast throughout the entire Television Territory; and

WHEREAS, the parties desire to express their mutual agreements, covenants, promises and understandings in a written agreement; and

NOW THEREFORE, in consideration of mutual promises of the parties hereto, each to the other, and for good and valuable considerations, receipt of which is hereby acknowledged, it is mutually agreed by and among the parties hereto as follows:

Section 1. Franchise Asset Valuation Protection **REDACTED**

Section 2. Regional Sports Network

- 2.A. General – The Regional Sports Network: TCR, through O's TV, currently serves as the foundation for the Orioles' regional sports network. TCR will be the basis for the regional sports network that will have the sole and exclusive right to present any and all of the Nationals' and the Orioles'

**REDACTED VERSION**

baseball games not otherwise retained or reserved by Major League Baseball's national rights agreements, including all preseason, regular season and postseason games (if applicable and available) (hereinafter "Available Games"), for each of the Nationals and the Orioles (through cable, satellite, over-the-air television, or such other technology as may then be generally allowed by Major League Baseball; hereinafter "telecast") and all ancillary programming related to the Nationals and the Orioles throughout the Television Territory through the medium of the RSN described in this Agreement.

- 2.B. TCR To Be Renamed: The Orioles agree that TCR will take appropriate steps to register the name Mid-Atlantic Sports Network ("MASN") as the d/b/a name of the RSN, or such other name as may be selected, as soon as practicable. TCR, however, will remain as the entity, for all legal purposes, through which the Orioles' and the Nationals' games will be telecast.
- 2.C. Radio Rights Excluded: For all purposes of this Agreement, all revenues and costs related to the radio broadcast of the Orioles' games by and through TCR shall be allocated specially to BOLP and shall not be taken into account as revenue, costs or valuation of the RSN for purposes of this Agreement but shall be imputed to the Orioles for Major League Baseball revenue sharing purposes. The RSN shall have no radio broadcast rights to the Nationals' games.
- 2.D. Sole And Exclusive Right To Telecast All Available Orioles' And Nationals' Games: TCR shall have the sole and exclusive right and the obligation to telecast, using commercially reasonable efforts, all Available Games of the Orioles and the Nationals and all ancillary programming related to the Orioles and the Nationals throughout the Television Territory through the medium of the RSN as described in this Agreement. The Nationals shall grant and license the right and the obligation to the telecast of their Available Games to the RSN. The Orioles shall grant and license the right and the obligation to the telecast of their Available Games to the RSN. The Nationals and the Orioles may not telecast any of their Available Games other than through the RSN nor in any television territory other than the geographically defined Television Territory referenced in this Agreement. The Nationals and TCR shall enter into a mutually acceptable rights agreement, incorporating the terms set forth in this Section and other customary terms and conditions, ordinarily included in a rights agreement, including, without limitation, the MLB Local Telecast Regulations Required Language for Local Telecast Agreements. Major League Baseball will not provide, allocate or otherwise assign to the Nationals any television territory independent, separate or distinct from the Television Territory served by the RSN and as described in Exhibit A. It is expressly understood and agreed, however, that for 2005 and 2006, certain of the Orioles' games are currently under contract to a third party cable distributor and those games are not available for telecast by the RSN until 2007. The telecast rights of those



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Orioles' games which are available in 2005 and 2006 for telecast and not contracted to a third party cable distributor shall be granted and licensed to the RSN for over-the-air telecasts, or as otherwise permitted as a reservation of rights in the Orioles' third party cable contract. In any given year, after consultation with the Nationals and the Orioles, TCR shall determine the number of Available Games of the Nationals and the Orioles that it shall telecast. TCR shall telecast as many of the Available Games of the Nationals and the Orioles as it determines is commercially reasonable in that year. Unless otherwise prevented by an event covered by the provisions of Subsection 11. J., as soon as the RSN is "fully operational" (anticipated to be in 2007), in each season thereafter, TCR shall telecast no less than 95 of each of the Nationals' and the Orioles' regular season Available Games. The grant of rights by the Nationals and the Orioles set forth in this Section shall be subject to the applicable Major League Baseball Local Telecast Regulations, and shall be deemed to include the "Required Language for Local Telecast Agreements" as set forth in such regulations. Notwithstanding the foregoing, it is agreed that the Television Territory to be served by the RSN on behalf of the Orioles and the Nationals is and shall be as defined in Subsection 2.F. The Orioles and the Nationals each shall have the right to approve the RSN's selection of the game announcers for their respective telecasts. Such approval may not unreasonably be withheld. Notwithstanding the preceding two sentences, the Nationals and the Orioles shall have the right to employ their game announcers at their expense, subject to the approval of the RSN, which shall not be unreasonably withheld. The RSN shall provide the Nationals and the Orioles with all reasonable and customary production values for the telecasts of their games.

- 2.E. Orioles And Nationals – Cooperation With Regional Sports Network: The Nationals and the Orioles shall cooperate with the RSN in the sale, promotion and distribution of their games for telecast by the RSN, including providing all customary promotional and marketing materials and tools necessary for the generation of revenue for the RSN.
- 2.F. Applicable Television Territory: The Television Territory to be served by the RSN, on behalf of the Orioles and the Nationals, is and shall be the Television Territory as reflected in Exhibit A, attached hereto and incorporated by reference herein. This Subsection shall be a material and essential element of this Agreement.
- 2.G. Rights Fees: The Nationals and the Orioles shall be paid an annual rights fee from the RSN. For the telecast of its games, the Nationals shall be paid its rights fees, commencing in 2005, as follows: **REDACTED** in 2005; **REDACTED** in 2006. During 2005 and 2006, only, for the telecast of its games on over-the-air television, or otherwise permitted as a reservation of rights in the Orioles' third party cable contract, the Orioles shall be paid a rights fee of up to **REDACTED** per game for each game telecast in 2005 and a rights fee of up to **REDACTED** per game for each game telecast in 2006.

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Subject to the foregoing, for 2005 and 2006 only, the amount of the Orioles' rights fees shall be agreed upon between TCR and the Orioles. Thereafter, and beginning in 2007, for the telecast of their games, the Orioles and the Nationals shall each be paid **REDACTED** per year for the next four successive years escalating at a non-compounded **REDACTED** rate. The Orioles and the Nationals will, therefore, be paid the following rights fees: in 2007, **REDACTED** each; in 2008, **REDACTED** each; in 2009, **REDACTED** each; in 2010, **REDACTED** each; in 2011, **REDACTED** each. To the extent that the Orioles and/or the Nationals do not actually play five or more regular season games that are scheduled for telecast by the RSN in any given year, the rights fee for that year shall be reduced by an amount equal to the product of (i) the rights fee payable multiplied by (ii) a fraction, the numerator of which is the number of regular season games not played and the denominator of which is the number of regular season games scheduled to be played.

- 2.H. Payment Of Rights Fees: Unless otherwise agreed to by the Nationals, the Orioles and TCR, for 2005, the applicable rights fee payment for the Orioles and the Nationals shall be made in four equal installments as follows: June 15, 2005; July 15, 2005; August 15, 2005 and September 15, 2005. Unless otherwise agreed to by the Nationals, the Orioles and TCR, for 2006, the applicable rights fee payment shall be made in four equal installments as follows: June 15, 2006; July 15, 2006; August 15, 2006 and September 15, 2006. Unless otherwise agreed to by the Nationals, the Orioles and TCR, in 2007 and thereafter, all rights fee payments shall be made in four equal installments in each year as follows: April 1; June 1; August 1 and September 1.
- 2.I. Future Rights Fees Determination: After 2011, and for each successive five year period, the Orioles, the Nationals and the RSN first shall negotiate in good faith using the most recent information available which is capable of verification to establish the fair market value of the telecast rights licensed to the RSN for the following five year period.
- 2.J. Rights Fees Dispute Resolution Mechanism: For any dispute regarding the determination of rights fees pursuant to Subsection 2.I., the dispute resolution mechanism shall be as follows:
- 2.J.1. Mandatory Negotiation Period: In the event that the Nationals and the RSN, or the Orioles and the RSN, are unable to agree on the fair market value of their respective rights within thirty (30) days or a mutually-agreed upon longer period of time (the "Negotiation Period"), the relevant parties shall follow the procedures set forth in this Subsection to establish the fair market value of the rights licensed to the RSN (the "Rights").
- 2.J.2. Mediation: In the event that the Nationals and RSN are unable to timely establish the fair market value of the Rights by negotiation as

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set forth above, then the parties agree to enter into non-binding mediation. The mediation shall be held at a mutually agreeable place and shall be conducted under the auspices of the American Arbitration Association or JAMS.

- 2.J.3. Appeal: In the event that the Nationals and/or the Orioles and RSN are unable to timely establish the fair market value of the Rights by negotiation and/or mediation as set forth above, then the fair market value of the Rights shall be determined by the Revenue Sharing Definitions Committee ("RSDC") using the RSDC's established methodology for evaluating all other related party telecast agreements in the industry. The fair market value of the rights established pursuant to this Subsection for the relevant five year period, or such shorter time as may be agreed to by the parties, shall be final and binding on the Nationals and the RSN, and the Nationals and the RSN may seek to vacate or modify such fair market valuation as established by the RSDC only on the grounds of corruption, fraud or miscalculation of figures. Beginning in 2007, the Orioles and the Nationals shall be paid the same rights fees by the RSN.
- 2.J.4. The above-described dispute resolution mechanism shall be applied unless otherwise agreed to by the RSN and MLB on or before June 1, 2005.
- 2.K. Rights Fee Methodology: For all purposes of determining the amount of the appropriate rights fees payable to the Orioles and the Nationals, the entire Television Territory shall be analyzed and examined as if the Television Territory were a unified territory in all respects, that is, the same geographic territory, the same DMAs, the same number of households and treated as a single television market.
- 2.L. Distributions: Except as provided in Subsection P, below, distributions, if any, to be made from the RSN shall be made consistent with the parties' relative and then-applicable partnership profits interests in the RSN. For the sake of clarity, in no event shall any distributions be made to BOLP or to the limited partners of TCR as of the Effective Date unless pro rata distributions are simultaneously made to the Major League Baseball Partner (as defined below), or its assigns, in relation to its then-applicable partnership profits interest.
- 2.M. Major League Baseball To Assist Regional Sports Network: Major League Baseball agrees to promptly use its commercially reasonable best efforts as reasonably necessary to assist the RSN in obtaining access to all available telecast distribution for the Orioles' and Nationals' games, ancillary programming and other sports content throughout the entire Television Territory and to use its commercially reasonable best efforts to assist the RSN in any such negotiations.

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- 2.N. Equity Interest In Regional Sport Network: The Major League Baseball Partner (as defined below) shall initially receive a 10% partnership profits interest in TCR. Following the full completion of the fifth year of operation of the RSN, the Major League Baseball Partner, or its assignee, shall receive an annual increase of its partnership profits interest, one percentage point per year, until such time as the initial interest and the annual increases to its profits interests total 33%. The Major League Baseball Partner may assign, at its sole discretion, such profits interest, in whole or in part, to an affiliated entity. Such assignment is without regard to the right of first refusal provided in Subsection 2.Q.
- 2.O. Governance Of Regional Sports Network: BOLP, its successors or assigns, as managing partner of the RSN, shall have the full authority to manage and operate all of the business affairs of the RSN, to employ such personnel as it may deem necessary and do all other things as it may deem necessary to conduct the business of the RSN, as more fully set forth in the TCR Limited Liability Partnership Agreement (as defined below). Notwithstanding the foregoing, the Major League Baseball Partner shall be provided with the customary rights accorded a limited partner including, **REDACTED**. Except as provided in Subsection 2.G. above (Rights Fees), TCR shall treat the Orioles' and Nationals' telecast rights on a substantially equal basis with respect to their operation, distribution and marketing.
- 2.P. Capital Structure Of TCR:
- 2.P.1. In consideration for the receipt of the equity interests in TCR, referred to in Subsection N above, the Major League Baseball Partner shall contribute **REDACTED** as its capital contribution to TCR, and BOLP shall contribute the Orioles' rights relating to its Television Territory as its capital contribution to TCR. At such time as the Major League Baseball Partner's capital contributions are made, it shall receive credit in its capital account for the amount of the payment. As a result of its capital contribution, BOLP shall receive a capital account credit of **REDACTED**. Any liquidation of TCR shall be made in accordance with capital accounts as required by Internal Revenue Code rules and regulations.
- 2.P.2. The Major League Baseball Partner's capital shall be contributed as follows: **REDACTED**.
- 2.P.3. TCR shall utilize the cash capital referred to in Subsection 2.P.1. above for such capital expenditures and operational costs as are necessary to conduct its operations.
- 2.P.4. The Agreement of Limited Liability Partnership of TCR ("TCR Partnership Agreement") shall be amended to remove any conflict between the TCR Partnership Agreement and this Agreement, and in such other respects as shall be agreed to by the parties, including, without

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limitation, that Major League Baseball or an affiliated entity, such as the Nationals (the "Major League Baseball Partner" or the "MLB Partner") shall be included, as appropriate, as a limited partner in accordance with the terms set forth herein.

- 2.Q. Transfer Of Equity To Third Party: BOLP and the limited partners of TCR shall be provided a right of first refusal over sales or transfers of any equity in TCR by the MLB Partner, except for **REDACTED**.
- 2.R. Remedies For Non-Payment, Insolvency: In the event that the RSN does not pay either the Orioles or the Nationals the rights fees contemplated herein in a timely fashion, then:
- 2.R.1. The RSN shall have a right to cure such non-payment within a reasonable period of time after written notice of the non-payment from either the Nationals or the Orioles, as the case may be. Such time shall not exceed 30 days.
- 2.R.2. If payment is not made within the applicable cure period, then the Orioles and/or the Nationals, as appropriate, shall have a right to seek money damages or avail themselves of any other appropriate remedies that may be available for such non-payment, including without limitation, termination of the license to their respective telecast rights granted herein; provided, that they will not terminate such licenses until thirty days after the expiration of the cure period set forth in Subsection 2.R.1 above. Such termination shall take effect upon receipt by the RSN of a written notice of termination (the "Notice of Termination").
- 2.R.3. In addition, the Nationals and the Orioles may, in their respective discretion, terminate the license to their telecast rights licensed herein upon notice in writing to the RSN, if (i) the RSN becomes insolvent; (ii) a petition under any bankruptcy act is filed by or against the RSN (which petition shall not have been dismissed within 30 days of the initial filing); (iii) any receiver, trustee or liquidator is appointed for all or a substantial part of the assets of the RSN (which appointment shall not have been dismissed within 30 days of such appointment); or (iv) the RSN takes advantage of any applicable insolvency or like statute.
- 2.R.4. Notwithstanding any other provision of this Agreement, upon receipt of the Notice of Termination or at any time thereafter, the RSN has the right to and may seek any and all immediate legal or equitable relief and remedies from such termination available in any court of law with jurisdiction, including, without limitation, the right to seek injunctive relief or specific performance. In the instance in which there are no other material defaults of this Agreement, other than the delinquent payment of rights fees, and the Nationals or the Orioles, as applicable, have not been materially prejudiced by the delinquent payment, payment of the

**REDACTED VERSION**

delinquent rights fees plus interest at any time prior to the final determination of a court of original jurisdiction pursuant to this Subsection shall constitute a cure of such default, and the termination, if any, shall be void and of no effect. Multiple violations of the failure to pay rights fees shall be considered a rebuttable presumption of material prejudice.

Section 3. Tax Treatment **REDACTED**Section 4. Debt Service Rule **REDACTED**

## Section 5. Scheduling Of Home Games

Major League Baseball shall treat the Orioles and the Nationals as a single market for scheduling protocol and allow no more than 15 overlapping and conflicting home games during any baseball season unless otherwise agreed to by Major League Baseball, the Nationals and the Orioles, subject to exigent circumstances. Major League Baseball will endeavor to keep the number of overlapping and conflicting home games during any season to less than 10.

Section 6. No League Transfer **REDACTED**

## Section 7. Representations And Warranties; Further Assurances

The Commissioner of Baseball, Major League Baseball, the Nationals, BOLP, the Orioles and TCR represent and warrant, each on their own behalf, and each to each other, that they are authorized and empowered to enter into this Agreement. Further, Major League Baseball represents and warrants that all relevant terms, conditions and obligations of this Agreement shall be made known to any purchaser(s) of the Nationals now, and in the future, and that the assumption of the Nationals' obligations under this Agreement shall be made a binding condition of the purchase of the Nationals' franchise. The Nationals and Major League Baseball represent and warrant that they shall take such other steps as reasonably may be necessary to bind any subsequent purchaser(s) of the Nationals to the terms and conditions set forth in this Agreement. The Commissioner of Baseball, Major League Baseball, the Nationals, BOLP, the Orioles and TCR shall take all necessary actions to effectuate and enforce this Agreement. Further, Major League Baseball, the Nationals, BOLP, the Orioles and TCR represent and warrant, each on their own behalf, and each to each other, that prior to the execution of this Agreement, neither the terms of this Agreement, nor the execution of this Agreement by it, nor the performance of its obligations hereunder conflicts with any contract, agreement, undertaking or understanding to which it is a party.

Section 8. Dispute Resolution **REDACTED**

## Section 9. Remedies For Breach

- 9.A. It is expressly understood and agreed that any and all remedies in law or in equity including, without limitation, any claims for damages for breach of this Agreement, and/or specific performance and injunctive relief, shall be available to Major League Baseball, the Nationals, the Orioles, BOLP and/or TCR to enforce the terms and conditions of this Agreement in such

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arbitration or other proceedings and that the arbitrators therein are specifically empowered to grant injunctive relief.

- 9.B. No Third-Party Beneficiary Rights. The rights, duties and obligations set forth in this Agreement are specific to those named parties to this Agreement and their permitted successors and assigns. The parties hereby disclaim any intent to benefit third-parties and specifically agree that there shall be no third-party beneficiaries of this Agreement.

## Section 10. Effective Immediately

This Agreement shall take effect immediately upon execution by the parties.

## Section 11. Miscellaneous

- 11.A. Governing Law: The terms of this Agreement shall be governed by and construed in accordance with the laws of the State of Maryland, without regard to its conflict of laws principles.
- 11.B. Entire Agreement: This Agreement, and the terms contained herein, constitute the entire agreement between the parties with respect to the subject matters herein and supersede all other oral and written understandings or agreements relating to the subject matters contained herein.
- 11.C. Assignment: This Agreement and the terms contained herein irrevocably are binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns. No party shall sell, convey, assign or otherwise transfer this Agreement or its equity interest in the RSN without the prior written consent and approval of BOLP, its successors or assigns, and the RSN; provided that in the event that either the Orioles, the Nationals or the RSN are sold, conveyed, assigned or in any other way transferred, in whole or in part, all subsequent purchaser(s), assignees or transferees shall be unconditionally bound to all terms and conditions of this Agreement.
- 11.D. Headings/Plural: The section headings in this Agreement have been included for mere convenience of reference, and shall not be considered substantive parts of this Agreement in resolving any question or interpretation or construction. As circumstances may require, the singular shall include the plural and vice versa.
- 11.E. No Waiver: The failure of any party to object to, or to take affirmative action with respect to, any conduct of another party that violates any term or condition of this Agreement shall be limited to that particular instance, and shall not be construed as a waiver of that party's rights for such breach or as a waiver of such remedies for future breaches by the other party(ies).
- 11.F. Voluntary Agreement/No Presumption: The parties hereto represent that they have carefully read the Agreement, understood its terms, consulted with

**REDACTED VERSION**

an attorney of their choice, and voluntarily signed the same as their own free act with the intent to be legally bound thereby. The terms of this Agreement are contractual and not a mere recital. The parties hereby acknowledge that no provision of this Agreement shall be construed against a party solely because that party (or that party's counsel) drafted such provision.

- 11.G. Notices: All notices, including notices of address changes, required or permitted, to be given by either party under this Agreement shall be sent by registered or certified mail or by reputable overnight commercial delivery to the address specified herein by each party and shall be deemed given three (3) days after the date of mailing in the event of registered or certified mail, and one (1) day after said notice is provided to the delivery service in the event of overnight delivery.
- 11.H. Survival: All terms and provisions of this Agreement, which should by their nature survive the termination or expiration of this Agreement shall so survive. The relationships established by this Agreement between the Orioles, TCR, the Nationals and, as the case may be, Major League Baseball, including the RSN or such other regional sports network or entity that may be formed, shall survive the expiration of any telecast rights agreement or any future documents or agreements related to the regional sports network and each of BOLP, its successors or assigns, TCR, the Nationals and Major League Baseball shall remain bound to the terms and conditions of this Agreement at all times.
- 11.I. Release **REDACTED**
- 11.J. Force Majeure: Neither party shall be liable for any delays or causes beyond its reasonable control, including, without limitation, fire or other casualty, act of God, strike or labor dispute, war or other violence or act of terrorism, or any law, order or requirement of any governmental agency or authority, except and to the extent the party has acquired insurance to cover such risk. A separate force majeure provision shall be contained in the rights agreements contemplated in this Agreement.
- 11.K. Severability: If any term, provision, covenant or condition of this Agreement, or any application thereof shall be held by a court of competent jurisdiction, or by the final decision of an arbitration panel as provided herein, to be invalid, void or unenforceable, such invalidity, unenforceability or illegality shall not affect any other provision of this Agreement, and this Agreement shall be construed, as if such invalid, unenforceable or illegal provision had never been contained in this Agreement, but only to the extent of its invalidity, unenforceability or illegality.
- 11.L. No Admission of Liability. The parties acknowledge that neither this Agreement, nor any statement made, nor any event occurring during negotiations of this Agreement by the parties or their respective attorneys and



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representatives, is considered to be an admission of liability for any disputed claim resolved herein or otherwise. It is further acknowledged and agreed that neither this Agreement, nor any statement made, nor any event occurring during negotiations of this Agreement by the parties or their respective attorneys and representatives, may be used by the parties as precedent for any other claim that any party may have in the future.

- 11.M. Counterparts: This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together, shall be considered one and the same agreement.

IT WITNESS WHEREOF, the parties have signed and sealed this Agreement as of the day and year first above written.

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**REDACTED VERSION**

**AGREED AND ACCEPTED:**

**THE BALTIMORE ORIOLES BASEBALL CLUB**

By: Baltimore Orioles Limited Partnership

By: Baltimore Orioles, Inc.

Its: General Partner

\_\_\_\_\_/s/\_\_\_\_\_(SEAL)

By: Peter G. Angelos

Its: President, Baltimore Orioles, Inc.

**BALTIMORE ORIOLES LIMITED PARTNERSHIP**

By: Baltimore Orioles, Inc.

Its: General Partner

\_\_\_\_\_/s/\_\_\_\_\_(SEAL)

By: Peter G. Angelos

Its: President, Baltimore Orioles, Inc.

**TCR SPORTS BROADCASTING HOLDING, L.L.P.**

\_\_\_\_\_/s/\_\_\_\_\_(SEAL)

By: Peter G. Angelos

Its: President, Baltimore Orioles, Inc.

**OFFICE OF THE COMMISSIONER OF BASEBALL**

[as agent for the Clubs]

\_\_\_\_\_/s/\_\_\_\_\_(SEAL)

By: Allan H. (Bud) Selig

Its: Commissioner

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**REDACTED VERSION**

For the purposes of the provisions in the Agreement relating to the determination of the  
Television Territory  
MAJOR LEAGUE EXECUTIVE COUNCIL

\_\_\_\_\_/s/\_\_\_\_\_(SEAL)  
By: Allan H. (Bud) Selig  
Its: Chairman

BASEBALL EXPOS, L.P.  
d/b/a THE WASHINGTON NATIONALS BASEBALL CLUB  
By Baseball Expos GP, Inc., its General Partner

\_\_\_\_\_/s/\_\_\_\_\_(SEAL)  
By:  
Its:

Attachment: EXHIBIT A

**REDACTED VERSION**

**EXHIBIT A**

**BALTIMORE ORIOLES  
TELEVISION HOME TERRITORY**

State of Maryland

Washington, D.C.

State of Virginia

State of Delaware

West Virginia counties:

Grant	Morgan
Hardy	Berkeley
Mineral	Jefferson
Hampshire	

York/Harrisburg/Lancaster Pennsylvania ADI counties:

Adams	Lebanon
Cumberland	Berkeley
Mineral	Jefferson
Hampshire	Mifflin
Dauphin	Perry
Juniata	York
Lancaster	

Eastern North Carolina including Winston-Salem, Greensboro and Charlotte

7/27/81

11/22/82

9/24/97

Chairman TOM DAVIS. Thank you very much.  
Mr. Angelos, thank you for being with us.

**STATEMENT OF PETER G. ANGELOS**

Mr. ANGELOS. Thank you, Mr. Chairman, members of the panel. Thank you for inviting us here today to discuss the issue which you have alerted us to and which we are obviously thoroughly conversant with.

I have listened to what was said a moment ago or a few minutes ago by Congressman Burton, but I shall not address those items that he talked about; but, rather, I am here to ask you to do all that you can to facilitate the distribution of Washington National games over paid television systems.

This may seem paradoxical to you that the owner of the Orioles—that is, the majority owner. I should remark that we have 18 other investors who contributed to the purchase of the Orioles out of bankruptcy in 1993. I am committed to promoting the distribution of Nationals games because, obviously, we have a vested interest in seeing to it that effort will be successful.

As has been commented, we now have under contract five distributors, very sophisticated and very long in the business of distributing programming. And the games are now available to 2 million subscribers of these companies.

Now, we made, we believe, an agreement with Major League Baseball that Mr. Dupuy just touched on which was one that would benefit both clubs. The idea was that by establishing a regional sports network, essentially composed of the two baseball teams and offering those games throughout the entire Orioles home television territory, which runs from Lancaster, PA, down through central Pennsylvania, all of Maryland, all of Delaware, all of the District of Columbia, all of Virginia, 13 counties in West Virginia, and half of the State of North Carolina. We now share that territory, Mr. Chairman, with the Nationals, and we are promoting the inclusion of the Nationals games right through that entire territory along with the Orioles, who are now being projected through that territory by Comcast in the final year of a contract that they have held with the Orioles for 10 long years.

I might say at this point that the highest rights fee that we have ever received in those 10 years from Comcast for that entire territory, Mr. Chairman, is in this particular last season that Comcast will have the Oriole rights to use on their distribution system. The highest they have ever paid is \$18,450,000 for the entire territory. So our commitment to the Nationals at \$20 million, which next year goes to \$25 million, we believe was a much more generous and sensible kind of arrangement that was made with Major League Baseball, and obviously, I believe that will ultimately be the arrangement that the Nationals will have once the new owner has been selected.

So we are able to say that in addition to the \$20 million that we paid in the year 2005, \$20 million in the year 2006, and \$25 million in 2007, and thereafter even higher fees will be paid to the Nationals, and the Orioles, for that matter, we believe that along with that, a special arrangement has been made with the Nationals in

that they initially start with owning 10 percent of the RSN and over a period of years will ultimately own 33 percent of the RSN.

Now, there have been comments about our opposition or specifically my opposition to the location of the Nationals in Washington, DC. When we learned that was going to be accomplished, we obviously were concerned—concerned, one, that the inclusion of a team not 50 miles away, as Mr. Dupuy has mentioned, but actually some 35 miles away if you measure from border to border, but actually the establishment of the Nationals at the proposed new baseball stadium in probably 2008, or while they are at RFK, brings another team roughly 8 miles away from one of the counties that is part of our franchise, that is, Howard County or Anne Arundel County and so on. Formerly, we enjoyed all of that territory. But the decision was made, and we made a decision to live with that arrangement. And concurrently, as Mr. Dupuy has said, we arranged to work things out with Major League Baseball to share our territory with the Nationals, to establish the RSN that has been talked about, and thereby to create an opportunity for both teams to benefit and, moreover, to allow the Orioles to gain extra revenue to make up for what is expected to be at least a 25-percent reduction in attendance as well as other potential diminution in income that the club has been accustomed to for some 30 years.

I might say that the territory that I described has been the Oriole home television territory for more than 30 years. Nonetheless, it is now the territory, through the efforts of Mr. Dupuy and the commissioner, of both teams, and both teams can produce and present their games within that territory.

Now, the purpose, therefore, of asking that this arrangement be made was, as I said, to make up for the expected losses that our team will suffer. Now, the comment that we control the games I think is absolutely incorrect, especially because we don't control the games. We can present the games. But the ultimate control as to what is going to be paid for the rights from period to period is in the hands of Major League Baseball and will remain there. If at any time the Nationals would be dissatisfied with the fee structure, the rights fee structure, they have a right to complain to Major League Baseball and demand that a survey be made to guarantee that fair market value payments are being made for the rights fees for the rights to their games. So I think that is important to understand, that we do not exercise any authority over the team. We cannot set the rights fees without the approval of Major League Baseball.

As to the quality of the presentation, Major League Baseball controls that also. If we do not perform up to a quality level and the Nationals are not satisfied with the presentation of the games by MASN, they have every right to petition Major League Baseball to compel us to correct the situation.

So the issue here really is not the litigation that ensued that was referred to previously or litigation that might ensue in the future. The issue here is why doesn't Comcast put the National games on their distribution system. As has been said repeatedly, five other companies have done so. Five other companies have accepted the rate schedule that was recommended to them, and the games are being seen by 2 million people within the territory that I described.

We think that Comcast does not want to do that because they want to protect what they already have. They have had their way for so many years, they feel that no one should interrupt their monopolistic arrangement where they do not have any competition and where they simply deal with sports teams essentially on the basis of what they think is appropriate, since essentially there is no competition within the broad territory that I described. There are other distributors, but Comcast is not just a distributor. Comcast is a program generator. And, obviously, it prefers to hold onto what it has and does not appreciate the competition that MASN is providing. One might say that is an understandable business attitude, that what a business has it wants to keep. But, unfortunately, it should not be allowed to keep what it has had at the expense of the fans of the Nationals or, for that matter, the Orioles or, for that matter, any sports team.

I think they have an obligation to show the games, to present the games of the Nationals. We have approached them more than five times, and they have refused not a particular approach that we have talked about. Why, they will not even talk to us about it. They do not want to have any discussion about whether or not we can get together.

Now, we are ready. We have been ready for over a year. And I am sitting here next to Mr. Cohen, and I am prepared to sit down and shake his hand and make a deal with him now and let all of the differences and all of the acrimony that has ensued in the past disappear. But that is up to them. The price—our rates, we carefully made sure, are just about what Comcast charges, and maybe a tad less and maybe—well, I say a tad less. And when we have the Orioles in 2007 along with the Nationals, actually our rate will be less than what the Comcast level is presently.

So just as I urge you, Mr. Chairman and other members of the committee, do not be deceived by the arguments that are being advanced by Comcast. Just like their lawsuit, give those comments and those positions no credence. The lawsuit that Congressman Burton talked about or referred to was tossed out of court peremptorily by the judge, who said on two different occasions because they filed it two times, “Your case, gentlemen, is dismissed because you have failed to state a cause of action.” And I would apply that same argument to their position now, that somehow or other putting the games on is going to cause the Comcast company some kind of negative consequences. What will happen is they will then have the games of the Orioles and the Nationals, and they will make their fans happy, and the fans will see the Nationals and the Oriole games and be certainly grateful to you, gentlemen and ladies, for all that you have done to make that come about.

I urge you to put the pressure on them. They should put those games on now. Thank you.

[The prepared statement of Mr. Angelos follows:]

**TESTIMONY OF PETER G. ANGELOS**  
**Before the House Committee on Government Reform**  
**U.S. House of Representatives**  
**April 7, 2006**

Thank you for inviting me here to testify. The issue you are addressing today – Comcast’s refusal to distribute over its cable system productions of Washington Nationals games – is of great interest to baseball fans in this region who support both the Washington Nationals and the Baltimore Orioles. As President of Baltimore Orioles Inc., I am here to encourage you to do all that you can to facilitate the distribution of Washington Nationals games over pay television systems. I know it may seem paradoxical to you that the owner of the Orioles would want to help the Nationals get on television, but through a creative and far-sighted arrangement reached just over a year ago, Major League Baseball has developed a means through which both the Orioles and the Nationals have the best possible chance of thriving in this market. From that arrangement, which I will describe, the Orioles and Nationals prosper when both teams together succeed.

Before doing so, however, I need to give you a little legal background, and this is important only because Comcast has filed a meritless lawsuit against the Orioles, Major League Baseball, and the regional sports network that now televises Nationals games and a certain number of Orioles games (those shown on the over-the-air broadcasts). The Baltimore Orioles Inc. is the general partner in a legal



entity known as TCR Sports Broadcasting Holding, L.L.P., which in turn does business under the trade name, Mid Atlantic Sports Network, or MASN. I give you that background from the outset because I will be using MASN as a short hand for the regional sports network that produces and exhibits the Washington Nationals games. We have been trying to brand the Mid-Atlantic Sports Network name so that fans know where to look on their television schedule to find the games. But the legal entity that branded the MASN name is TCR. TCR is the regional sports network that we formed in 1996 to hold the production rights to televise Baltimore Orioles games and that was the contracting party when Major League Baseball transferred the rights to produce and exhibit Nationals games. I will refer to this regional sports network, however, as "MASN," because that is how it is known to the public.

Prior to Major League Baseball assigning the production rights to Nationals games to TCR/MASN, Comcast negotiated vigorously to obtain those production rights for itself. So there can be no doubt that Comcast views the televising of Nationals games as very attractive and profitable programming. But, for more than a year now, Comcast has refused to carry MASN's programming of Nationals games. It has sent letters to all of the cable and satellite distributors threatening them with lawsuits if they defied Comcast and carried the Nationals games. Comcast has sent letters to members of Congress falsely blaming me, the Orioles,

and Major League Baseball for being responsible for the majority of pay television subscribers in the Washington area not being able to watch the Nationals games. And Comcast's affiliated regional sports network, Comcast SportsNet, has filed a meritless lawsuit against the Orioles, Major League Baseball, and TCR for breach of contract – a lawsuit that has twice been dismissed in the state trial court where Comcast chose to file suit.

All of those actions were designed either to use Comcast's monopoly power to try to put MASN out of business or to weaken MASN so much that we had no choice but to give up an ownership interest to Comcast as a condition for getting distribution. In short, Comcast wants the rights to televise Nationals games for its own regional sports network, and it has used the most aggressive possible tactics to achieve that objective. Now it is holding Nationals fans hostage as a way to weaken MASN.

Comcast has never told us that the price for this programming is too high. Indeed, we have reached carriage agreements from DirecTV, Cox, Verizon FIOS, RCN, and Charter Communications, and we have offered Comcast the same reasonable terms that these other distributors have accepted. Those agreements will enable approximately 2 million pay television subscribers to see Nationals games. But Comcast will not even talk to us about distributing these games to the fans even though Comcast is the dominant cable television distributor in

Washington, D.C., and the immediately surrounding areas. We have now made five formal written offers to Comcast to carry MASN – including one this week. Comcast has not even dignified our communications with a response. Let me be clear: We have repeatedly offered the same terms to Comcast that smaller distributors have accepted. Comcast simply refuses to deal with us.

Comcast's actions are in direct violation of the Cable Television Consumer Protection and Competition Act of 1992, 47 U.S.C. § 536. That Act provides that the FCC "shall establish regulations governing program carriage agreements and related practices between cable operators or other multichannel video programming distributors and video programming vendors." 47 U.S.C. § 536. In particular, Congress provided that the regulations shall:

(3) contain provisions designed to prevent a multichannel video programming distributor from engaging in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or nonaffiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors.

47 U.S.C. § 536(a)(3). In 1993, pursuant to Congress's instructions, the Commission adopted rules to implement that provision. The relevant regulation is now codified at 47 C.F.R. § 76.1301(c), which states: "No multichannel video programming distributor shall engage in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to

compete fairly by discriminating in video programming distribution on the basis of affiliation or non-affiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors.”

There is no reasonable doubt that, if Comcast had obtained the rights to produce and exhibit Nationals games for Comcast SportsNet, those games would be available to Comcast subscribers. Indeed, only recently a two-team regional sports network or “RSN” was formed in Chicago, in which Comcast owns an equity position. That RSN easily obtained carriage from Comcast, but that RSN then doubled the rate charged to other competing satellite distributors such as DirecTV. It is thus clear that Comcast’s actions are in direct violation of the Cable Act and FCC regulations prohibiting discrimination on the basis of non-affiliation. Although we believe a clear remedy is available to us with the FCC, the Commission has thus far taken no action on a complaint that we filed on June 14, 2005. We urge you to communicate with the FCC to encourage the Commission to take prompt action in resolving our complaint.

Comcast’s actions and its proclivity to discriminate in ways that harm unaffiliated programmers and other competing video distributors make it especially inappropriate that Comcast should expand its monopoly. Yet that is precisely what Comcast seeks to do in purchasing the assets of Adelphia, the nation’s third largest cable operator, in conjunction with Time Warner. That acquisition would increase

Comcast's monopoly position in paid television in the Washington, D.C. region to the point where Comcast would have the same incentives and ability to discriminate as in other markets where it has control over marquee programming and a dominant position in distribution. In Philadelphia, for example, Comcast's regional sports network controls the Phillies, the Flyers, and the 76ers. Yet Comcast does not permit any rival distributor to carry that programming. Consequently, satellite penetration in Philadelphia is approximately half the national average, and cable prices have been increasing in Philadelphia at a faster rate than elsewhere in the country. Comcast should not be permitted to use its dominant position in distribution in the Washington market to bleed MASN into bankruptcy. As it did in Philadelphia, Comcast would then scoop up MASN's valuable programming assets for Comcast SportsNet and restrict other carriers from obtaining that access. We have urged the FCC not to allow Comcast to increase its monopoly position by acquiring the assets of Adelphia without substantial conditions that would protect unaffiliated regional sports networks and rival distributors. We urge you to make your views known to the Commission that Comcast's tactics are wrong and hurt consumers.

We did not seek to have conflict with Comcast. Our aim has simply been to run our business and to obtain a distribution agreement with Comcast. But the

Cable Act prohibits Comcast from insisting on control over programming or an ownership interest in a programming network as a condition of obtaining carriage.

I would like to explain how we got to this situation and why we believe that Comcast is engaging in anti-competitive actions that only harm baseball fans in this region. Quite simply, Comcast is trying as hard as it can to protect its monopoly on regional sports programming through its affiliated regional sports network, Comcast SportsNet. MASN is a competitor to Comcast SportsNet, and Comcast negotiated vigorously to obtain the production rights to Nationals games for itself. Comcast's refusal to deal with MASN reflects Comcast's unhappiness that MLB awarded these rights to TCR/MASN, and not to Comcast SportsNet. It also reflects an abuse of its market power to weaken a rival regional sports network that has the audacity to maintain its independence from Comcast. I submit to you that those are not good reasons to deny the fans of this area the opportunity to see their team on television.

In fact, at this point, it is not relevant why Major League Baseball entered into a contract with us to award the Nationals' television rights to TCR/MASN. What is relevant is that Comcast should do the right thing now and carry the games.

Nonetheless, I do want to explain why Comcast is simply wrong to assert that it offered a better deal for Comcast SportsNet to produce the Nationals games,

because that explanation will make it even clearer why Comcast is abusing its monopoly power. First, under a longstanding arrangement, each Major League team controls the pay television rights within a specified territory. In the Orioles' case, that territory encompasses the States of Maryland, Virginia, and Delaware, the District of Columbia, and parts of Pennsylvania, West Virginia, and North Carolina. The relocation of the Expos into the Orioles' television territory without any corresponding change in MLB's rules meant that the Orioles controlled the pay television rights for that team. When my ownership group paid a record \$173 million to purchase the Orioles in 1993, we recognized that this television territory was a very valuable asset of the franchise. In the intervening years since we bought the Orioles, it increasingly has become the trend for sports teams to form their own regional sports networks. Chicago has a regional sports network with both the Cubs and the White Sox as owners, and New York has four regional sports networks. Our aim was to find a way to do what other teams were doing.

A second reason this contract made sense for the Nationals was it made Major League Baseball, through a legal entity it has created, a part owner of the network. We have all assumed that, once the new owners of the Nationals are selected, MLB will have the option of selling its interest in TCR/MASN to the team's new owners. If that happens, the Nationals will have the best of all possible worlds – a guaranteed rights fee payment that places the Nationals in the top ten of

all major league teams, according to the Washington Post, plus a percentage of the profits of the network. Comcast offered only a rights fee to televise Nationals games, and not a percentage of the profits in its RSN, Comcast SportsNet. Consequently, the profit sharing component of this contract is potentially very lucrative for the Nationals.

Third, even the rights fee aspect of this contract is better for MLB, the Nationals, and the Orioles than what Comcast has offered. Last year, we paid the Nationals \$20 million to televise their games, which is more than Comcast SportsNet paid us to televise Orioles games. The agreement provides a mechanism to revalue the rights fees at a market-based rate through an MLB committee in the event TCR/MASN and the Nationals are not able to agree on a new contract. The benefits of that arrangement to both the Nationals and Orioles cannot be overstated. It guarantees each team a market rate as evaluated and set by a neutral third party determined by Major League Baseball.

I want to close by stressing that we are doing all we can to make the Nationals games available for all the fans in this region. We have worked tirelessly to produce and exhibit those games and to reach out to distributors to carry those games. Comcast has the power to make these games available to more than 1 million subscribers with just the flick of a switch. We have made good-faith offers to Comcast to carry our programming and we stand ready to consider any



reasonable counterproposals it offers. But it is completely intolerable for Comcast to abuse its monopoly power by refusing to carry programming that baseball fans throughout the region want to see.

Thank you, Mr. Chairman.

Chairman TOM DAVIS. Thank you very much, Mr. Angelos. Mr. Cohen, thank you for being with us.

**STATEMENT OF DAVID L. COHEN**

Mr. COHEN. Thank you very much, Mr. Chairman, and thank you for providing us the opportunity to testify here today. Let me start by making a clear and unmistakable point. We at Comcast are fans of the Washington Nationals, we want to carry as many of the teams' games as possible, and we are absolutely committed to solving the current dilemma.

It is also important to note that Comcast has always supported the return of Major League Baseball to the Washington, DC, area. This position distinguished us from the Baltimore Orioles, which apparently believed that a Washington baseball team would result in a loss of fans and television revenue and, therefore, would reduce the value of that team. It is certainly Mr. Angelos' right to advocate on behalf of the economic interests of the Orioles, and that is properly a matter that should have been resolved between MLB and the Orioles.

The problem that confronts us today began when MLB came up with its very odd solution to this problem. It is what I refer to as "the original sin" in this entire episode. You see, MLB chose to compensate the Orioles by giving the team control of the Nationals' local television rights. This was the first time in history of which we are aware that a team's rights have been handed over to a rival franchise.

Now, Comcast is agnostic as to whether or not MLB owes the Orioles compensation as a result of the relocation of the Nationals. But we do object to how MLB has chosen to compensate the Orioles—by assigning the television rights of the Nationals to that competing franchise. By doing this, MLB has tried to foist onto D.C. cable customers, your constituents, Mr. Chairman, their obligation to compensate the Orioles. That is unfair to our customers, and it is just plain wrong. Let me explain.

The Orioles and MLB have created a new regional sports network, MASN, which is trying to charge satellite and cable providers more than \$2 a month per subscriber once MASN is carrying Nationals and Orioles games. This charge is for a channel that has no programming right now other than the Nationals games. Even today, 1 year after its launch, MASN offers no sports newscasts, no college games, and no other sports contests. In fact, for nearly 8,000 hours a year, MASN offers nothing but a dark screen. It is no wonder that Communications Daily reported last week that independent analysts believe that MASN is asking too much for carrying the network.

What does this mean for Washington area consumers? Only this: Over the next decade, assuming that cable and satellite companies pass along these increased programming costs to their customers, as Cox has pointed out it will have no choice but to do, this arrangement will transfer more than \$600 million from Comcast customers and your constituents and more than \$1.3 billion from all D.C. area cable customers to a business that is controlled and majority-owned by the Orioles.

Of course, at the same time that this assignment of the television rights to the Orioles hurts our customers, we believe that it also hurts the Nationals. According to MASN's own Web site, and as Mr. Angelos confirmed today, the network paid only \$20 million to the Nationals last year, and I gather this year. This is well below what we believe the market rate is. And we know this because we offered to pay more for those rights. And I would suggest to you that the only way you can set a market rate is to have those rights being made available on the market and to see what people would agree to pay for them. A mechanism by which the Nationals can appeal to Major League Baseball if they do not like the rights fees they are getting is not a market rate adjustment and does not guarantee the Nationals a market rights fee over the life of the franchise.

Even more unbelievable, though, is that the rights deal states that, at least until 2011, the Orioles will not get less for its TV rights than the Nationals, contractually eliminating the real differences in the value of the Washington market, which is the 8th ranked DMA in the country, from the Baltimore market, which is the 24th ranked DMA in the country.

Moreover, we believe that this deal creates a real and substantial conflict of interest. Last year, by way of example, the Orioles negotiated over-the-air broadcast deals that did not provide the Nationals with carriage in many D.C. suburbs and in certain Baltimore markets, while negotiating deals for the Orioles that included all homes in the D.C. and Baltimore markets. And this year, it was the Orioles, not Comcast, that decided to slash the number of Nationals games on over-the-air broadcast television from 81 to 39 games. That is how we find ourselves here today. But we are not here to assign blame. We are here to help find a solution.

We have suggested that Major League Baseball and Mr. Angelos do what is right for the Nationals, for their fans, for our customers, and for your constituents. They should return control of the Nationals television rights to the Nationals, their rightful owner. Let the team engage in a process for the sale of its local television rights in which all legitimate telecast partners are invited to make proposals. MASN can participate in this process, as can Comcast SportsNet and any other regional sports net that might want to do business in this market. If MLB's owners believe that their colleague deserves compensation, let them pay him directly rather than shifting this burden to cable and satellite customers and to your constituents.

If the parties will agree to this solution, Comcast will immediately begin televising all Nationals games that are available for local cable broadcast. We have also offered the Nationals an additional rights fee equal to what MASN is paying the team, I learned today \$20 million this year, for the non-exclusive rights along with MASN to televise these games this year while this gets worked out. The fans will benefit because all of the games will be on television, and the Nationals will prosper through a doubling of their rights fee as they deserve to. We have to find a solution that is in the best interest of all the parties to this situation. In our view, that requires undoing the original sin of the disinheritance of the Nationals of their TV rights. Our proposal will get the Nationals games

on the air fast. It will give the Nationals fair market value for the team's local cable rights. And it will allow Major League Baseball and the Orioles to work out their issues in a way that does not pick the pockets of our customers. That, Mr. Chairman, to borrow a baseball analogy, would be a grand slam.

Thank you very much.

[The prepared statement of Mr. Cohen follows:]

**TESTIMONY OF  
DAVID L. COHEN  
EXECUTIVE VICE PRESIDENT  
COMCAST CORPORATION**

**BEFORE THE  
U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON GOVERNMENT REFORM  
APRIL 7, 2006**

Mr. Chairman, Ranking Member, and Members of the Committee:

Thank you for providing us the opportunity to testify here today.

Let me start by making a clear and unmistakable point: we, at Comcast, are fans of the Washington Nationals, we want to carry as many of the team's games as possible, and we are absolutely committed to solving the current dilemma. As you may have heard, we have proposed a solution to Major League Baseball (MLB) which we hope will get a full review and will serve as a basis to resolve this situation once and for all. A copy of our proposal is attached to this testimony.<sup>1</sup>

It is also important to note that Comcast has always supported the return of major league baseball to the Washington D.C. area. This position distinguishes us from the Baltimore Orioles, which consistently opposed the return of baseball to Washington. The Orioles apparently believed that a Washington baseball team would result in a loss of fans and television revenue and, therefore, would reduce the value of that team. For instance, Peter Angelos told the Associated Press on March 13, 2005 that a Washington baseball team would have a "profound adverse impact" on the Orioles. On July 24, 2004, the Associated Press quoted Mr. Angelos as saying that a Washington baseball team would cost the Orioles \$40 million a year. It is certainly Mr. Angelos' right to advocate on behalf of the economic interests of the Orioles. And this is properly a matter that should have been resolved between MLB and the Orioles.

The MLB Deal With Mr. Angelos Will Impose Substantial Costs On Consumers.

The problem that confronts us today began when MLB came up with its very odd solution to this problem – it's what I refer to as the "original sin" in this entire episode.

MLB chose to compensate the Orioles by giving the team control of the Nationals' local television rights – the first time in history, of which we are aware, that a team's rights

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<sup>1</sup> See Letter from Stephen B. Burke, President, Comcast Cable Communications, to Allan H. (Bud) Selig, Commissioner, Major League Baseball (Apr. 6, 2006) (attached hereto as Exhibit A).

have been handed over to a rival franchise.<sup>2</sup> There was no sale process to protect the Nationals' interests.<sup>3</sup> The usual market-based procedures for licensing a team's rights were cast aside.

Comcast is agnostic as to whether or not MLB owes the Orioles compensation as a result of the relocation of the Nationals to the Washington area. But we do object to how MLB has chosen to compensate the Orioles -- by assigning the television rights of the Nationals to the Orioles. By doing this, MLB has tried to foist onto D.C. area cable customers -- your constituents, Mr. Chairman -- the obligation that they believed they had to compensate the Orioles. That is unfair to our customers and it's just plain wrong. Let me explain.

The Orioles and MLB have created a new regional sports network -- Mid-Atlantic Sports Network (MASN). MASN is trying to charge satellite and cable providers more than \$2 a month per subscriber once MASN is carrying Nationals and Orioles games.<sup>4</sup> This charge is for a channel that has no programming right now other than Nationals games and --if the Orioles succeed in violating the team's current contract with Comcast SportsNet Mid-Atlantic (CSN) -- Orioles games. Even today, one year after its launch, MASN offers no sports newscasts, no college games, and no other sports contests.<sup>5</sup> In fact, for nearly 8,000 hours a year, MASN offers nothing but a dark screen. It is no wonder that *Communications Daily* reported last week that independent analysts, such as Bruce Leichtman, believe that MASN is asking "too much" for carrying its network.<sup>6</sup>

What does this mean for Washington area consumers? Only this -- over the next decade, assuming the cable and satellite companies pass along these increased programming costs to their customers, this arrangement will transfer more than \$600 million from Comcast customers -- and more than \$1.3 billion from all D.C. area cable customers -- to a business that is controlled, and majority owned, by the Orioles.

The MLB Deal With Mr. Angelos Does Not Serve The Interests Of The Nationals Or Their Fans.

Of course, at the same time that this assignment of the television rights to the Orioles hurts our customers, it also hurts the Nationals. According to MASN's own website, the

<sup>2</sup> See Jayson Stark, *Stark: Rumbblings & Grumbblings*, ESPN.com (Apr. 30, 2005) ("It's hard to think of any franchise that has its games televised by a network controlled by another team. But maybe that's because there aren't any.").

<sup>3</sup> See Andrew Zimbalist, *In the Best Interests of Baseball? The Revolutionary Reign of Bud Selig* 183-188 (2006) (describing MLB's negotiations with Mr. Angelos).

<sup>4</sup> "Prices such as MASN wants more commonly are associated with ESPN and other national sports networks[.]" Josh Wein & Jonathan Make, *MASN Seen Retreating on High Comcast Carriage Fee*, Comm. Daily, Mar. 29, 2006, at 9-10.

<sup>5</sup> See Mike Reynolds, *Hard Ball: Regional Nets at Bat in Baseball Battles*, Multichannel News, Mar. 27, 2006 (noting that MASN only shows Nationals games and pre- and post-game shows).

<sup>6</sup> Josh Wein & Jonathan Make, *MASN Seen Retreating on High Comcast Carriage Fee*, Comm. Daily, Mar. 29, 2006, at 9-10.

network paid only \$20 million to the Nationals in 2005.<sup>7</sup> This is well below what we believe the market rate is. We know this because we offered to pay more for the rights. And, unbelievably, the rights deal states that, at least until 2011, the Orioles will not get less for its TV rights than the Nationals – placing an added constraint on what MASN will be willing to pay for the Nationals' TV rights and contractually eliminating the real differences in the value of the Washington market compared to the Baltimore market – all only for the benefit of the Orioles.<sup>8</sup>

Moreover, we believe this deal creates a real and substantial conflict of interest. Because the Orioles control their rival's TV exposure, and as the Orioles have stated that the Washington team will harm the Orioles' financial interests, the Orioles have every natural incentive to promote themselves while limiting the exposure and growth of the Nationals' fan base.

Last year, for instance, the Orioles negotiated over-the-air broadcast deals that did not provide the Nationals with carriage in many D.C. suburbs and in certain Baltimore markets, while negotiating over-the-air broadcast deals for the Orioles that included *all* homes in the D.C. and Baltimore markets.<sup>9</sup> And this year, it was the Orioles – not Comcast – that decided to slash the number of Nationals games on over-the-air broadcast television from 81 to 39 games.<sup>10</sup>

MASN Is The Product Of A Breach Of Comcast Sports Net's Contractual Rights To Orioles' Baseball Games.

As noted, MLB's agreement with Mr. Angelos included the TV rights to the Nationals. Mr. Angelos, in turn, used those rights to create MASN with MLB. But, because regional sports networks (RSNs) typically will not survive with TV rights to only one major league team, Mr. Angelos wanted to package the Nationals' TV rights with the Orioles' TV rights.<sup>11</sup> However, those rights belong to CSN. Specifically, CSN has carriage rights for the Orioles through the 2006 season. CSN also has an exclusive right to negotiate for the extension of that agreement and, after the period of exclusivity expires, the right to match any offer from a "third party" for the Orioles' TV rights. (In

<sup>7</sup> See MASN, *Frequently Asked Questions*, at <http://www.masn.tv/faqs/> (visited Apr. 5, 2006).

<sup>8</sup> See Exhibit B, Section 2.G. The MLB agreement with Mr. Angelos to create MASN is attached hereto as Exhibit B. This is the redacted version of the agreement that TCR (an Orioles-owned entity) filed with the FCC as an exhibit to its program carriage complaint against Comcast. Comcast has never seen an unredacted version of this agreement.

<sup>9</sup> See Childs Walker, *Annoyed Fans Stay Tuned to TV Talks*, Balt. Sun, Apr. 16, 2005 (noting the lack of broadcast carriage of Nationals games in the Baltimore market); Ed Waldman, *Orioles, MLB Reach Tentative Deal On TV Network To Show Nationals*, Balt. Sun, Mar. 31, 2005 (same).

<sup>10</sup> Compare Thomas Heath, *Nats to Have Fewer Games Over the Air*, Wash. Post, at E1, Feb. 24, 2006 (noting that 81 Nationals games were broadcast in the 2005 season), with Washington Nationals, *Broadcast Schedule*, at <http://washington.nationals.mlb.com/NASApp/mlb/was/schedule/broadcast.jsp> (last visited Apr. 4, 2006) (indicating that 39 Nationals games will be broadcast in the 2006 season).

<sup>11</sup> See Exhibit B.

1996, CSN's predecessor, Home Team Sports, paid a premium price to secure these provisions in the contract.)

Notwithstanding these contractual requirements, Mr. Angelos agreed to license the Orioles' TV rights after 2006 to MASN for the same license fees paid to the Nationals for its rights. CSN filed a breach of contract claim in Maryland Circuit Court last May.<sup>12</sup> The court sided with the Orioles in the first round of litigation (on the grounds that MASN was not a "third party" under the contract, but rather a registered trade name of TCR, another Orioles-owned entity that handles telecast licensing for the Orioles). The case is now on appeal to Maryland's highest court. The case will be briefed and argued this summer and fall. Comcast firmly believes that its contractual rights with respect to the Orioles will be vindicated on appeal.

MASN's Program Carriage Complaint At The FCC Is Without Merit.

We also want to touch on the program carriage issues that have been raised regarding MASN. As the Committee knows, last June, TCR filed a complaint with the FCC, alleging that Comcast violated the FCC's program carriage rules.<sup>13</sup> TCR made two basic claims in its complaint. First, it alleged that Comcast demanded an equity interest in MASN as a condition of carriage. In particular, TCR claimed that Comcast had made these demands for equity through Steve Greenberg, an investment banker with Allen & Company, who was hired by MLB to develop various RSN proposals involving the Nationals' telecast rights prior to MLB's agreement with Mr. Angelos. Second, TCR alleged that Comcast discriminated against MASN on the basis of affiliation in refusing to carry MASN while carrying CSN.

As Comcast detailed in its answer to the complaint last July, TCR's claims are without merit.<sup>14</sup> As to the first claim, Comcast denied that it ever demanded an equity interest in TCR or MASN. It also noted that Allen & Co. had sent the FCC two letters expressly denying TCR's accusations that Steve Greenberg had secretly operated on Comcast's behalf to demand that TCR give Comcast a financial interest in MASN.<sup>15</sup> In fact, Mr. Greenberg acted solely on behalf of MLB.

<sup>12</sup> See *Comcast SportsNet Mid-Atlantic, L.P., Plaintiff, v. Baltimore Orioles L.P., TCR Sports Broadcasting Holding, L.L.P., Major League Baseball, Mid-Atlantic Sports Network*, First Amended Complaint, Civ. Action No. 260751-V (Md. Cir. Ct. filed May 24, 2005).

<sup>13</sup> See *In the Matter of TCR Sports Broadcasting Holding, L.L.P. v. Comcast Corporation*, Carriage Agreement Complaint, File No. CSR-6911-N (June 14, 2005).

<sup>14</sup> See *In the Matter of TCR Sports Broadcasting Holding, L.L.P. v. Comcast Corporation*, Answer of Comcast Corporation, File No. CSR-6911-N (July 14, 2005) ("Answer"). Comcast's Answer is attached hereto as Exhibit C.

<sup>15</sup> See Letter from Richard R. Zaragoza, Counsel for Allen & Company, to the Hon. Kevin J. Martin, Chairman, Federal Communications Commission (July 11, 2005); Letter from Richard R. Zaragoza, Counsel for Allen & Company, to the Hon. Kevin J. Martin, Chairman, Federal Communications Commission (July 13, 2005). These letters from Allen & Company to the FCC are attached hereto as Exhibit D.



As to the second claim, Comcast noted, among other things, that:

- Comcast has numerous legitimate business reasons for not carrying MASN (such as the high price for MASN and the lack of programming on the network, other than the Nationals games).
- Comcast has a proven track record of carrying unaffiliated RSNs in markets where it also had affiliated RSNs, including Atlanta, Chicago, New York, Boston, the Bay Area, and South and Central Florida, so claims of anti-competitive conduct are untrue. Comcast has no financial interest in over 90% of the programming we carry and most of the sports programming we carry is unaffiliated.
- Other MVPDs, such as Time Warner, Adelphia, and EchoStar, have also elected not to carry MASN either and clearly made their decisions for reasons unrelated to affiliation.
- The carriage agreements that MASN offered to Comcast were long-term carriage contracts that included the carriage of future Orioles' games, notwithstanding that MASN's asserted rights to these games were acquired in violation of the Orioles' existing contract with CSN.
- Comcast does not have the power to unreasonably restrain the ability of MASN to compete fairly. First, MASN overstated Comcast's position in MASN's service area, which extends from Harrisburg, Pennsylvania to Charlotte, North Carolina. Comcast pointed out that it serves less than 30% of TV households in that service area (*i.e.*, 1.9 million out of 6.3 million TV households). Second, Comcast noted that there are multiple actual and potential competing distributors of Nationals' games in the Washington market, and that DirecTV, Verizon, and RCN had agreed to carry MASN.<sup>16</sup>

The complaint is still pending at the FCC. Comcast has asked that the complaint be dismissed with prejudice.

MLB Bears Significant Responsibility For Creating This Unfair Situation And Is Uniquely Positioned To Help Resolve It.

Comcast is not here today to assign blame. We're here to find a solution that is in the best interests of the Nationals, their fans, and all consumers, that allows Mr. Angelos to protect his legitimate interests, and that gets the Nationals' games televised.

Thus, Comcast has stepped up to the plate with the following proposal, which can solve the impasse immediately.

<sup>16</sup> As detailed in Comcast's Answer, MASN itself has acknowledged that the distribution deals it had already struck with DirecTV and others fully addressed its foreclosure concerns. *See* Answer ¶ 52 (quoting MASN officials about deal with DirecTV).

We have suggested that MLB and Mr. Angelos return control of the Nationals' television rights to the Nationals, their rightful owner. Let the team engage in a process for the sale of its local television rights in which all legitimate telecast partners are invited to make proposals, like any good business would do. MASN can bid on those rights, as can CSN and any other regional sports network or broadcast television station. If MLB's owners believe their colleague Mr. Angelos deserves compensation, let them pay him directly – rather than shifting this burden to cable and satellite consumers, and to vast numbers of your constituents. Our proposal will ensure that the Nationals get the full market value for the team's television rights so that the new owner can build and maintain a competitive team, and that Mr. Angelos and the Orioles receive the compensation that they may deserve from MLB.

If MLB will agree to this solution, Comcast will immediately begin televising all Nationals games that are available for local cable broadcast. We have also offered the Nationals an additional rights fee – equal to what MASN is paying the team – for the *non-exclusive* rights (along with MASN) to televise these games this year. This will give the Nationals twice the rights fee that they are getting this season, plus a fair market deal going forward. The fans will benefit because all of the games will be on television, and the Nationals will prosper, as they deserve to. The new owners of the Nationals – and we hope they are announced soon – deserve nothing less.

We have to find a solution that is in the best interests of all the interested parties. It means undoing the “original sin” of the disinheritance of the Nationals of their TV rights. Instead, the free market should be left to work unconstrained by the artificial situation created by MLB.

Our proposal will get the Nationals' games on the air fast, give the Nationals fair-market value for the team's local cable rights, and allow MLB and the Orioles to work out their issues in a way that does not raid the wallets of our customers. That, Mr. Chairman, would be a grand-slam.

Thank you for this opportunity to testify today.

**EXHIBIT A  
TO  
TESTIMONY OF  
DAVID L. COHEN  
EXECUTIVE VICE PRESIDENT  
COMCAST CORPORATION**

**BEFORE THE  
U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON GOVERNMENT REFORM**



Comcast Corporation  
1500 Market Street  
Philadelphia, PA 19102-2148

April 6, 2006

**Via Telecopier and First Class Mail**

Mr. Allan H. (Bud) Selig  
Commissioner  
Major League Baseball  
245 Park Avenue, 31<sup>st</sup> Floor  
New York, NY 10167

**Re: Washington Nationals Baseball**

Dear Commissioner Selig:

As you know, Comcast has had a long-standing interest in supporting the return of Major League Baseball (MLB) to Washington and in carriage of the Nationals games.

We are a major distributor of MLB games through our various regional sports networks, including Comcast SportsNet Mid-Atlantic. We pride ourselves on offering our customers the best in television sports and entertainment, and we consider our significant partnership with MLB teams to be an integral part of that offering. In addition, we distribute MLB's out-of-market baseball package, *Extra Innings*, in Comcast systems serving over 20 million customers and carry numerous other baseball teams' games through relationships with many other unaffiliated regional sports networks.

In Washington and Baltimore, however, our customers will be unable to watch many of the games of the Washington Nationals. This unfortunate result has occurred because MLB has taken the unprecedented step of granting to a competing team's owner control over the local broadcast television rights of the Nationals, apparently in perpetuity. We are not aware of a similar situation anywhere else in major league baseball, or in any other professional sport, for that matter. As a result of this unique arrangement, MLB has declined to offer Comcast the opportunity even to make an offer to acquire the local cable television rights to the Nationals' games at any price. Rather, the rights to televise the games were granted to Mid-Atlantic Sports Network (MASN) without any consideration of other buyers' interest. MASN is a network formed by the Baltimore Orioles and MLB that has yet to reach full distribution in the marketplace. (In fact, MASN does not even have a full-time programming schedule today -- either during the baseball season or for the rest of the year.) In addition, those rights were

Mr. Allan H. (Bud) Selig  
April 6, 2006  
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granted to MASN at what we believe is a below-market rights fee to the Nationals (a rights fee lower than that which we were willing to pay), thereby depriving the new Washington team of critical revenues it needs to compete effectively in the market.

This situation has been detrimental not only to MLB and the Nationals, but also to the residents who live in the territory of the Washington Nationals, including Washington and Baltimore. For example, as a result of this structure, Peter Angelos, as owner of the competing Baltimore Orioles franchise, has been put in the position to control how many Nationals games are carried on over-the-air broadcast television and in which segments of the market.

In an attempt to do what is best for your fans and our customers, we would like to propose a resolution that allows the games of the Nationals to be seen across the Nationals' territory immediately and that ensures that the Nationals and their fans are treated fairly and equitably in the future. This proposal is as follows:

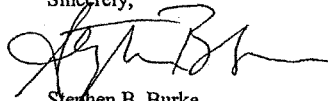
1. MLB and Mr. Angelos should agree to terminate their current arrangement and enter into an alternative compensation arrangement as you deem appropriate – financed by your owners and not by the fans and our customers. You can then return the local television rights for the Nationals to the team and the new owner of the team can commit to a process for the sale of the Nationals' television rights in which all legitimate telecast partners (including MASN and Comcast SportsNet) would be invited to make proposals. This will ensure that the Nationals – like every other team in MLB – is in control of its own local television rights and that the team receives a market rate for those rights.
2. Should the above actions take place, Comcast will agree to carry all of the Nationals games that are available for local cable broadcast for this season, effective immediately. We will carry the games on Comcast SportsNet, CN8, or another available cable channel. In this way, all of the fans in the market will have immediate access to all Nationals games while the long-run solution outlined above is put into place.
3. In exchange for these rights, Comcast is prepared to pay to the Nationals a rights fee for this season equal to the rights fee being paid by MASN for the *non-exclusive* rights to carry Nationals games as part of this interim arrangement. This offer will enable MASN to continue its carriage of the Nats and will also double the rights fee being earned by the Nationals this year.
4. Comcast is prepared to take the MASN feed of Nationals games, to take a MLB feed of those games, or to produce the games itself.

Mr. Allan H. (Bud) Selig  
April 6, 2006  
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We believe that this proposal is in the best interests of all parties and especially is in the best interests of your fans and our customers.

We look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "S. B. Burke", written over a horizontal line.

Stephen B. Burke  
President, Comcast Cable

**EXHIBIT B  
TO  
TESTIMONY OF  
DAVID L. COHEN  
EXECUTIVE VICE PRESIDENT  
COMCAST CORPORATION**

**BEFORE THE  
U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON GOVERNMENT REFORM**

**REDACTED VERSION****AGREEMENT BY AND AMONG THE OFFICE OF THE COMMISSIONER OF  
BASEBALL D/B/A MAJOR LEAGUE BASEBALL, TCR SPORTS BROADCASTING  
HOLDING, L.L.P., BASEBALL EXPOS, L.P. D/B/A WASHINGTON NATIONALS  
BASEBALL CLUB, AND THE BALTIMORE ORIOLES LIMITED PARTNERSHIP**

This Agreement ("Agreement"), is made as of the 12<sup>th</sup> day of March, 2005 (the "Effective Date"), by and among the Office of the Commissioner of Baseball d/b/a Major League Baseball (hereinafter "Major League Baseball" or "MLB"), TCR Sports Broadcasting Holding, L.L.P. (hereinafter "TCR" or "RSN"), Baseball Expos, L.P. d/b/a Washington Nationals Baseball Club ("Nationals"), and the Baltimore Orioles Limited Partnership ("BOLP") to provide for the unified telecast of Orioles' and Nationals' baseball games within the defined Television Territory; to guarantee BOLP a minimum franchise sales price; and other agreements; and

WHEREAS, the Orioles' home television territory, as recognized by the parties to this Agreement, is geographically defined and includes the entire states of Maryland, Virginia, Delaware, the District of Columbia and certain counties in West Virginia, Central Pennsylvania and Eastern North Carolina as more particularly set forth in Exhibit A ("Television Territory"); and

WHEREAS, in 2001, the Orioles and TCR established the Orioles' Television Network ("O's TV") as a platform for the Orioles' regional sports network to serve the Orioles' Television Territory; and

WHEREAS, in December 2004, the MLB Clubs approved, over the objection of BOLP, the relocation of the Montreal Expos Baseball Club to Washington, D.C., pursuant to a vote of the member Clubs; and

WHEREAS, the parties hereto desire to resolve various issues and to provide for the presentation and telecast of all available Nationals' baseball games in the Television Territory through a regional sports network along with all available Orioles' baseball games, unifying the games of both Clubs for telecast throughout the entire Television Territory; and

WHEREAS, the parties desire to express their mutual agreements, covenants, promises and understandings in a written agreement; and

NOW THEREFORE, in consideration of mutual promises of the parties hereto, each to the other, and for good and valuable considerations, receipt of which is hereby acknowledged, it is mutually agreed by and among the parties hereto as follows:

Section 1. Franchise Asset Valuation Protection **REDACTED**

Section 2. Regional Sports Network

2.A. General – The Regional Sports Network: TCR, through O's TV, currently serves as the foundation for the Orioles' regional sports network. TCR will be the basis for the regional sports network that will have the sole and exclusive right to present any and all of the Nationals' and the Orioles'



**REDACTED VERSION**

baseball games not otherwise retained or reserved by Major League Baseball's national rights agreements, including all preseason, regular season and postseason games (if applicable and available) (hereinafter "Available Games"), for each of the Nationals and the Orioles (through cable, satellite, over-the-air television, or such other technology as may then be generally allowed by Major League Baseball; hereinafter "telecast") and all ancillary programming related to the Nationals and the Orioles throughout the Television Territory through the medium of the RSN described in this Agreement.

- 2.B. TCR To Be Renamed: The Orioles agree that TCR will take appropriate steps to register the name Mid-Atlantic Sports Network ("MASN") as the d/b/a name of the RSN, or such other name as may be selected, as soon as practicable. TCR, however, will remain as the entity, for all legal purposes, through which the Orioles' and the Nationals' games will be telecast.
- 2.C. Radio Rights Excluded: For all purposes of this Agreement, all revenues and costs related to the radio broadcast of the Orioles' games by and through TCR shall be allocated specially to BOLP and shall not be taken into account as revenue, costs or valuation of the RSN for purposes of this Agreement but shall be imputed to the Orioles for Major League Baseball revenue sharing purposes. The RSN shall have no radio broadcast rights to the Nationals' games.
- 2.D. Sole And Exclusive Right To Telecast All Available Orioles' And Nationals' Games: TCR shall have the sole and exclusive right and the obligation to telecast, using commercially reasonable efforts, all Available Games of the Orioles and the Nationals and all ancillary programming related to the Orioles and the Nationals throughout the Television Territory through the medium of the RSN as described in this Agreement. The Nationals shall grant and license the right and the obligation to the telecast of their Available Games to the RSN. The Orioles shall grant and license the right and the obligation to the telecast of their Available Games to the RSN. The Nationals and the Orioles may not telecast any of their Available Games other than through the RSN nor in any television territory other than the geographically defined Television Territory referenced in this Agreement. The Nationals and TCR shall enter into a mutually acceptable rights agreement, incorporating the terms set forth in this Section and other customary terms and conditions, ordinarily included in a rights agreement, including, without limitation, the MLB Local Telecast Regulations Required Language for Local Telecast Agreements. Major League Baseball will not provide, allocate or otherwise assign to the Nationals any television territory independent, separate or distinct from the Television Territory served by the RSN and as described in Exhibit A. It is expressly understood and agreed, however, that for 2005 and 2006, certain of the Orioles' games are currently under contract to a third party cable distributor and those games are not available for telecast by the RSN until 2007. The telecast rights of those

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Orioles' games which are available in 2005 and 2006 for telecast and not contracted to a third party cable distributor shall be granted and licensed to the RSN for over-the-air telecasts, or as otherwise permitted as a reservation of rights in the Orioles' third party cable contract. In any given year, after consultation with the Nationals and the Orioles, TCR shall determine the number of Available Games of the Nationals and the Orioles that it shall telecast. TCR shall telecast as many of the Available Games of the Nationals and the Orioles as it determines is commercially reasonable in that year. Unless otherwise prevented by an event covered by the provisions of Subsection 11. J., as soon as the RSN is "fully operational" (anticipated to be in 2007), in each season thereafter, TCR shall telecast no less than 95 of each of the Nationals' and the Orioles' regular season Available Games. The grant of rights by the Nationals and the Orioles set forth in this Section shall be subject to the applicable Major League Baseball Local Telecast Regulations, and shall be deemed to include the "Required Language for Local Telecast Agreements" as set forth in such regulations. Notwithstanding the foregoing, it is agreed that the Television Territory to be served by the RSN on behalf of the Orioles and the Nationals is and shall be as defined in Subsection 2.F. The Orioles and the Nationals each shall have the right to approve the RSN's selection of the game announcers for their respective telecasts. Such approval may not unreasonably be withheld. Notwithstanding the preceding two sentences, the Nationals and the Orioles shall have the right to employ their game announcers at their expense, subject to the approval of the RSN, which shall not be unreasonably withheld. The RSN shall provide the Nationals and the Orioles with all reasonable and customary production values for the telecasts of their games.

- 2.E. Orioles And Nationals – Cooperation With Regional Sports Network: The Nationals and the Orioles shall cooperate with the RSN in the sale, promotion and distribution of their games for telecast by the RSN, including providing all customary promotional and marketing materials and tools necessary for the generation of revenue for the RSN.
- 2.F. Applicable Television Territory: The Television Territory to be served by the RSN, on behalf of the Orioles and the Nationals, is and shall be the Television Territory as reflected in Exhibit A, attached hereto and incorporated by reference herein. This Subsection shall be a material and essential element of this Agreement.
- 2.G. Rights Fees: The Nationals and the Orioles shall be paid an annual rights fee from the RSN. For the telecast of its games, the Nationals shall be paid its rights fees, commencing in 2005, as follows: **REDACTED** in 2005; **REDACTED** in 2006. During 2005 and 2006, only, for the telecast of its games on over-the-air television, or otherwise permitted as a reservation of rights in the Orioles' third party cable contract, the Orioles shall be paid a rights fee of up to **REDACTED** per game for each game telecast in 2005 and a rights fee of up to **REDACTED** per game for each game telecast in 2006.

**REDACTED VERSION**

Subject to the foregoing, for 2005 and 2006 only, the amount of the Orioles' rights fees shall be agreed upon between TCR and the Orioles. Thereafter, and beginning in 2007, for the telecast of their games, the Orioles and the Nationals shall each be paid **REDACTED** per year for the next four successive years escalating at a non-compounded **REDACTED** rate. The Orioles and the Nationals will, therefore, be paid the following rights fees: in 2007, **REDACTED** each; in 2008, **REDACTED** each; in 2009, **REDACTED** each; in 2010, **REDACTED** each; in 2011, **REDACTED** each. To the extent that the Orioles and/or the Nationals do not actually play five or more regular season games that are scheduled for telecast by the RSN in any given year, the rights fee for that year shall be reduced by an amount equal to the product of (i) the rights fee payable multiplied by (ii) a fraction, the numerator of which is the number of regular season games not played and the denominator of which is the number of regular season games scheduled to be played.

- 2.H. Payment Of Rights Fees: Unless otherwise agreed to by the Nationals, the Orioles and TCR, for 2005, the applicable rights fee payment for the Orioles and the Nationals shall be made in four equal installments as follows: June 15, 2005; July 15, 2005; August 15, 2005 and September 15, 2005. Unless otherwise agreed to by the Nationals, the Orioles and TCR, for 2006, the applicable rights fee payment shall be made in four equal installments as follows: June 15, 2006; July 15, 2006; August 15, 2006 and September 15, 2006. Unless otherwise agreed to by the Nationals, the Orioles and TCR, in 2007 and thereafter, all rights fee payments shall be made in four equal installments in each year as follows: April 1; June 1; August 1 and September 1.
- 2.I. Future Rights Fees Determination: After 2011, and for each successive five year period, the Orioles, the Nationals and the RSN first shall negotiate in good faith using the most recent information available which is capable of verification to establish the fair market value of the telecast rights licensed to the RSN for the following five year period.
- 2.J. Rights Fees Dispute Resolution Mechanism: For any dispute regarding the determination of rights fees pursuant to Subsection 2.I., the dispute resolution mechanism shall be as follows:
- 2.J.1. Mandatory Negotiation Period: In the event that the Nationals and the RSN, or the Orioles and the RSN, are unable to agree on the fair market value of their respective rights within thirty (30) days or a mutually-agreed upon longer period of time (the "Negotiation Period"), the relevant parties shall follow the procedures set forth in this Subsection to establish the fair market value of the rights licensed to the RSN (the "Rights").
- 2.J.2. Mediation: In the event that the Nationals and RSN are unable to timely establish the fair market value of the Rights by negotiation as

**REDACTED VERSION**

set forth above, then the parties agree to enter into non-binding mediation. The mediation shall be held at a mutually agreeable place and shall be conducted under the auspices of the American Arbitration Association or JAMS.

2.J.3. Appeal: In the event that the Nationals and/or the Orioles and RSN are unable to timely establish the fair market value of the Rights by negotiation and/or mediation as set forth above, then the fair market value of the Rights shall be determined by the Revenue Sharing Definitions Committee ("RSDC") using the RSDC's established methodology for evaluating all other related party telecast agreements in the industry. The fair market value of the rights established pursuant to this Subsection for the relevant five year period, or such shorter time as may be agreed to by the parties, shall be final and binding on the Nationals and the RSN, and the Nationals and the RSN may seek to vacate or modify such fair market valuation as established by the RSDC only on the grounds of corruption, fraud or miscalculation of figures. Beginning in 2007, the Orioles and the Nationals shall be paid the same rights fees by the RSN.

2.J.4. The above-described dispute resolution mechanism shall be applied unless otherwise agreed to by the RSN and MLB on or before June 1, 2005.

2.K. Rights Fee Methodology: For all purposes of determining the amount of the appropriate rights fees payable to the Orioles and the Nationals, the entire Television Territory shall be analyzed and examined as if the Television Territory were a unified territory in all respects, that is, the same geographic territory, the same DMAs, the same number of households and treated as a single television market.

2.L. Distributions: Except as provided in Subsection P, below, distributions, if any, to be made from the RSN shall be made consistent with the parties' relative and then-applicable partnership profits interests in the RSN. For the sake of clarity, in no event shall any distributions be made to BOLP or to the limited partners of TCR as of the Effective Date unless pro rata distributions are simultaneously made to the Major League Baseball Partner (as defined below), or its assigns, in relation to its then-applicable partnership profits interest.

2.M. Major League Baseball To Assist Regional Sports Network: Major League Baseball agrees to promptly use its commercially reasonable best efforts as reasonably necessary to assist the RSN in obtaining access to all available telecast distribution for the Orioles' and Nationals' games, ancillary programming and other sports content throughout the entire Television Territory and to use its commercially reasonable best efforts to assist the RSN in any such negotiations.

**REDACTED VERSION**

- 2.N. Equity Interest In Regional Sport Network: The Major League Baseball Partner (as defined below) shall initially receive a 10% partnership profits interest in TCR. Following the full completion of the fifth year of operation of the RSN, the Major League Baseball Partner, or its assignee, shall receive an annual increase of its partnership profits interest, one percentage point per year, until such time as the initial interest and the annual increases to its profits interests total 33%. The Major League Baseball Partner may assign, at its sole discretion, such profits interest, in whole or in part, to an affiliated entity. Such assignment is without regard to the right of first refusal provided in Subsection 2.Q.
- 2.O. Governance Of Regional Sports Network: BOLP, its successors or assigns, as managing partner of the RSN, shall have the full authority to manage and operate all of the business affairs of the RSN, to employ such personnel as it may deem necessary and do all other things as it may deem necessary to conduct the business of the RSN, as more fully set forth in the TCR Limited Liability Partnership Agreement (as defined below). Notwithstanding the foregoing, the Major League Baseball Partner shall be provided with the customary rights accorded a limited partner including, **REDACTED**. Except as provided in Subsection 2.G. above (Rights Fees), TCR shall treat the Orioles' and Nationals' telecast rights on a substantially equal basis with respect to their operation, distribution and marketing.
- 2.P. Capital Structure Of TCR:
- 2.P.1. In consideration for the receipt of the equity interests in TCR, referred to in Subsection N above, the Major League Baseball Partner shall contribute **REDACTED** as its capital contribution to TCR, and BOLP shall contribute the Orioles' rights relating to its Television Territory as its capital contribution to TCR. At such time as the Major League Baseball Partner's capital contributions are made, it shall receive credit in its capital account for the amount of the payment. As a result of its capital contribution, BOLP shall receive a capital account credit of **REDACTED**. Any liquidation of TCR shall be made in accordance with capital accounts as required by Internal Revenue Code rules and regulations.
- 2.P.2. The Major League Baseball Partner's capital shall be contributed as follows: **REDACTED**.
- 2.P.3. TCR shall utilize the cash capital referred to in Subsection 2.P.1. above for such capital expenditures and operational costs as are necessary to conduct its operations.
- 2.P.4. The Agreement of Limited Liability Partnership of TCR ("TCR Partnership Agreement") shall be amended to remove any conflict between the TCR Partnership Agreement and this Agreement, and in such other respects as shall be agreed to by the parties, including, without

**REDACTED VERSION**

limitation, that Major League Baseball or an affiliated entity, such as the Nationals (the "Major League Baseball Partner" or the "MLB Partner") shall be included, as appropriate, as a limited partner in accordance with the terms set forth herein.

- 2.Q. Transfer Of Equity To Third Party: BOLP and the limited partners of TCR shall be provided a right of first refusal over sales or transfers of any equity in TCR by the MLB Partner, except for **REDACTED**.
- 2.R. Remedies For Non-Payment; Insolvency: In the event that the RSN does not pay either the Orioles or the Nationals the rights fees contemplated herein in a timely fashion, then:
- 2.R.1. The RSN shall have a right to cure such non-payment within a reasonable period of time after written notice of the non-payment from either the Nationals or the Orioles, as the case may be. Such time shall not exceed 30 days.
- 2.R.2. If payment is not made within the applicable cure period, then the Orioles and/or the Nationals, as appropriate, shall have a right to seek money damages or avail themselves of any other appropriate remedies that may be available for such non-payment, including without limitation, termination of the license to their respective telecast rights granted herein; provided, that they will not terminate such licenses until thirty days after the expiration of the cure period set forth in Subsection 2.R.1 above. Such termination shall take effect upon receipt by the RSN of a written notice of termination (the "Notice of Termination").
- 2.R.3. In addition, the Nationals and the Orioles may, in their respective discretion, terminate the license to their telecast rights licensed herein upon notice in writing to the RSN, if (i) the RSN becomes insolvent; (ii) a petition under any bankruptcy act is filed by or against the RSN (which petition shall not have been dismissed within 30 days of the initial filing); (iii) any receiver, trustee or liquidator is appointed for all or a substantial part of the assets of the RSN (which appointment shall not have been dismissed within 30 days of such appointment); or (iv) the RSN takes advantage of any applicable insolvency or like statute.
- 2.R.4. Notwithstanding any other provision of this Agreement, upon receipt of the Notice of Termination or at any time thereafter, the RSN has the right to and may seek any and all immediate legal or equitable relief and remedies from such termination available in any court of law with jurisdiction, including, without limitation, the right to seek injunctive relief or specific performance. In the instance in which there are no other material defaults of this Agreement, other than the delinquent payment of rights fees, and the Nationals or the Orioles, as applicable, have not been materially prejudiced by the delinquent payment, payment of the

**REDACTED VERSION**

delinquent rights fees plus interest at any time prior to the final determination of a court of original jurisdiction pursuant to this Subsection shall constitute a cure of such default, and the termination, if any, shall be void and of no effect. Multiple violations of the failure to pay rights fees shall be considered a rebuttable presumption of material prejudice.

Section 3. Tax Treatment **REDACTED**Section 4. Debt Service Rule **REDACTED**

## Section 5. Scheduling Of Home Games

Major League Baseball shall treat the Orioles and the Nationals as a single market for scheduling protocol and allow no more than 15 overlapping and conflicting home games during any baseball season unless otherwise agreed to by Major League Baseball, the Nationals and the Orioles, subject to exigent circumstances. Major League Baseball will endeavor to keep the number of overlapping and conflicting home games during any season to less than 10.

Section 6. No League Transfer **REDACTED**

## Section 7. Representations And Warranties; Further Assurances

The Commissioner of Baseball, Major League Baseball, the Nationals, BOLP, the Orioles and TCR represent and warrant, each on their own behalf, and each to each other, that they are authorized and empowered to enter into this Agreement. Further, Major League Baseball represents and warrants that all relevant terms, conditions and obligations of this Agreement shall be made known to any purchaser(s) of the Nationals now, and in the future, and that the assumption of the Nationals' obligations under this Agreement shall be made a binding condition of the purchase of the Nationals' franchise. The Nationals and Major League Baseball represent and warrant that they shall take such other steps as reasonably may be necessary to bind any subsequent purchaser(s) of the Nationals to the terms and conditions set forth in this Agreement. The Commissioner of Baseball, Major League Baseball, the Nationals, BOLP, the Orioles and TCR shall take all necessary actions to effectuate and enforce this Agreement. Further, Major League Baseball, the Nationals, BOLP, the Orioles and TCR represent and warrant, each on their own behalf, and each to each other, that prior to the execution of this Agreement, neither the terms of this Agreement, nor the execution of this Agreement by it, nor the performance of its obligations hereunder conflicts with any contract, agreement, undertaking or understanding to which it is a party.

Section 8. Dispute Resolution **REDACTED**

## Section 9. Remedies For Breach

- 9.A. It is expressly understood and agreed that any and all remedies in law or in equity including, without limitation, any claims for damages for breach of this Agreement, and/or specific performance and injunctive relief, shall be available to Major League Baseball, the Nationals, the Orioles, BOLP and/or TCR to enforce the terms and conditions of this Agreement in such

**REDACTED VERSION**

arbitration or other proceedings and that the arbitrators therein are specifically empowered to grant injunctive relief.

- 9.B. No Third-Party Beneficiary Rights. The rights, duties and obligations set forth in this Agreement are specific to those named parties to this Agreement and their permitted successors and assigns. The parties hereby disclaim any intent to benefit third-parties and specifically agree that there shall be no third-party beneficiaries of this Agreement.

**Section 10. Effective Immediately**

This Agreement shall take effect immediately upon execution by the parties.

**Section 11. Miscellaneous**

- 11.A. Governing Law: The terms of this Agreement shall be governed by and construed in accordance with the laws of the State of Maryland, without regard to its conflict of laws principles.
- 11.B. Entire Agreement: This Agreement, and the terms contained herein, constitute the entire agreement between the parties with respect to the subject matters herein and supersede all other oral and written understandings or agreements relating to the subject matters contained herein.
- 11.C. Assignment: This Agreement and the terms contained herein irrevocably are binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns. No party shall sell, convey, assign or otherwise transfer this Agreement or its equity interest in the RSN without the prior written consent and approval of BOLP, its successors or assigns, and the RSN; provided that in the event that either the Orioles, the Nationals or the RSN are sold, conveyed, assigned or in any other way transferred, in whole or in part, all subsequent purchaser(s), assignees or transferees shall be unconditionally bound to all terms and conditions of this Agreement.
- 11.D. Headings/Plural: The section headings in this Agreement have been included for mere convenience of reference, and shall not be considered substantive parts of this Agreement in resolving any question or interpretation or construction. As circumstances may require, the singular shall include the plural and vice versa.
- 11.E. No Waiver: The failure of any party to object to, or to take affirmative action with respect to, any conduct of another party that violates any term or condition of this Agreement shall be limited to that particular instance, and shall not be construed as a waiver of that party's rights for such breach or as a waiver of such remedies for future breaches by the other party(ies).
- 11.F. Voluntary Agreement/No Presumption: The parties hereto represent that they have carefully read the Agreement, understood its terms, consulted with



**REDACTED VERSION**

an attorney of their choice, and voluntarily signed the same as their own free act with the intent to be legally bound thereby. The terms of this Agreement are contractual and not a mere recital. The parties hereby acknowledge that no provision of this Agreement shall be construed against a party solely because that party (or that party's counsel) drafted such provision.

- 11.G. **Notices:** All notices, including notices of address changes, required or permitted, to be given by either party under this Agreement shall be sent by registered or certified mail or by reputable overnight commercial delivery to the address specified herein by each party and shall be deemed given three (3) days after the date of mailing in the event of registered or certified mail, and one (1) day after said notice is provided to the delivery service in the event of overnight delivery.
- 11.H. **Survival:** All terms and provisions of this Agreement, which should by their nature survive the termination or expiration of this Agreement shall so survive. The relationships established by this Agreement between the Orioles, TCR, the Nationals and, as the case may be, Major League Baseball, including the RSN or such other regional sports network or entity that may be formed, shall survive the expiration of any telecast rights agreement or any future documents or agreements related to the regional sports network and each of BOLP, its successors or assigns, TCR, the Nationals and Major League Baseball shall remain bound to the terms and conditions of this Agreement at all times.
- 11.I. Release **REDACTED**
- 11.J. **Force Majeure:** Neither party shall be liable for any delays or causes beyond its reasonable control, including, without limitation, fire or other casualty, act of God, strike or labor dispute, war or other violence or act of terrorism, or any law, order or requirement of any governmental agency or authority, except and to the extent the party has acquired insurance to cover such risk. A separate force majeure provision shall be contained in the rights agreements contemplated in this Agreement.
- 11.K. **Severability:** If any term, provision, covenant or condition of this Agreement, or any application thereof shall be held by a court of competent jurisdiction, or by the final decision of an arbitration panel as provided herein, to be invalid, void or unenforceable, such invalidity, unenforceability or illegality shall not affect any other provision of this Agreement, and this Agreement shall be construed, as if such invalid, unenforceable or illegal provision had never been contained in this Agreement, but only to the extent of its invalidity, unenforceability or illegality.
- 11.L. **No Admission of Liability.** The parties acknowledge that neither this Agreement, nor any statement made, nor any event occurring during negotiations of this Agreement by the parties or their respective attorneys and

**REDACTED VERSION**

representatives, is considered to be an admission of liability for any disputed claim resolved herein or otherwise. It is further acknowledged and agreed that neither this Agreement, nor any statement made, nor any event occurring during negotiations of this Agreement by the parties or their respective attorneys and representatives, may be used by the parties as precedent for any other claim that any party may have in the future.

11.M. Counterparts: This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together, shall be considered one and the same agreement.

IT WITNESS WHEREOF, the parties have signed and sealed this Agreement as of the day and year first above written.

[THIS SPACE LEFT INTENTIONALLY BLANK]

**REDACTED VERSION**

AGREED AND ACCEPTED:

THE BALTIMORE ORIOLES BASEBALL CLUB

By: Baltimore Orioles Limited Partnership

By: Baltimore Orioles, Inc.

Its: General Partner

\_\_\_\_\_/s/\_\_\_\_\_  
(SEAL)

By: Peter G. Angelos

Its: President, Baltimore Orioles, Inc.

BALTIMORE ORIOLES LIMITED PARTNERSHIP

By: Baltimore Orioles, Inc.

Its: General Partner

\_\_\_\_\_/s/\_\_\_\_\_  
(SEAL)

By: Peter G. Angelos

Its: President, Baltimore Orioles, Inc.

TCR SPORTS BROADCASTING HOLDING, L.L.P.

\_\_\_\_\_/s/\_\_\_\_\_  
(SEAL)

By: Peter G. Angelos

Its: President, Baltimore Orioles, Inc.

OFFICE OF THE COMMISSIONER OF BASEBALL

[as agent for the Clubs]

\_\_\_\_\_/s/\_\_\_\_\_  
(SEAL)

By: Allan H. (Bud) Selig

Its: Commissioner

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**REDACTED VERSION**

For the purposes of the provisions in the Agreement relating to the determination of the  
Television Territory  
MAJOR LEAGUE EXECUTIVE COUNCIL

\_\_\_\_\_/s/\_\_\_\_\_(SEAL)  
By: Allan H. (Bud) Selig  
Its: Chairman

BASEBALL EXPOS, L.P.  
d/b/a THE WASHINGTON NATIONALS BASEBALL CLUB  
By Baseball Expos GP, Inc., its General Partner

\_\_\_\_\_/s/\_\_\_\_\_(SEAL)  
By:  
Its:

Attachment: EXHIBIT A

**REDACTED VERSION**

**EXHIBIT A**  
**BALTIMORE ORIOLES**  
**TELEVISION HOME TERRITORY**

State of Maryland

Washington, D.C.

State of Virginia

State of Delaware

West Virginia counties:

Grant	Morgan
Hardy	Berkeley
Mineral	Jefferson
Hampshire	

York/Harrisburg/Lancaster Pennsylvania ADI counties:

Adams	Lebanon
Cumberland	Berkeley
Mineral	Jefferson
Hampshire	Mifflin
Dauphin	Perry
Juniata	York
Lancaster	

Eastern North Carolina including Winston-Salem, Greensboro and Charlotte

7/27/81  
11/22/82  
9/24/97

**EXHIBIT C  
TO  
TESTIMONY OF  
DAVID L. COHEN  
EXECUTIVE VICE PRESIDENT  
COMCAST CORPORATION**

**BEFORE THE  
U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON GOVERNMENT REFORM**

BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C.

In the Matter of )  
 )  
TCR Sports Broadcasting Holding, L.L.P ) File No. \_\_\_\_\_  
 )  
Complainant )  
 )  
v. )  
 )  
Comcast Corporation )  
 )  
Defendant )

**ANSWER OF COMCAST CORPORATION**

James L. Casserly  
Michael H. Hammer  
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**Willkie Farr & Gallagher LLP**  
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(202) 303-1000

*Attorneys for Comcast Corporation*

July 14, 2005

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- Exhibit 1:** Declaration of Steven B. Burke, Executive Vice President and Chief Operating Officer, Comcast Corporation.
- Exhibit 2:** Declaration of Madison Bond, Executive Vice President for Programming, Comcast Cable Communications, LLC.
- Exhibit 3:** Letter from Richard R. Zaragoza, Counsel for Allen & Company, to the Honorable Kevin J. Martin, Chairman, Federal Communications Commission (July 11, 2005).
- Exhibit 4:** Letter from Richard R. Zaragoza, Counsel for Allen & Company, to the Honorable Kevin J. Martin, Chairman, Federal Communications Commission (July 13, 2005).

BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C.

In the Matter of	)	
	)	
TCR Sports Broadcasting Holding, L.L.P	)	File No. _____
	)	
Complainant	)	
	)	
v.	)	
	)	
Comcast Corporation	)	
	)	
Defendant	)	

**ANSWER OF COMCAST CORPORATION**

Comcast Corporation ("Comcast"), by its attorneys, hereby files this answer in response to the above-captioned program carriage complaint filed by TCR Sports Broadcasting Holding, L.L.P. ("TCR") on June 14, 2005.<sup>1</sup>

**I. INTRODUCTION AND SUMMARY**

1. The instances of Commission involvement in a program carriage decision are -- and should remain -- exceptionally rare. Putting aside considerations of the First Amendment,<sup>2</sup>

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<sup>1</sup> See *In the Matter of TCR Sports Broadcasting Holding, L.L.P. v. Comcast Corporation*, Carriage Agreement Complaint, File No. \_\_\_\_ (June 14, 2005) ("Complaint"). No CSR file number has been assigned to the Complaint as of the date this answer is filed.

<sup>2</sup> See *Leathers v. Medlock*, 499 U.S. 439, 444 (1991) (noting that cable programmers and operators "seek[] to communicate messages on a wide variety of topics and in a wide variety of formats" and are "engaged in 'speech' under the First Amendment"); *Turner I*, 512 U.S. 622, 636 (1994) ("There can be no disagreement on an initial premise: Cable programmers and cable operators engage in and transmit speech, and they are entitled to the (footnote continued...)

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both Congress and the Commission expressly and properly recognized that business relationships between video programmers and program distributors are matters of private commercial negotiations, and understood that only exceptional circumstances could justify entangling the Commission in such negotiations.<sup>3</sup> Not surprisingly, the program carriage rules have been invoked only once, and then inconclusively, in more than a decade.<sup>4</sup>

2. This Complaint involves a situation that is especially ill-suited for Commission intervention. The tale told by TCR is incomplete, distorted, and misleading, and the claimed violations of the program carriage rules are non-existent. TCR's most dramatic accusations have already been repudiated by Allen & Company, an entity with "no stake in the outcome of the Complaint," in a letter sent to Chairman Martin on July 11, 2005.<sup>5</sup> TCR's other allegations are meritless. Comcast has never sought an equity interest in Mid-Atlantic Sports Network ("MASN"), the new regional sports network ("RSN") created by a joint venture among Major League Baseball ("MLB"), the Baltimore Orioles (the "Orioles"), and TCR, and does not want

(...footnote continued)

protection of the speech and press protections of the First Amendment."); *Los Angeles v. Preferred Communications, Inc.*, 476 U.S. 488, 494 (1986) ("Cable television partakes of some of the aspects of speech and the communication of ideas as do the traditional enterprises of newspaper and book publishers, public speakers, and pamphleteers.").

<sup>3</sup> See *In the Matter of Implementation of Section 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992; Development of Competition and Diversity in Video Programming Distribution and Carriage*, Second Rept. & Order, 9 FCC Rcd. 2642, ¶ 15 (1993) ("*Program Carriage Order*") (recognizing the need to "preserv[e] the legitimate aspects of negotiations for multichannel video programming that result in greater availability of programming to the multichannel video marketplace"). See also *id.* ("Indeed, we believe that these regulations will follow the statute's directive to 'rely on the marketplace, to the maximum extent feasible, to achieve greater availability' of the relevant programming" (quoting 1992 Cable Act § 2(b)(2))).

<sup>4</sup> See *In the Matter of Classic Sports Network, Inc. v. Cablevision Systems Corp.*, Order, 12 FCC Rcd. 22100 (1997) (dismissing program carriage complaint upon request of Classic Sports Network and Cablevision).

<sup>5</sup> Letter from Richard R. Zaragoza, Counsel for Allen & Company, to the Honorable Kevin J. Martin, Chairman, Federal Communications Commission, at 1 (July 11, 2005) (attached hereto as Exhibit 3) ("Allen Letter").

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an equity interest in that network. Moreover, MASN has failed to obtain immediate carriage not just from Comcast but also from a number of other multichannel video programming distributors ("MVPDs").

3. A simple chronology of the key events will help to crystallize the issues before the Commission:

- Comcast SportsNet Mid-Atlantic, L.P. ("CSN") carries Orioles' baseball games pursuant to a 1996 agreement with the Orioles and TCR. That contract expires after the 2006 season, but also grants CSN a right of exclusive negotiation up to the last year of the agreement (which has not yet occurred) and a right-to-match as to future Orioles' telecast rights.
- On September 16, 2004, MLB announced it was relocating the Montreal Expos to Washington, D.C. Over the next six months, MLB negotiated with various parties, including the Orioles and, separately, Comcast, regarding TV rights to the games of the new Washington Nationals.
- Before and during this period, TCR did not own or operate an RSN or possess the pay TV rights to *any* sports team in the greater Washington-Baltimore area. TCR produced certain Orioles' games for broadcast television, but did not televise or otherwise distribute *any* Orioles' games for pay television.
- On March 28, 2005, MLB, the Orioles, and TCR reached an agreement to create a joint venture to produce and exhibit Nationals' games and, starting with the 2007 season, Orioles' games on a new RSN (now known as MASN).
- CSN believes this agreement violates its existing contract with the Orioles and TCR since the Orioles and TCR did not provide CSN with an opportunity to negotiate an extension or to match the agreement struck with the new RSN (MASN). On April 21, 2005, CSN filed a lawsuit in Maryland state court on these contractual issues, and the matter is still in litigation.<sup>6</sup>

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<sup>6</sup> See *Comcast SportsNet Mid-Atlantic, L.P., Plaintiff, v. Baltimore Orioles L.P., TCR Sports Broadcasting Holding, L.L.P., Major League Baseball, Mid-Atlantic Sports Network*, Complaint, Civ. Action No. 260751-V, ¶¶ 60-61 (Md. Cir. Ct. filed Apr. 21, 2005) ("CSN Complaint"). CSN filed an amended complaint on May 24, 2005. See *Comcast SportsNet Mid-Atlantic, L.P., Plaintiff, v. Baltimore Orioles L.P., TCR Sports Broadcasting Holding*, (footnote continued...)

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- Beginning in mid-April, 2005, MASN began seeking carriage of the new network on cable and satellite systems for distribution in a wide area spanning from Harrisburg, Pennsylvania, to Charlotte, North Carolina. Thus far, MASN has obtained carriage on DirecTV and RCN, but with no other MVPDs, including, among others, Comcast, EchoStar, Cox, Time Warner, Charter, and Adelphia. Separately, MASN has licensed approximately 80 Nationals' games this year to local broadcast stations in the Washington, D.C. area (which can be seen on all MVPD systems in the greater Washington area, including Comcast's cable systems).
- MASN had an initial meeting to discuss possible carriage with Comcast on April 14, 2005 and presented a draft term sheet during that meeting for a carriage agreement through March, 2011, including carriage of Nationals' games beginning in 2005 and Orioles games beginning in 2007. MASN sent Comcast a second term sheet on May 13, 2005. The second term sheet also proposed carriage of both Nationals' and Orioles' games. *At no point has MASN given Comcast a proposal to carry just the Nationals' games.*
- Comcast sent MASN a letter on June 7, 2005 requesting additional information. MASN replied to that letter on June 9, 2005 providing cursory and incomplete responses to Comcast's questions and indicating an interest in continuing discussions with Comcast and a willingness to provide additional information.
- *Only five days later*, on June 14, 2005, TCR filed the instant program carriage complaint.

4. TCR's program carriage claims are without merit and should be dismissed. As to the *first* claim -- that Comcast demanded an equity interest in MASN as a condition of carriage -- the plain facts are that Comcast has never demanded a financial interest in MASN or even had discussions with MASN or any other party regarding a financial interest in MASN. To the contrary, Comcast has repeatedly made clear that it has no interest in acquiring equity in MASN.

(...footnote continued)

*L.L.P., Major League Baseball, Mid-Atlantic Sports Network, First Amended Complaint, Civ. Action No. 260751-V (Md. Cir. Ct. filed May 24, 2005) ("CSN First Amended Complaint").* The complaint asserts claims based on breach of contract, breach of implied covenant of good faith and fair dealing, and tortious interference with contract.

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5. Moreover, Comcast never demanded an ownership interest in TCR *prior* to the creation of MASN in March 2005. It would have made absolutely no sense for Comcast to seek an equity stake in TCR prior to March 2005, since, at that time, TCR did not own or operate an RSN and possessed no pay TV distribution rights to license.

6. TCR's claim to the contrary focuses entirely on negotiations between MLB and the Orioles that did not involve Comcast, and, as to these negotiations, TCR erroneously attributes to Comcast the actions of an individual who worked solely for *MLB*. Specifically, TCR offers the outrageous allegation that Steven Greenberg, a well-respected business executive with the investment firm of Allen & Company, operated secretly on Comcast's behalf to demand a financial interest in TCR. Allen & Company sent a letter to the Commission on July 11, 2005, flatly denying that Mr. Greenberg operated on behalf of Comcast in this matter. In particular, the letter states that:

TCR makes a number of unsupported allegations about Mr. Greenberg and Allen. None of those allegations are supported by the affidavit of a person having actual knowledge of the facts. They are based on the supposition and surmise of TCR and the Orioles' management. *All are false. Moreover, we understand that MLB officials told TCR they were false before the Complaint was filed.*<sup>7</sup>

In short, while TCR apparently knew at the time it filed its Complaint that the allegation was false, it nevertheless made the allegation and bases its case in chief on this falsehood. This is a clear abuse of Commission process and a violation of the Commission's rules against the filing

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<sup>7</sup> Allen Letter at 2 (emphasis added). Mr. Greenberg subsequently filed a declaration with the Commission swearing to the contents of the Allen Letter. See Letter from Richard R. Zaragoza, Counsel for Allen & Company, to the Honorable Kevin J. Martin, Chairman, Federal Communications Commission (July 13, 2005) (attached hereto as Exhibit 4) ("Greenberg Declaration").

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of frivolous pleadings.<sup>8</sup> Comcast joins Allen & Company in denying emphatically that Mr. Greenberg operated on Comcast's behalf to demand a financial interest in TCR or to discuss any other matter with TCR.

7. As to TCR's *second* claim, there is no credence to TCR's assertion that Comcast has unlawfully discriminated against MASN on the basis of affiliation. TCR's claim is undercut by two basic facts: (1) Comcast carries competing, independently owned RSNs in many markets, and (2) several MVPDs other than Comcast, including EchoStar, Cox, Time Warner, Adelphia, and Charter, have elected not to carry MASN, decisions which even TCR does not assert are attributable to considerations of "affiliation or nonaffiliation" -- just as Comcast's decision is not attributable to such considerations.

8. Indeed, Comcast's behavior reflects entirely legitimate business judgments under the circumstances, including, among other things, the proposed carriage terms, the lack of a defined program schedule for MASN, and the fact that TCR, the Orioles, and MLB have breached Comcast's contractual rights regarding the Orioles' games.

9. Comcast hereby *answers* TCR's *complaint*.<sup>9</sup> TCR has also purported to file other pleadings -- an "emergency petition" for injunctive relief and a motion for discovery (and associated requests for documents and interrogatories) -- that are impermissible under the Commission's rules and orders. Comcast provides generalized responses to these ancillary

---

<sup>8</sup> As detailed *infra* Section IV.A, the Commission's rules provide for clear penalties in such instances, and TCR should be sanctioned accordingly.

<sup>9</sup> Specific, paragraph-by-paragraph responses to each of TCR's allegations appear in Section V below.

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pleadings, but expressly reserves its rights to respond fully to those pleadings when, if, and to the extent that the Commission decides to consider them.

**II. COMCAST HAS NEVER REQUIRED, OR EVEN REQUESTED, A FINANCIAL INTEREST IN MASN OR TCR AS A CONDITION OF CARRIAGE.**

**A. TCR does not state a claim upon which relief can be granted under Section 1301(a) of the Commission's rules because the Complaint does not even allege that Comcast demanded a financial interest in MASN as a condition for carriage.**

10. Section 76.1301(a) of the Commission's program carriage rules prohibit a cable operator or other multichannel video programming distributor from "requir[ing] a financial interest in any program service as a condition of carriage on one or more of such operator's/provider's systems."<sup>10</sup>

11. Count Two of the Complaint alleges that Comcast unlawfully demanded, as a condition of carriage, an equity interest in "the regional sports network that produces and exhibits Nationals games."<sup>11</sup> MASN is the RSN that exhibits Nationals' games, and MASN did not come into existence as an RSN until *after* the March 28, 2005 agreement among MLB, the Orioles, and TCR.<sup>12</sup> Orioles' officials have confirmed that view.<sup>13</sup> Prior to the agreement with

<sup>10</sup> 47 C.F.R. § 76.1301(a). *See also* 47 U.S.C. § 536(a)(1).

<sup>11</sup> *See* Complaint ¶ 76.

<sup>12</sup> This answer uses the term "MASN" to refer to the new RSN established by MLB, the Orioles, and TCR pursuant to their March 28, 2005 agreement. *See id.*, Ex. 37 (6/13/05 Motion to Dismiss Amended Complaint as to Mid-Atlantic Sports Network for Lack of Personal Jurisdiction and Memorandum in Support) (noting that trade name application for Mid-Atlantic Sports Network was filed with the Maryland Department of Assessments and Taxation on April 7, 2005). Every major area and sports trade publication has described MASN as a "new" network. *See, e.g.*, Andy Bernstein, *Comcast Scrap Hinders O's RSN deal with MLB*, Sports Business Journal, at 4 (June 20-26, 2005) (characterizing MASN as a "shiny new regional sports network"); Eric Fisher, *Nationals' TV Picture Clearing Up*, Wash. Times (Mar. 31, 2005) (same); Thomas Heath, *MLB, O's Agree on Sports Network*, Wash. Post, at D1 (Mar. 31, 2005) (same); Thomas Boswell, *A TV Fight That's Tough to Watch*, Wash. Post, at D1 (May 6, 2005) (referring to Peter Angelos's "new Mid-Atlantic Sports Network"); Jeff Barker, *Nationals Making Pitch for Fans on Oriole Turf in Howard, Anne Arundel*, Balt. Sun (May 11, 2005) (discussing the "fledgling Mid-Atlantic Sports Network").

(footnote continued...)



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MLB, the only rights TCR had for any local team were the rights to produce Orioles' games for over-the-air broadcast.<sup>14</sup> TCR did not have the pay TV rights to any local sports teams and was not operating as an RSN.<sup>15</sup> (It certainly was not recognized as an RSN by the Commission.<sup>16</sup>) So it would have made no sense for TCR to be seeking a carriage agreement from Comcast (given that TCR had no programming to distribute) or for Comcast to have been seeking a financial interest in return (even if it were inclined to make such a request).

(...footnote continued)

Atlantic Sports Network"); Mike Hume, *Picking Splinters*, Falls Church News-Press (May 28, 2005) (mentioning the "recently born Mid-Atlantic Sports Network"); *Orioles Move for Dismissal of Comcast Lawsuit*, AP (June 13, 2005) (noting that MASN was "created to distribute Orioles and Washington Nationals telecasts").

<sup>13</sup> See Thomas Heath, *Orioles Accuse Comcast of Intimidating Cable Prospects*, Wash. Post, at D1 (May 24, 2005) (quoting William Murphy, Jr., Orioles' attorney as saying that: "The Orioles have *formed* their own regional sports network." (emphasis added)).

<sup>14</sup> The Orioles and TCR had already licensed the pay television rights to the Orioles' games to Comcast Sports Net Mid-Atlantic ("CSN") by way of a ten-year contract executed in 1996. See Complaint, Ex. 11 ("1996 License Agreement").

<sup>15</sup> TCR asserts, without evidentiary support, that it was operating as a regional sports network prior to the launch of MASN in April 2005. See Complaint ¶ 2 ("In 2001, TCR began operating a regional sports network under the trade name, 'Orioles Baseball Network' for over-the-air broadcasts of Orioles games."). See also *id.*, Ex. 4 ¶ 9 (Foss Decl.) (stating that "in 2002, the Orioles, through TCR, launched a regional sports network which produced and exhibited approximately 65 over-the-air television games per season within the Orioles' Television Territory"). In fact, TCR has been a licensing and production arm for the Orioles, but it certainly has never qualified as an RSN. Prior to March 28, 2005, TCR operated no network, had no MVPD distribution contracts, and delivered no games to consumers. As noted, all of the Orioles' pay TV games have been telecast on CSN (and HTS before that), and all of the Orioles' over-the-air games are telecast by local broadcast stations in the Washington/Baltimore region. See *id.*, Ex. 18 at 2 (9/23/04 presentation to MLB Executive Committee (noting that "Media rights for professional sports teams in the region are held by Comcast Sports Mid-Atlantic"). See also *Comcast SportsNet Mid-Atlantic, L.P., Plaintiff, v. Baltimore Orioles L.P., TCR Sports Broadcasting Holding, L.L.P., Major League Baseball, Mid-Atlantic Sports Network*, Memorandum in Opposition to Defendants' Motions to Dismiss, Civ. Action No. 260751-V, at 15-19 (Md. Cir. Ct. filed July 12, 2005) ("CSN Opposition") (noting, among other things, that TCR was not registered as an RSN and did not possess any pay TV rights).

<sup>16</sup> See, e.g., *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Eleventh Annual Report, 20 FCC Rcd. 2755, at Table C-4 (2005) (listing "Regional Video Programming Services"). Cf. *YES Network v. Cablevision*, 224 F. Supp.2d 657, 663 (S.D.N.Y. 2002) (defining RSNs as "networks focused primarily on airing live sporting events of local sports teams" (emphasis added)).

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12. Consequently, the only relevant question with respect to Count Two is whether Comcast ever demanded an equity interest in MASN between the time MASN first approached Comcast about possible carriage on April 14, 2005 and the filing of the Complaint on June 14, 2005.

13. The answer to that question is “no.” As shown in the attached Declaration of Madison Bond, executive vice president for programming at Comcast Cable Communications, LLC, at no time has Comcast ever demanded of MASN, requested of MASN, or even discussed with MASN acquiring a financial interest in MASN.<sup>17</sup> Significantly, the Complaint does not even *allege* otherwise; its allegations involve statements by a person who was not representing Comcast, which statements were made in the context of negotiations that pre-dated March 28, 2005 (*i.e.*, the date that MLB, the Orioles, and TCR agreed to establish the new RSN) and that were entirely separate from MASN’s efforts to obtain carriage agreements.<sup>18</sup> In fact, Comcast has repeatedly made clear that it has no interest in owning any part of MASN.<sup>19</sup> This is fatal to TCR’s Count Two claim.

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<sup>17</sup> See Declaration of Madison Bond ¶ 11 (attached hereto as Exhibit 2) (“Bond Decl.”).

<sup>18</sup> See Complaint ¶ 36. See also *id.*, Ex. 4 ¶ 1 (Foss Decl.).

<sup>19</sup> See *id.*, Ex. 3 (6/3/05 Letter from John Schmidlein to Michael Kellogg). See also Timothy Dwyer, *Nats Caught in a TV Rundown*, Wash. Post, at A1 (June 28, 2004) (quoting Comcast Executive Vice President David Cohen as saying: “We have never asked for and are not interested in an equity position in MASN”).

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**B. Comcast has never demanded, or even requested, an ownership stake in TCR.**

14. TCR attempts to confuse the issue by alleging that Comcast, through intermediaries, sought an equity interest in TCR, *prior* to the creation of MASN in March 2005. Comcast states categorically that this claim is false.<sup>20</sup>

15. TCR was not part of the discussions between MLB and the Orioles at the time.<sup>21</sup> More fundamentally, TCR's allegation rests entirely on a claim that Steve Greenberg, an investment banker at Allen & Company, was secretly acting as an agent for Comcast.<sup>22</sup> The claim is completely false.

16. TCR's claims that Mr. Greenberg was surreptitiously working on behalf of Comcast are preposterous. According to TCR's own Complaint, *MLB* hired Mr. Greenberg to serve as a consultant to *MLB* on the Nationals' TV rights.<sup>23</sup> Although TCR asserts that this was all a sham -- that Mr. Greenberg was acting secretly on behalf of Comcast in these discussions<sup>24</sup> -- TCR provides not a scintilla of evidence to support this extraordinary and outrageous claim and

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<sup>20</sup> See Declaration of Stephen B. Burke Decl. ¶ 4 (attached hereto as Exhibit 1) ("Burke Decl.").

<sup>21</sup> See *infra* Section II.C. for detailed discussion on this issue.

<sup>22</sup> See Complaint ¶¶ 25-37. TCR admits that Comcast never approached TCR or the Orioles directly about seeking such an equity interest. See *id.* ¶ 36. See also Andy Bernstein, *Comcast Scrap Hinders O's Deal With MLB*, Sports Business Journal, at 4 (June 20-26, 2005) (noting that David Frederick, outside counsel for MASN, "acknowledged that the Orioles had no direct communication with Comcast regarding ownership in a new network").

<sup>23</sup> Complaint ¶ 26. Indeed, Mr. Greenberg has a long relationship with Major League Baseball. Mr. Greenberg has served as Deputy Commissioner and Chief Operating Officer of MLB. See Greenberg Declaration ¶¶ 2-3. He was also hired by Commissioner Selig's family to handle the sale of the Milwaukee Brewers. See *Source: Brewers Ownership Accepts Sale Offer*, USA Today (Sept. 27, 2004). It should therefore come as no surprise to TCR that MLB would hire Mr. Greenberg to help with the disposition of the Nationals' TV rights.

<sup>24</sup> Complaint ¶¶ 25-37.

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*admits* that it is relying on inferences and suppositions.<sup>25</sup> The fact that TCR's counsel failed to provide written verification, as the Commission's rules explicitly require,<sup>26</sup> is sufficient reason for the Commission to question the veracity of these allegations.

17. Moreover, since the filing of these allegations, they have been explicitly refuted by parties with direct knowledge of the facts and with no interest in the dispute between Comcast and TCR. Mr. Greenberg has stated in a sworn declaration filed with the Commission that "[t]he claims set forth [in the Complaint] that I was secretly employed by Comcast Corporation ("Comcast"), or acted as the agent of Comcast Corporation, are false. Throughout the period in question my client, and that of Allen & Company, was MLB and no one else."<sup>27</sup> Allen & Company has also sent a letter to Chairman Martin on July 11, 2005 stating unequivocally that these allegations were false.<sup>28</sup> That letter further suggests that MLB had advised TCR *prior* to the filing of the Complaint that Mr. Greenberg was hired by MLB and had no involvement

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<sup>25</sup> See *id.*, Ex. 4 ¶¶ 11, 15 (Foss Decl.). See also Thomas Heath, *Orioles Accuse Comcast of Intimidating Cable Prospects*, Wash. Post, at D1 (May 24, 2005) (quoting William Murphy, Jr., an Orioles attorney, as saying that Comcast's "*unspoken* position is that they won't televise Nationals games until they own a piece of MASN." (emphasis added)). It is also strange that only now does TCR make this claim when, according to the Complaint, "it was apparent to the Orioles that Greenberg was acting as the agent of Comcast" at the time he was giving his presentations, over nine months ago. Complaint ¶ 35.

<sup>26</sup> See 47 C.F.R. § 76.6(a)(4) ("Each submission must contain a written verification that the signatory has read the submission and to the best of his or her knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and that it is not interposed for any improper purpose."). The Complaint did not include such a verification.

<sup>27</sup> Greenberg Declaration ¶ 4. See also Thomas Heath, *FCC Asked by O's to Rule on Nats TV Stalemate*, Wash. Post, at E1 (June 15, 2005) (quoting Mr. Greenberg as saying that: "These allegations regarding Allen & Company are as ridiculous as they are factually inaccurate.").

<sup>28</sup> See Allen Letter at 2.

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whatsoever with Comcast, and yet TCR made the allegation anyway in its Complaint.<sup>29</sup> This is a clear abuse of Commission process and a clear and sanctionable violation of the Commission's rule against the filing of frivolous pleadings.<sup>30</sup>

18. The Greenberg and Allen & Company documents are dispositive on the issue of Mr. Greenberg's role. Nonetheless, to eliminate any possible doubt, Comcast unequivocally confirms that at no point did it ever retain Mr. Greenberg to act as its agent to discuss any matter with TCR, the Orioles, or MLB.<sup>31</sup>

19. In addition to mischaracterizing Mr. Greenberg's role in the discussions between MLB and the Orioles, TCR makes a series of assertions that falsely portray Comcast's relationship with Mr. Greenberg and Allen & Company. For example, TCR implies that Allen & Company represented Comcast in the transaction to acquire Adelphia.<sup>32</sup> In fact, Mr. Greenberg worked for *Adelphia*, not Comcast, in that transaction.<sup>33</sup> Also, contrary to TCR's implications,

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<sup>29</sup> See *id.* See also *id.* at 4 ("Allen and Mr. Greenberg have represented only MLB in connection with this matter. At all times they have acted in good faith in what they believed were the best interests of MLB. They did not represent Comcast in this matter or serve as its agent. It is indeed unfortunate that false accusations to the contrary were submitted to the Commission in a proceeding in which Allen is not named as a party.")

<sup>30</sup> See 47 C.F.R. § 76.6(c) ("It shall be unlawful for any party to file a frivolous pleading with the Commission."). See also 47 U.S.C. § 536(a)(6) (directing the Commission to adopt rules that "provide penalties to be assessed against any person filing a frivolous complaint pursuant to this section"). The verification requirement previously cited places a burden on counsel to "read the submission" and ensure the Commission that, "to the best of his or her knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact . . ." That obviously was not done here.

<sup>31</sup> See Burke Decl. ¶ 10.

<sup>32</sup> See Complaint ¶ 30 (stating that "Allen & Company was also involved in a major acquisition by Comcast from Adelphia").

<sup>33</sup> See Burke Decl. ¶ 11. See also Allen Letter at 3 ("Allen was indeed an advisor in the proposed sale of Adelphia to Comcast and Time Warner; however, it acted as advisor to Adelphia, not to Comcast. Moreover, the very SEC filing TCR references to support its claims shows that Allen & Company is to be paid by Adelphia, not Comcast."). See Complaint, Ex. 17 (4/26/05 Comcast Form 8-K § 3.26) (noting that "Seller" (i.e., Adelphia) will pay fees to Allen & Company).

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in the transaction to create an RSN to televise New York Mets baseball games,<sup>34</sup> Mr. Greenberg represented the *New York Mets*, not Comcast or Time Warner.<sup>35</sup> And, while Comcast did speak with Allen & Company regarding a possible bid for Vivendi in 2003, TCR fails to mention that Comcast worked very briefly with Allen & Company on the project and that Mr. Greenberg had no involvement whatsoever in the discussions.<sup>36</sup> In short, there is absolutely no factual basis for TCR's allegation that Mr. Greenberg was acting as Comcast's agent in the Orioles' discussions with MLB or that Mr. Greenberg or his firm were otherwise "representing Comcast's interests" during the summer and fall of 2004.<sup>37</sup>

20. Moreover, it would have made no sense to have Mr. Greenberg or any other outside consultant perform such activities on behalf of Comcast. As the Complaint acknowledges, Comcast was making its own proposal to MLB between September 2004 and March 2005 about TV rights to the Nationals' games.<sup>38</sup> There was no reason why Comcast would have hired a third party to pitch a different set of proposals to MLB and certainly no reason why Comcast would have sought to do so in the bizarre manner alleged by TCR. In fact, Comcast only proposed to MLB a "rights" deal to carry Nationals' games on CSN, and

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<sup>34</sup> See Complaint ¶ 33.

<sup>35</sup> See Burke Decl. ¶ 11.

<sup>36</sup> See *id.* See also Allen Letter at 3 ("The specific allegation regarding the contemplated bid for Vivendi is false, however. Allen spoke with Comcast about Vivendi over a very brief period of time in 2003, but was never engaged and no transaction ever resulted."). In fact, as Allen & Company notes in its letter, Mr. Greenberg has never advised Comcast on any matter. See *id.*

<sup>37</sup> See Complaint ¶ 79.

<sup>38</sup> See *id.* ¶ 23. See also CSN First Amended Complaint ¶ 50.

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specifically rejected an MLB proposal to create a new joint venture with the Orioles to televise Orioles' and Nationals' games on a new RSN.<sup>39</sup>

**C. Even if Mr. Greenberg had been representing Comcast, which he was not, any discussion of "equity" in 2004 was properly linked to issues other than cable carriage.**

21. The Commission's implementing order makes plain that MVPDs may negotiate for financial interests in program services "in the context of good faith, arms-length discussions," but may not "insist upon" such benefits *in exchange for carriage* on their systems.<sup>40</sup> The Commission went on to clarify the types of conduct that would come within the scope of the rules: "We believe that ultimatums, intimidation, conduct that amounts to the exertion of pressure beyond good faith negotiations, or behavior that is tantamount to an unreasonable refusal to deal with a vendor who refuses to grant financial interests or exclusivity rights *in exchange for carriage*, should be considered examples of behavior that violates the prohibitions set forth in Section 616."<sup>41</sup>

22. TCR has not provided any evidence of ultimatums, intimidations, or similar conduct at any time by anyone associated with Comcast.<sup>42</sup>

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<sup>39</sup> See Burke Decl. ¶¶ 5, 11 (describing Comcast's discussions with MLB regarding the Nationals' rights prior to the March 28, 2005 agreement).

<sup>40</sup> *Program Carriage Order* ¶ 17.

<sup>41</sup> *Id.* (emphasis added). The Commission also underscored that its rules were designed to prohibit unfair and anticompetitive actions "without restraining the amount of multichannel programming available by precluding legitimate business practices common to a competitive marketplace." *Id.* ¶ 15. See also *id.* (citing 1992 Cable Act directive to "rely on the marketplace, to the maximum extent feasible, to achieve the greater availability" of the relevant programming).

<sup>42</sup> In this regard, TCR's suggestion that Comcast has refused "even to negotiate with TCR over televising the Nationals' games" is inaccurate. According to TCR's own declarant, Mr. David Gluck, MASN representatives met with Matt Bond, Comcast's Executive Vice President of Programming, and Alan Dannenbaum, Comcast's Senior Vice President of Programming, on April 14, 2005 to discuss MASN's initial term sheet. See Complaint, Ex. 20 (footnote continued...)

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23. In addition, as noted, TCR's Complaint makes clear that MLB and the Orioles were discussing a proposal (put forth by Mr. Greenberg, *on behalf of MLB*) that Comcast, the Orioles, and the Nationals would share joint ownership in a two-network joint venture.<sup>43</sup> Presumably, under this proposal, Comcast would have been expected to contribute to this new joint venture entity its TV rights to the Orioles (at least through the 2006 MLB season), the Wizards (at least through the 2011-2012 season), and the Capitals (through the 2016-2017 NHL season), and MLB would have contributed the TV rights to the Nationals.

24. Under these circumstances, it would have been entirely logical that Comcast would end up with equity in the resulting two-network joint venture, particularly when Comcast would have been contributing TV rights to three of the four teams to be carried on the new network. This would have been exchanging one form of equity for another, not exchanging equity for carriage.

25. In any event, any such discussions were between MLB and the Orioles and did not involve Comcast. Comcast's own efforts were focused not on acquiring "equity" in anything, but on licensing the rights to the Nationals for Comcast's existing network, CSN.<sup>44</sup>

(...footnote continued)

(Declaration of Mr. David Gluck, consultant to TCR). MASN sent Comcast a second proposed term sheet on May 13, 2005, and Mr. Bond provided comments and questions on that term sheet on June 7, 2005. *Id.* ¶ 12. *See also* Complaint, Ex. 34 (6/7/05 Letter from Matt Bond to David Gluck). MASN sent a reply to Mr. Bond on June 9, 2005 offering to "provide you with whatever information you may need to make an informed decision about carrying the Nationals games and the MASN service." *See* Complaint, Ex. 35 (6/9/05 Letter from David Gluck, MASN, to Matt Bond, Comcast). TCR filed the Complaint five days later.

<sup>43</sup> The Allen Letter makes abundantly clear that the joint venture proposal was developed by Mr. Greenberg and that "[a]s of September, 2004, neither he nor anyone else at Allen had ever discussed the concept of a new Washington RSN with Comcast." Allen Letter at 3.

<sup>44</sup> *See* Burke Decl. ¶ 9.



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**III. TCR'S CLAIM THAT COMCAST ENGAGED IN UNLAWFUL DISCRIMINATORY CONDUCT TOWARDS MASN IS UNFOUNDED AND SHOULD BE DISMISSED.**

**A. Requirements of program carriage rules.**

26. Section 76.1301(c) of the Commission's rules prohibits MVPDs from engaging in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating on the basis of affiliation or nonaffiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors.<sup>45</sup>

27. Thus, the Commission's rules and the underlying statutory provision cannot be violated absent "discriminat[ion] on the basis of affiliation," as opposed to other factors. And, they prohibit only conduct "the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly."<sup>46</sup> The rules specifically require that a complainant must provide evidence in its complaint satisfying the second of these requirements.<sup>47</sup> TCR has not satisfied either element required to prove a violation of this rule.

**B. There is no merit to TCR's claim that Comcast has discriminated against MASN "on the basis of affiliation."**

28. As any established network knows (and as the industry professionals at TCR should be aware), carriage negotiations are highly complex, and carriage decisions are typically informed by a wide range of considerations. In general, as Comcast has stated on the record in

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<sup>45</sup> See 47 C.F.R. § 76.1301(c). See also 47 U.S.C. § 536(a)(3).

<sup>46</sup> 47 C.F.R. § 76.1301(c). See also 47 U.S.C. § 536(a)(3).

<sup>47</sup> See 47 C.F.R. § 76.1302(c)(3).

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prior Commission proceedings, cable operators and other MVPDs make carriage decisions based on, among other things, an understanding of the nature of the programming involved, its target demographics, its likely appeal to consumers, its similarities and differences from other programming available to the MVPD, its cost, and other factors.<sup>48</sup> There are, in fact, a variety of reasons why Comcast and other MVPDs have independently elected not to carry MASN -- none of which has anything to do with affiliation.

**1. Comcast carries competing RSNs in many markets, and this fact alone significantly weakens TCR's claim that "non-affiliation" motivates Comcast's actions in regard to MASN.**

29. TCR is simply wrong in suggesting that Comcast is attempting, by its conduct, to prevent MASN from competing against CSN. Comcast is accustomed to competition in every facet of its business, and Comcast responds to competition appropriately and lawfully. More to the point, Comcast faces an RSN competitor in nearly every region of the country where it operates or co-owns an RSN, including the following geographic markets (Comcast affiliate in bold), and in each case Comcast carries (or will carry) both the affiliated and the non-affiliated networks:

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<sup>48</sup> See Comcast Ex Parte, filed in CS Dkt. No. 98-120 (Sept. 6, 2002) (citing comments from Mr. Alan Dannenbaum, Vice President of Programming for Comcast); Bond Decl. ¶ 13. See also Complaint, Ex. 34 (Letter from Matt Bond to David Gluck) (requesting further information on the types of programming MASN intends to carry).

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MARKET	RSNs (Comcast affiliates in bold)
Atlanta	<ul style="list-style-type: none"> <li>• <b>Fox Sports Network ("FSN") South:</b> Atlanta Braves, Atlanta Hawks</li> <li>• <b>Turner South:</b> Atlanta Braves, Atlanta Hawks, Atlanta Thrashers</li> <li>• <b>Comcast Sports Southeast ("CSS"):</b> Intercollegiate sports programming</li> </ul>
Boston	<ul style="list-style-type: none"> <li>• <b>New England Sports Network:</b> Boston Red Sox, Boston Bruins</li> <li>• <b>FSN New England:</b> Boston Celtics</li> </ul>
Chicago	<ul style="list-style-type: none"> <li>• <b>Comcast SportsNet Chicago:</b> Chicago Bulls, Chicago Blackhawks, Chicago Cubs, and Chicago White Sox</li> <li>• <b>FSN Chicago:</b> Chicago Rush (Arena Football)</li> </ul>
Detroit	<ul style="list-style-type: none"> <li>• <b>FSN Detroit:</b> Detroit Pistons, Detroit Tigers, Detroit Shock</li> <li>• <b>Comcast Local Detroit:</b> Intercollegiate sports, minor league baseball</li> </ul>
Miami/Orlando/Tampa Bay	<ul style="list-style-type: none"> <li>• <b>FSN Florida:</b> Florida Panthers, Tampa Bay Devil Rays, Florida Marlins</li> <li>• <b>Sun Sports Network:</b> Miami Heat, Orlando Magic, Tampa Bay Lightning</li> <li>• <b>CSS:</b> Intercollegiate sports programming</li> </ul>
New York	<ul style="list-style-type: none"> <li>• <b>FSN New York:</b> New York Mets, New York Islanders, New Jersey Devils</li> <li>• <b>MSG Network:</b> New York Knicks, New York Rangers, New York Mets</li> <li>• <b>YES:</b> New York Yankees, New Jersey Nets</li> <li>• <b>Mets Network (Spring 2006):</b> New York Mets</li> </ul>
San Francisco/Sacramento	<ul style="list-style-type: none"> <li>• <b>CSN West:</b> Sacramento Kings, Sacramento Monarchs</li> <li>• <b>FSN Bay Area:</b> San Francisco Giants, Oakland Athletics, Golden State Warriors, San Jose Sharks</li> </ul>

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Comcast carries the competing unaffiliated RSN service or services in *all* of these markets, providing strong evidence that the issue of “affiliation or nonaffiliation” does not drive its carriage determinations.<sup>49</sup>

30. In fact, the vast majority of *all* of the programming that Comcast carries is unaffiliated. In a typical market, Comcast makes available over 250 channels of video programming. But Comcast owns or has attributable interests in only nine national networks and 10 regional networks.<sup>50</sup> In Washington D.C., Comcast delivers over 250 channels of video programming services, of which it has ownership interests in only ten.<sup>51</sup> Again, questions of “affiliation or nonaffiliation” do not drive these determinations.

**2. TCR’s claims regarding discrimination are further undercut by the fact that MASN has failed to reach carriage arrangements with numerous MVPDs other than Comcast.**

31. TCR makes much of the fact that MASN has struck carriage deals with DirecTV and RCN, but not Comcast.<sup>52</sup> TCR fails to note, however, that Comcast is not the only MVPD in MASN’s service area that does not carry MASN. There are many others, including EchoStar,

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<sup>49</sup> See Bond Decl. ¶ 12.

<sup>50</sup> See *In the Matter of Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corporation to Time Warner Cable Inc. and Comcast Corporation*, Public Interest Statement, MB Dkt. No. 05-192, at 15-18 (filed May 18, 2005) (listing Comcast ownership interests in national and regional networks).

<sup>51</sup> See Comcast: Washington, D.C. Channel Lineup, available at <http://www.comcast.com/Support/ChannelGuidePrintable.aspx?CGID=925> (visited June 28, 2005). Comcast-affiliated channels include: E!, The Golf Channel, Outdoor Life Network, The Style Network, G4 Network, TV One, AZN Television, iN DEMAND (including high-definition and pay-per-view channels), and CSN.

<sup>52</sup> See Complaint ¶ 49.

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Cox Cable, Time Warner, Adelphia, and Charter.<sup>53</sup> None of these MVPDs has an ownership interest in an RSN in the greater Washington, D.C. area, so MASN's failure to reach carriage agreements with these distributors must be attributable to factors other than "discrimination on the basis of affiliation" -- as is the case with Comcast's decision.

32. As noted, the relationship between a programmer and an MVPD is complex, and there are many reasons why an MVPD may not reach a carriage agreement with a particular programmer. Some of these reasons -- *e.g.*, cost, uncertainty as to terms and conditions of carriage, an ill-defined programming schedule -- are likely to influence the decisionmaking of MVPDs with regard to carriage of MASN. Cox, for example, has said publicly that it "looks forward to the day when [MASN] presents reasonable contractual terms that would allow Cox to carry MASN and the Nats" and that MASN "has not done so to date."<sup>54</sup>

33. And, as even MASN officials acknowledge, negotiating carriage agreements generally takes time -- often many months and sometimes in excess of a year.<sup>55</sup> MASN, however, clearly was focusing on Commission litigation rather than cable carriage negotiations by some time in advance of Mr. Kellogg's May 27, 2005 letter to Comcast indicating TCR's intent to file a program carriage complaint.<sup>56</sup> That May 27, 2005 letter was sent only six weeks after MASN *first* approached Comcast with a request for carriage.

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<sup>53</sup> See *id.*, Ex. 29 (listing of MVPDs that carry CSN in the greater Washington/Baltimore region).

<sup>54</sup> Eric Fisher, *MASN Spars with Comcast*, Wash. Times (May 27, 2005).

<sup>55</sup> See Eric Fisher, *Network Deal Gives Angelos Huge Fee*, Wash. Times (Apr. 29, 2005) (quoting Bob Whitelaw, Executive Vice President and General Manager of MASN, as saying: "What we're trying to do in days and weeks to set up this network is usually done in months.").

<sup>56</sup> See Complaint, Ex. 2 (5/27/05 Letter from Michael Kellogg, counsel for TCR, to Brian Roberts, Comcast).

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**3. Comcast's actions with regard to MASN are also influenced by the breach of Comcast's contractual rights by MASN's owners.**

34. MASN's owners have blatantly breached the contractual rights of CSN, a wholly-owned subsidiary of Comcast, in a way that significantly, and legitimately, affects Comcast's decision on whether to carry MASN. The breach is the subject of litigation brought by CSN in Maryland state court.<sup>57</sup>

35. Briefly stated, CSN's existing contract to televise Orioles' games, which runs through the 2006 season, gives CSN the exclusive right through November 1, 2005 to negotiate an extension to the agreement as well as the right to match competing offers received after November 1, 2005 for the rights to televise Orioles' games beginning with the 2007 season.<sup>58</sup> And yet, on March 28, 2005, MLB, the Orioles and TCR agreed to create a "joint venture" that would own and license the local television rights to the Nationals' games beginning in the 2005 season and Orioles' games beginning in the 2007 season.<sup>59</sup> Not until after that March 28, 2005 agreement did MASN come into being as a regional sports network.<sup>60</sup> Thus, at the heart of the complaint in the Maryland litigation is CSN's claim that the March 28, 2005 agreement among

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<sup>57</sup> See *id.*, Ex. 22 (Comcast's initial Complaint in the Maryland litigation); Ex. 19 (First Amended Complaint).

<sup>58</sup> See *id.*, Ex. 11A (1996 Letter Agreement §16 (Right to Match)).

<sup>59</sup> See *id.*, Ex. 1 (March 28, 2005 Agreement). See also MLB.com Press Release, *MLB, Orioles Reach Agreement* (Mar. 31, 2005), available at [http://mlb.mlb.com/NASApp/mlb/content/printer\\_friendly/mlb/y2005/m03/d31/c982015.jsp](http://mlb.mlb.com/NASApp/mlb/content/printer_friendly/mlb/y2005/m03/d31/c982015.jsp). The Orioles currently own a 90% interest in MASN, with MLB owning the rest. See Complaint ¶ 45 & Ex. 1. MLB's ownership stake in MASN will increase by one percent each year and will be capped (presumably 23 years from now) at 33%. See *id.* Moreover, MLB has reportedly agreed to pay \$75 million for its ownership interest in MASN. See Eric Fisher, *Network Deal Gives Angelos Huge Fee*, Wash. Times (Apr. 29, 2005).

<sup>60</sup> See *infra* note 12.

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MLB, the Orioles, and TCR breached both provisions by unilaterally giving the new RSN (*i.e.*, MASN) the local pay television rights to the Orioles' games beginning with the 2007 season.<sup>61</sup>

36. TCR attempts to confuse the issue by asserting that the Maryland litigation "has *nothing* to do with the telecast rights for Nationals games" and implying that the program carriage agreement that MASN has sought with Comcast involves *nothing but* Nationals games.<sup>62</sup> Both the assertion and the implication are untrue. The creation of MASN is a direct result of the Orioles' breach of CSN's contract, and the carriage agreements proposed by MASN to Comcast explicitly contemplated carriage of *both* Nationals games and Orioles games.

37. As noted above, MASN came into existence as an RSN seeking carriage from Comcast and other MVPDs only on or after March 28, 2005.<sup>63</sup> It was created for the express purpose of televising both Orioles' *and* Nationals' games. The March 28, 2005 agreement among MLB, the Orioles, and TCR makes plain that the new network "will have the sole and exclusive rights to present any and all of the Nationals' and the Orioles' baseball games."<sup>64</sup>

38. The carriage agreements that MASN has offered to Comcast are long-term carriage contracts that include the carriage of future Orioles' games, notwithstanding that

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<sup>61</sup> See CSN First Amended Complaint ¶¶ 60-61.

<sup>62</sup> See Complaint ¶ 53.

<sup>63</sup> See *id.* ¶ 42. See also Timothy Dwyer, *Nats Caught in a TV Rundown*, Wash. Post, at A1 (June 28, 2005) (noting that Orioles owner Peter Angelos "this spring established the Mid-Atlantic Sports Network in partnership with Major League Baseball").

<sup>64</sup> Complaint, Ex. 1 (MLB-Orioles Agreement § 2.A). See also *id.* (MLB-Orioles Agreement Preamble) ("WHEREAS, the parties hereto desire to resolve various issues and to provide for the presentation and telecast of all available Nationals' baseball games in the Television Territory through a regional sports network along with all available Orioles' baseball games, unifying the games of both Clubs for telecast throughout the entire Television Territory.").

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MASN's asserted rights to these games were acquired in violation of the Orioles' existing contract with CSN. The April 13, 2005 term sheet would require Comcast to carry Nationals' and Orioles' games without condition.<sup>65</sup> MASN subsequently modified its offer to alter the pricing of the carriage agreement depending on whether the Orioles prevailed in the Montgomery County litigation -- *thus explicitly linking the litigation and the proposed carriage agreement*.<sup>66</sup> At no time did MASN ever offer Comcast a contract to distribute *only* Nationals' games. Nor has MASN ever presented a coherent plan for MASN's existence once the breach of CSN's contractual rights is remedied.

39. Moreover, it is ludicrous for TCR to present itself as the champion for the Washington Nationals and its fans.<sup>67</sup> The Baltimore Orioles worked assiduously to block the Nationals from coming to Washington.<sup>68</sup> The Baltimore Orioles threatened to sue Major League Baseball over the relocation of the Expos unless MLB agreed to substantial financial concessions.<sup>69</sup> The Baltimore Orioles demanded, and received, unprecedented control over the

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<sup>65</sup> See Complaint, Ex. 21.

<sup>66</sup> See *id.*, Ex. 28.

<sup>67</sup> See Complaint ¶¶ 55-56.

<sup>68</sup> See Tom Knott, *Owner of Orioles Needs a Lesson in Geography*, Wash. Times (Mar. 17, 2005) ("Mr. Angelos is the person who said, 'There are no real baseball fans in D.C.' Now he is the person who views the region's support of the Nationals as a threat to his baseball empire in Baltimore."); *Televising the Nats*, Wash. Post, at A14 (Mar. 8, 2005) (noting that the main obstacle to getting a TV deal for the Nats, "as throughout much of the struggle to bring the former Montreal Expos to town, is the stubborn resistance of Peter G. Angelos").

<sup>69</sup> See Thomas Boswell, *Angelos May Have Won, But Nationals Can't Lose*, Wash. Post, at D1 (Apr. 1, 2005) (commenting on Peter Angelos' "bare-knuckles legal reputation" and quoting one influential baseball source as saying that "Bullying and suing is what Angelos does for a living"); *Televising the Nats*, Wash. Post, at A14 (Mar. 8, 2005) (commenting on "Mr. Angelos' legendary litigiousness").



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TV rights of their most significant economic competitor, the Nationals, as a key condition of ending their decades-long opposition to bringing baseball to Washington.

40. As one industry source noted, the agreement between MLB and the Orioles "is even worse for the Nationals than has been reported."<sup>70</sup> To wit: the Orioles will have a controlling interest in the Nationals' TV rights forever, and the license fees being paid to the Nationals are below fair market value.<sup>71</sup> The inequity of the MLB-Orioles deal is further underscored by the fact that the Nationals and the Orioles will receive the same rights fee each year, even though the Washington television market is *twice the size* of Baltimore's.<sup>72</sup> It is even uncertain whether the eventual owners of the Nationals will own a share of MASN since MLB has reportedly solicited bids for the team with and without the TV rights.<sup>73</sup> Thus, the eventual owners of the Nationals could become the first owners in the history of baseball -- and perhaps

<sup>70</sup> See Fisher, *Network Deal Gives Angelos Huge Fee*.

<sup>71</sup> See Timothy Dwyer, *Nats Caught in a TV Rundown*, Wash. Post, at A1 (June 28, 2005) (quoting Bob Gutkowski, CEO of Marketing Group International and former president of Madison Square Garden Network as saying: "It is a bad deal for the Nationals no matter how you cut it."). See also Thomas Heath, *O's Get Majority of TV Deal*, Wash. Post, at D1 (Apr. 1, 2005) (quoting a source familiar with sports television deals as saying that "the \$21 million rights fee for both cable and over-the-air broadcasts sounded low for the Washington market."); Jack Evans, *A Little Friendly Competition*, Wash. Times Op-Ed (Mar. 24, 2005) ("On average, television rights earn a new team \$40 million"). The rights fee is less than what Comcast had offered to pay. See Burke Decl. ¶ 7.

<sup>72</sup> See Nielsen Media Research *Local Universe Estimates*, available at <http://www.nielsenmedia.com/DMA.html> (noting that the Washington, D.C. DMA has 2.2 million TV households while the Baltimore DMA has 1.1 million households). Moreover, the Nationals' strong attendance figures this season suggest a higher rights fee may be warranted. See Thomas Heath, *Nationals' Expected '05 Profit Is \$20 Million*, Wash. Post, at A1 (June 21, 2005) (noting that the Nationals are "on track to sell 2.5 million tickets this year").

<sup>73</sup> See Eric Fisher, *First Round of Bidding for Nats Imminent*, Wash. Times (May 29, 2005) ("Baseball is asking for two bids Tuesday, one for just the club and another for the club and the share in MASN."). Reportedly, MLB is paying the Orioles \$75 million for the Nationals' 10% stake in MASN, and MLB will recoup that money as part of its sale of the Nationals. See Eric Fisher, *Network Deal Gives Angelos Huge Fee*, Wash. Times (Apr. 29, 2005). That would place the valuation of MASN at approximately \$750 million, of which Mr. Angelos would own 90%. See *id.*

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any major professional sport -- who do not own even a fraction of the local TV rights to their team's games.

41. In sum, the Orioles have succeeded in striking a deal with MLB that will hobble the Nationals financially, particularly given the importance of local TV revenues to the long-term economic success of sports franchises.<sup>74</sup> Moreover, it seems clear that the Orioles have the ability and incentive to use their dominant ownership stake in MASN to disadvantage the Nationals, for example, by giving the Orioles preferential treatment in terms of game selection, marketing, and promotion.<sup>75</sup> It is indisputable that the Nationals and their fans would fare much better if the team controlled its own TV rights -- *just like every other team in Major League Baseball*.<sup>76</sup>

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<sup>74</sup> See *Baseball, TV and the Antitrust Exemption*, Wash. Times (Apr. 23, 2005) ("In an era when the potential on-the-field fortunes of baseball teams rise or collapse with the size of the television contracts they can negotiate off the field, the Nationals have suffered a major financial setback whose relative and absolute dimensions will almost certainly worsen over time[.]"); *id.* ("Forcing the Nationals to become a very, very junior partner in a regional sports network overwhelmingly controlled and operated by Angelos -- an irascible, vengeance-seeking malcontent -- seriously jeopardizes their short- and long-term ability to compete."). See also *The Report of the Independent Members of the Commissioner's Blue Ribbon Panel on Baseball Economics* at 17-21 (July 2000) (noting importance of local TV revenues to MLB teams).

<sup>75</sup> See Thom Loverro, *Why Would Anyone Buy Peter Angelos' Nationals*, Wash. Times (Apr. 30, 2005) ("If Angelos doesn't own the Nationals, he sure is their 'daddy.'").

<sup>76</sup> See Jayson Stark, *Stark: Rumbblings & Grumbblings*, ESPN.com (Apr. 30, 2005) ("It's hard to think of any franchise that has its games televised by a network controlled by another team. But maybe that's because there aren't any."). See also Phineas Lambert, *Democracy at its Finest*, The Back Page, May 2, 2005 ("Forbes magazine on April 7 valued the Nationals franchise at \$310 million, a sharp increase from its \$145 million valuation in 2004. According to some, that number could drop by \$75 million to \$100 million because of the [MASN] cable contract.").

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**4. Even putting to one side the Montgomery County litigation, Comcast has other specific concerns with the MASN service completely unrelated to affiliation.**

42. Comcast detailed a number of questions and concerns with the MASN service during an initial meeting with MASN representatives on April 14, 2005 and in a June 7, 2005 letter to MASN responding to MASN's May 13, 2005 term sheet.<sup>77</sup> For example, Comcast expressed concern regarding the "extremely limited and uncertain programming schedule that will be available on MASN in the foreseeable future."<sup>78</sup> Today, MASN can be expected to televise approximately six hours of programming on any day it is televising a baseball game (*i.e.*, a pre-game show, the game, and a post-game show). The baseball season runs from April to September. This means that there are six months of the year for which MASN has not given any reasonable explanation of what programming it will provide and, even during the baseball season MASN has described programming for only one-quarter of the day on those days when games are televised.<sup>79</sup> Comcast, like any other MVPD, typically looks for a far more developed and complete program lineup when making carriage decisions.<sup>80</sup>

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<sup>77</sup> See Bond Decl. ¶¶ 6-8. See also Complaint, Ex. 34 (June 7, 2005 Letter from Matt Bond, Comcast, to David Gluck, MASN).

<sup>78</sup> See Complaint, Ex. 34 (June 7, 2005 Letter from Matt Bond, Comcast, to David Gluck, MASN).

<sup>79</sup> Despite Comcast's requests for specific information on MASN's programming plans, MASN indicated that the network would consist of unspecified "local, regional, and national sporting events, sports news and information, sports talk, and other related programming" and alluded to the possibility of carrying the games of other major professional sports teams as well as ACC basketball games. See *id.*, Ex. 35 (6/9/05 Letter from David Gluck, MASN, to Matt Bond, Comcast). MASN has not indicated whether the rights to telecast those games are expected to become available for distribution in the Washington-Baltimore region in the foreseeable future. See Bond Decl. ¶ 9.

<sup>80</sup> See Eric Fisher, *DirectTV Misses 4-1/2 Innings*, Wash. Times (May 26, 2005) ("Unlike other regional sports networks, MASN does not yet operate a 24-hour programming schedule and instead must be reactivated for every Nationals game."). It is also worth noting that MASN's latest term sheet provides two minutes per hour of ad time for the MVPD "exclusive of infomercials and similar paid programming." See Complaint, Ex. 28 at 3 ("Ad Time").  
(footnote continued...)

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43. Likewise, Comcast noted the “substantial per subscriber fees sought by MASN” and the potential impact that such fees have on Comcast’s customers.<sup>81</sup> Other MVPDs, including EchoStar and Cox, apparently share these concerns.<sup>82</sup>

44. MASN’s request for carriage would also require Comcast to displace existing programming services. Implicit in MASN’s request for carriage on Comcast’s basic service tier is the understanding that Comcast would drop an existing service to free up capacity for MASN.<sup>83</sup> Indeed, TCR has made this point explicitly in the Complaint. It asks the Commission to order that, if Comcast’s cable systems lack capacity to accommodate MASN, those systems should be required to delete existing programming services to make room for MASN.<sup>84</sup>

45. Most of Comcast’s cable systems are constrained by limited channel capacity on the basic tier and would almost certainly have to drop an existing service to make room for MASN.<sup>85</sup> Doing so would raise two very significant issues for Comcast. First, Comcast would

(...footnote continued)

The implication is that MASN may be intending to fill its channel lineup with such programming, a prospect that likely would not enhance its chances of gaining carriage with MVPDs. *See also id.*, Ex. 31 (7/19/04 presentation to MLB and Orioles showing that the new RSN will show 800 hours per year of regular season games (including pre- and post-game shows), 5770 hours of shoulder programming, and 2190 hours of infomercials).

<sup>81</sup> See Complaint, Ex. 34 (6/7/05 Letter from Matt Bond, Comcast, to David Gluck, MASN).

<sup>82</sup> See Bond Decl. ¶ 15. Indeed, it is worth noting in this regard that MVPDs have made similar judgments with respect to other team-owned RSNs. For example, EchoStar has elected not to carry YES, the RSN owned by the New York Yankees. Likewise, several MVPDs chose not to carry team-owned networks in Minnesota and North Carolina. *See* R. Thomas Umstead, *Regionals on Prowl for Bobcats Rights*, Multichannel News (July 4, 2005) (noting that RSNs owned by the Charlotte Bobcats, Minnesota Twins, and Minnesota Grizzlies, among others, failed to attract MVPD distribution and went out of business).

<sup>83</sup> See Complaint, Ex. 28 (May 13, 2005 Term Sheet) (requiring carriage of MASN on the first or second most highly penetrated level of video service (*i.e.*, basic or expanded basic)).

<sup>84</sup> See Complaint at 34.

<sup>85</sup> See Bond Decl. ¶ 16. MASN wants one full-time basic tier channel to carry Nationals’ and Orioles’ games as well as access to a second channel it can use on a part-time basis to carry so-called “conflict games” (*i.e.*,  
(footnote continued...))

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have to consider whether it can drop existing services consistent with its carriage agreements with those programmers. Many affiliation contracts do not include deletion rights, particularly for basic tier services.<sup>86</sup> Second, Comcast must consider how consumers would react to service deletions. In general, operators typically try to avoid dropping existing services given the consumer unhappiness that can ensue.<sup>87</sup> Indeed, the Commission has previously acknowledged this very concern.<sup>88</sup>

46. In sum, there are numerous compelling reasons why Comcast has declined to carry MASN under the proposed terms,<sup>89</sup> and other MVPDs whose motives are not challenged by TCR have independently decided not to carry MASN at this time. The Commission has made very clear that its rules should not preclude “legitimate business practices common to a

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situations where both teams are televising games at the same time). *See* Complaint, Ex. 28 (May 13, 2005 Term Sheet, “MASN Programming”).

<sup>86</sup> *See* Bond Decl. ¶ 16.

<sup>87</sup> *See id.*

<sup>88</sup> *See, e.g., See In Re Charter Communications et al.: Petition for Waiver of the Requirement to Provide Point of Deployment Modules Contained in Section 76.1204 of the Commission’s Rules*, Mem. Opin. & Order, 15 FCC Rcd. 15075, ¶ 10 (2000) (Cable Services Bureau) (underscoring the importance of avoiding significant program service disruptions). As discussed in greater detail below, *see infra* Section IV.C.2, the program carriage rules also establish special due process rules in instances where program deletions are considered as a remedy.

<sup>89</sup> TCR’s assertion that Comcast is intimidating potential MVPDs with respect to carriage of MASN is baseless. *See* Complaint ¶¶ 59-60. CSN has every right to advise vendors that MASN’s representations regarding future rights to Orioles’ game (and any affiliation agreements entered into based on those representations) evidence a serious and material breach of CSN’s contractual rights, and that CSN has and will continue to enforce and protect its contractual rights to the fullest extent permitted by law. Providing vendors with such notice does not violate the program carriage rules. Likewise, the rules do not preclude Comcast from advising other parties, including members of Congress, about the violation of its contractual rights, particularly given the high-profile nature of this dispute and its interest to residents (even part-time residents) of the greater Washington, D.C. area.

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competitive marketplace.”<sup>90</sup> A government decision to compel a cable operator to carry a programming service in the face of these numerous and legitimate reasons not to carry would violate that principle.

47. Moreover, it is now clear that MASN has no serious interest in negotiating a carriage agreement with Comcast. In response to Comcast’s letter of June 7, 2005, MASN sent Comcast a letter on June 9, 2005 providing limited further details about MASN’s programming plans and offering “to continue discussions or provide additional information regarding affiliating with MASN.”<sup>91</sup> And yet, *just five days later* (i.e., on June 14, 2005) the instant Complaint was filed at the Commission.

**C. TCR has failed to demonstrate that Comcast’s conduct has the effect of unreasonably restraining MASN’s ability to compete fairly.**

48. Even assuming arguendo that Comcast was motivated only by a desire to harm MASN, Comcast lacks the power to “unreasonably restrain the ability of [MASN] to compete fairly.” First, MASN has overstated Comcast’s position in the geographic areas MASN seeks to serve. Second, and more importantly, there are multiple actual and potential competing distributors of Nationals’ games in the Washington market. Together, Comcast’s limited subscribership reach in MASN’s service area plus the existence of alternative distribution sources prevent Comcast from successfully executing any illegitimate foreclosure strategy.<sup>92</sup>

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<sup>90</sup> See *Program Carriage Order* ¶ 15. See also *id.* ¶ 14 (stating that the Commission’s rules must preserve “the ability of affected parties to engage in legitimate, aggressive negotiations”).

<sup>91</sup> See Complaint, Ex. 35 at 2 (6/9/05 Letter from David Gluck, MASN, to Matt Bond, Comcast).

<sup>92</sup> See *Time Warner Entertainment v. FCC*, 240 F.3d 1126, 1134 (D.C. Cir. 2001) (“[N]ormally a company’s ability to exercise market power depends not only on its share of the market, but also on the elasticities of supply and demand, which in turn are determined by the availability of competition.”).

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49. As to the first point, TCR vastly overstates Comcast's subscriber reach in MASN's service area.<sup>93</sup> TCR focuses on Comcast's franchise area to claim that Comcast serves two-thirds of the homes in those areas. This is not the relevant metric. The proper focus is MASN's service area, which, according to TCR, extends from Harrisburg, Pennsylvania to Charlotte, North Carolina and includes "over 6 million subscribers."<sup>94</sup> As MASN admits, the "major cable and satellite distributors" in this territory include "Adelphia Communications, Charter Communications, Comcast, Cox, Time Warner Cable, DirecTV and EchoStar Corporation."<sup>95</sup> Upon information and belief, in MASN's service area, Comcast serves approximately 1.9 million out of nearly 6.3 million TV households, or 30%. Focusing more specifically on the core Washington, D.C. and Baltimore markets, Comcast's subscribership reach is far below the figure included in the Complaint. In the Washington, D.C. DMA, there are 2,241,610 households,<sup>96</sup> and Comcast serves 721,979 of those households,<sup>97</sup> or 32%. In the

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<sup>93</sup> See Complaint ¶ 11. It appears that TCR failed to account for subscribers served by other satellite and cable operators in the area. See, e.g., *In the Matter of TCR Sports Broadcasting Holding, L.L.P. v. Comcast Corporation*, Emergency Petition for Injunctive Relief, File No. \_\_\_\_\_, at 10 (June 14, 2005) ("Emergency Petition") (stating that RCN and DirecTV are "the two other MVPDs in Comcast's franchise area."). However, aside from EchoStar, several cable operators also serve the Washington, D.C. area, including Cox (which has a very large presence in northern Virginia), Time Warner, and Charter. See Thomas Heath, *For Many Area Fans, Nationals Are Out of Sight*, Wash. Post, at D1 (Apr. 29, 2005) (noting that MASN is negotiating with EchoStar, Time Warner, Charter, and Cox, among others). Adelphia also operates cable systems in the greater Washington area. See <http://www.adelphia.com/about/locations.cfm>.

<sup>94</sup> See Complaint, Ex. 20 ¶ 3.

<sup>95</sup> See *id.*

<sup>96</sup> See Nielsen Media Research Local Universe Estimates, available at <http://www.nielsenmedia.com/DMA.html>.

<sup>97</sup> See Comcast/Time Warner *Ex Parte*, filed in MB Dkt. No. 05-192 (June 21, 2005).

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combined Baltimore and Washington, D.C. DMAs, there are 3,320,340 households, and Comcast serves 1,341,280 of those households, or 40%.

50. As to the second point, there is *no* area within which Comcast can foreclose distribution of MASN specifically or of Nationals games generally. In every community that Comcast serves, it now faces strong competition from two satellite providers -- DirecTV and EchoStar. In addition, Comcast faces competition from RCN in several communities in the Maryland suburbs and Washington, D.C. and imminent competition from Verizon, which is actively preparing to launch its FiOS TV service in the Washington area in the near future.<sup>98</sup>

51. The head-to-head competition that Comcast faces gives MASN abundant opportunities to reach consumers. The claim that MASN cannot compete fairly in the market today is further undercut by the distribution deals it has cut over the last two months. Although it apparently did not begin to seek MVPD distribution agreements until mid-April 2005, MASN has already secured arrangements for distribution with DirecTV and RCN. DirecTV reportedly serves 1.3 million customers in the area,<sup>99</sup> and is available to nearly 100% of consumers throughout the Washington, D.C. DMA.<sup>100</sup> RCN has approximately 185,000 customers in the area and is available to many hundreds of thousands more homes in Washington, D.C. and the

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<sup>98</sup> For example, Verizon has deployed over 3 million feet of fiber optic cable in Montgomery County, Maryland, and plans to launch its FiOS TV service in near future. *See Verizon Brings Blazing-Fast Computer Connection to Growing Number of Montgomery County Customers*, Verizon New Release (May 5, 2005). Verizon has identified 52 communities in Maryland, 10 in Delaware, and 16 in Virginia where it is deploying its "fiber-to-the-premises" network. *See Verizon Ex Parte*, filed in WC Dkt. No. 04-242, at Att. B-5-6 (June 13, 2005).

<sup>99</sup> *See* Timothy Dwyer, *Nats Caught in a TV Rundown*, Wash. Post, at A1 (June 28, 2005).

<sup>100</sup> The near-ubiquitous availability of DirecTV (and EchoStar, which is equally free to carry MASN if it chooses) is especially harmful to the claim that Comcast is preventing MASN from competing fairly. As the D.C. Circuit has noted, "[i]f an MVPD refuses to offer new programming, customers with access to an alternative MVPD may switch." *See Time Warner Entertainment*, 240 F.3d at 1134.



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Maryland suburbs.<sup>101</sup> MASN is also pursuing additional distribution agreements with other cable operators in the greater Washington, D.C. area and, as noted above, its failure to secure such agreements is not the result of Comcast or any other MVPD having unreasonably restrained its ability to compete fairly.

52. In contrast to what it is now saying to the Commission, *MASN itself has acknowledged that the distribution deals it has already struck fully address its foreclosure concerns.* MASN spokesman Vince Wladika has publicly stated that the DirecTV deal “frees Comcast’s stranglehold on Nationals games” and “gives Nats fans an alternative to see all the games they want.”<sup>102</sup> He has also said that the DirecTV deal is “great news for Nationals fans because it no longer means they’re held hostage by Comcast and its monopoly.”<sup>103</sup> And MASN’s Executive Vice President and General Manager, Robert Whitelaw, has stated that the DirecTV deal “gave Nationals fans throughout the mid-Atlantic area *total and almost instant access to us.*”<sup>104</sup> As MASN readily acknowledges, based on the distribution deals it has already struck, Nationals’ games are available to customers throughout the Washington, D.C. area.

53. MASN also fails to mention that approximately 80 Nationals’ games are available on Comcast and all other MVPDs in the Washington, D.C. DMA this season.<sup>105</sup> MASN has

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<sup>101</sup> See Thomas Heath, *Orioles Accuse Comcast of Intimidating Cable Prospects*, Wash. Post, at D1 (May 24, 2005).

<sup>102</sup> *DirectTV to Broadcast Nationals Games*, AP (Apr. 29, 2005) (emphasis added).

<sup>103</sup> Eric Fisher, *MASN Makes Debut on DirecTV*, Wash. Times (Apr. 30, 2005).

<sup>104</sup> Jim Williams, *MASN is Here for the Long Run*, The Examiner (May 4, 2005) (emphasis added).

<sup>105</sup> See Eric Fisher, *WDCA Will Air 76 Nats Games*, Wash. Times (Apr. 2, 2005) (“The Nationals’ schedule with WDCA represents what is believed to be the largest collection of over-the-air broadcasts of any team in Major League Baseball.”).

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licensed games to UPN Channel 20 (WDCA) and Fox Channel 5 (WTTG).<sup>106</sup> Those broadcast stations are carried on Comcast and other MVPD systems pursuant to the Commission's must-carry rules or retransmission consent agreements.<sup>107</sup> In addition, some Nationals' games can be seen on national telecasts by ESPN and Fox.

54. In short, there are numerous distribution outlets other than Comcast that MASN can and does utilize to present Nationals' games to consumers in the Washington, D.C. television market. Whether MASN has succeeded in securing distribution arrangements with all MVPDs (today, a mere three months after launch) is not a result of any party having the power to "unreasonably" prevent MASN from "competing fairly." No single MVPD, including Comcast, has the power to do this.

#### IV. THE COMMISSION MUST REJECT TCR'S REQUESTS FOR RELIEF.

**A. Given that TCR has failed to prove a violation of the program carriage rules, no relief should be granted.**

55. Remedies can only be ordered if a violation is shown.<sup>108</sup> But, as shown above, both counts of the Complaint are without merit. Consequently, TCR is entitled to no relief.

56. On the contrary, Comcast asks the Commission to remedy TCR's misrepresentations and its submission of a frivolous complaint by applying appropriate sanctions to the complainant. As shown above, there is no evidence to support either count of the

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<sup>106</sup> *See id.*

<sup>107</sup> There does not appear to be any reason that MASN could not have licensed additional games to broadcast stations this year.

<sup>108</sup> *See* 47 U.S.C. § 536(a)(5) (requiring the Commission to establish rules that "provide for appropriate penalties and remedies for violation of this subsection"). *See also* 47 C.F.R. § 76.1302(g) (establishing "Remedies for Violations").

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Complaint. One of those counts is based on allegations that appear to have been made with reckless disregard for the truth, and the other represents such a perversion of the program carriage rules that it must be regarded as frivolous. In addition, TCR's counsel failed to attach a verification to the Complaint. The Commission's rules provide for clear penalties in such instances.<sup>109</sup> TCR should be sanctioned accordingly.

**B. Even if the Commission took the broadest possible view of the prohibitions and incorrectly sided with TCR as to key disputed facts, TCR's proposed remedies are unjustified.**

57. Assuming *arguendo* that the Commission should somehow find a violation of its rules, mandatory carriage would not be the right remedy under the circumstances. The complaint fails to provide the information needed to determine appropriate terms and conditions of carriage.<sup>110</sup> In addition, mandatory carriage would require Comcast to delete two basic tier channels on its systems in the greater Washington area. The Commission has made clear that such relief should only be provided in extraordinary circumstances and only subject to strict due process requirements.<sup>111</sup>

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<sup>109</sup> See 47 U.S.C. § 536(a)(6) (directing the Commission to adopt rules that "provide penalties to be assessed against any person filing a frivolous complaint pursuant to this section"). 47 C.F.R. § 76.6(a)(4) ("If any pleading or other submission is signed in violation of this provision, the Commission shall upon motion or upon its own initiative impose appropriate sanctions." See also *id.* § 76.6(c) ("Any violation of this paragraph shall constitute an abuse of process subject to appropriate sanctions."). Cf. *In re EchoStar Satellite Corp. v. Young Broadcasting, Inc.*, Memorandum Opinion and Order, 16 FCC Red 15070, ¶ 12 (2001) (admonishing EchoStar for abuse of process).

<sup>110</sup> The Commission should deny TCR's Complaint because TCR failed to satisfy the Commission's procedural requirements with respect to the relief requested. The *Program Carriage Order* states: "If the complainant seeks mandatory carriage, the complaint should specify the desired duration and terms of such carriage, and should include the rationale and any documentary evidence supporting such request." *Program Carriage Order* ¶ 29. All that TCR says is that Comcast should provide carriage on the same terms other MVPDs have provided MASN (plus any other terms the Commission deems appropriate). See Complaint at 33. TCR does not detail, for example, the key carriage terms from MASN's deals with DirecTV and RCN.

<sup>111</sup> See 47 C.F.R. § 76.1302(g) (requiring full Commission approval before an MVPD is ordered to drop an existing programming service).

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58. There is also no basis for TCR's request for damages.<sup>112</sup> As an initial matter, neither the program carriage statute nor the Commission's rules authorize the Commission to grant damages as a remedy in a program carriage complaint. Indeed, the *Program Carriage Order* specifically states that: "Available remedies and sanctions include forfeitures, mandatory carriage, or carriage on terms revised or specified by the Commission."<sup>113</sup> Moreover, where the Commission has determined that damages are an appropriate remedy in other cable-related contexts, it has done so as part of a formal rulemaking, not in individual adjudications.<sup>114</sup> The Commission has made no similar determination with respect to program carriage complaints.<sup>115</sup>

**C. The Commission should reject TCR's request for immediate injunctive relief out of hand.**

**1. TCR's request for injunctive relief is flatly inconsistent with the Commission's program carriage rules and general pleading requirements.**

59. The Commission's program carriage rules spell out the pleadings permitted in a program carriage case: a complaint, an answer, and a reply.<sup>116</sup> The Commission's accompanying order underscores the limited scope of the pleadings in program carriage complaints. In particular, the *Program Carriage Order* states that the Commission will decide as

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<sup>112</sup> See Complaint at 34.

<sup>113</sup> See *Program Carriage Order* ¶ 26.

<sup>114</sup> See, e.g., *In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Development of Competition and Diversity in Video Programming Distribution and Carriage*, Mem. Opin. & Order on Reconsideration of First Rept. & Order, 10 FCC Rcd. 1902, ¶¶ 16-18 (1994) (finding the Commission has authority to award damages in program access cases).

<sup>115</sup> In particular, the Commission amended its program access rules to provide for a damages remedy, but did not amend the program carriage rules. See *id.*

<sup>116</sup> See 47 C.F.R. §§ 76.1302(a), (d) & (e).

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many cases as possible on the basis of a complaint, answer, and reply, and that “*additional pleadings will not be accepted or entertained unless specifically requested by the reviewing staff.*”<sup>117</sup> The staff can gather more information, and it can create a discovery process, and the case may be assigned to an ALJ, but these determinations are to be made “[a]fter reviewing the complaint, answer, and reply[.]”<sup>118</sup>

60. And yet TCR demands immediate injunctive relief.<sup>119</sup> TCR’s attempts to base its request on the general pleading requirements in Section 76.7 are unavailing.<sup>120</sup> Section 76.7(a)(1) makes no reference to injunctive relief,<sup>121</sup> and, while Section 76.7(e)(1) does refer to “temporary” relief, it does not say anything about injunctions.<sup>122</sup> In context, Section 76.7 clearly contemplates that even temporary relief comes *after* due process, not before.

61. Lastly, the Commission’s rules make clear that the specific program carriage rules trump any general provisions in Section 76.7.<sup>123</sup> As detailed below, the program carriage rules do not contemplate the granting of interim relief at this stage of the proceeding.

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<sup>117</sup> *Program Carriage Order* ¶ 23 (emphasis added). *See also id.* ¶ 30 n. 51 (“unless specifically requested by the Commission or its staff, *additional pleadings* such as motions to dismiss or motions for summary judgment *will not be considered.*” (emphasis added and in original)).

<sup>118</sup> *See id.* ¶¶ 31-32.

<sup>119</sup> *See* Emergency Petition at 6.

<sup>120</sup> *See id.*

<sup>121</sup> *See* 47 C.F.R. § 76.7(a)(1) (establishing general rules for petitions).

<sup>122</sup> *See id.* § 76.7(e)(1) (establishing general rules for additional procedures and written submissions).

<sup>123</sup> *See id.* § 76.7, note 4 (“To the extent a conflict is perceived between the general pleading requirements of this section, and the procedural requirements of a specific section, the procedural requirements of the specific section should be followed.”). *See also In the Matter of Biennial Regulatory Review - Part 76 - Cable Television Service Pleading and Complaint Rules*, Rept. & Order, 14 FCC Red. 418, ¶ 8 (1999) (same).

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**2. TCR's proposal turns the regular order for considering program carriage complaints on its head.**

62. The program carriage rules state that the Commission can order carriage when and if a complainant has proved its case, not before. In particular, Section 76.1302(g)(1) directs the Commission to order appropriate remedies “*upon completion of such adjudicatory proceeding*” -- not before they begin.<sup>124</sup>

63. Moreover, the Commission has recognized the need to develop a full understanding of facts before acting. In particular, the *Program Carriage Order* states that the rules must “strike a balance that not only prescribes behavior prohibited by the specific language of the statute but also *preserves the ability of affected parties to engage in legitimate, aggressive negotiations*.”<sup>125</sup> It further emphasizes that resolution of complaints will involve focus on “behavior that must be evaluated within the context of *specific facts pertaining to each negotiation*.”<sup>126</sup>

64. It is also important to note that, in cases where compelled carriage would require displacement of existing programming (as would be the case here), even an order of compulsory carriage by the staff or an ALJ -- which would come *after* “completion of such adjudicatory

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<sup>124</sup> See 47 C.F.R. § 76.1302(g)(1) (emphasis added).

<sup>125</sup> *Program Carriage Order* ¶ 14 (emphasis added).

<sup>126</sup> *Id.* (emphasis added). See also *id.* ¶ 24 (noting that the Commission needs to “evaluate contested facts related to the parties’ *specific negotiation*” (emphasis added)). See also *id.* ¶ 15 (noting that the rules must “preserve[] the legitimate aspects of negotiations” and not “preclude[e] legitimate business practices common to a competitive marketplace”). As for remedies, “a *case-by-case determination* of the appropriate remedies based on the specific behavior involved in a particular violation provides the only reasonable and meaningful method of enforcing Section 616.” See *id.* ¶ 27 (emphasis added).

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proceeding”-- “will not become effective” until full Commission review.<sup>127</sup> This language provides clear evidence that the Commission contemplates following a standard “trial first, sentence afterwards” process, not the other way around.

65. Finally, there is a substantial question about the kind of injunction TCR seeks here. In general, where the Commission does exercise injunctive powers, it acts to preserve or restore the status quo.<sup>128</sup> Comcast is not aware of a single case where the Commission has granted injunctive relief that imposed entirely new obligations on a party, forcing the creation of a business relationship between two entities where none exists today, along the lines of what TCR is seeking here.

**3. Even assuming TCR can seek injunctive relief in this case, it cannot satisfy the applicable legal standard.**

66. The Commission has stated that it will “generally consider the four criteria set forth in *Virginia Petroleum Jobbers* to evaluate requests for preliminary injunctive relief: (1) likelihood of success on the merits; (2) the threat of irreparable harm; (3) the degree of injury to other parties if relief is granted; and (4) that the issuance of the order will further the public interest.”<sup>129</sup> TCR has not satisfied *any* of these requirements, much less *all* of them.

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<sup>127</sup> See 47 C.F.R. § 76.1302(g)(1).

<sup>128</sup> Indeed, the very Commission case cited by TCR is an order to restore the *status quo ante*, not an order requiring a party to do something that it has never done before (in this case, to carry MASN on Comcast’s cable systems). See *In re AT&T Corp., et al.*, Mem. Opin. & Order, 13 FCC Rcd. 14508, ¶¶ 13-14 (1998) (“AT&T”) (enjoining Ameritech and Qwest from continuing to offer a new service for a 90-day period). See also *Cox Cable Communications, Inc. v. Simpson*, 569 F. Supp. 507, 516 (D. Neb. 1983) (“It is established . . . that the principal function of a preliminary injunction is to preserve the status quo pending adjudication of the case on its merits. Furthermore, because an injunction is an extraordinary remedy, it should be granted sparingly and in a manner that accords the maximum possible protection to those affected by its issuance.”).

<sup>129</sup> AT&T ¶ 13 (citing *Virginia Petroleum Jobbers*, 259 F.2d 921 (D.C. Cir. 1958)).

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67. First, TCR's claims are without merit. Comcast never requested an equity interest in MASN or TCR, let alone demanded an equity interest in MASN as a condition of carriage. In addition, Comcast has not unlawfully discriminated against TCR or MASN, and MASN is not being unreasonably restrained from competing fairly.

68. Second, TCR has not shown that it will suffer irreparable harm absent a grant of injunctive relief. TCR has provided only redacted versions of the March 28, 2005 agreement among MLB, the Orioles, and TCR, withholding information about the financial arrangements. TCR has provided no information about its costs. TCR has not disclosed the terms of its relationships with DirecTV and RCN or the resulting revenues. In fact, TCR's "Emergency Petition" makes no serious effort of any kind to show irreparable injury to TCR.

69. Third, granting injunctive relief will cause substantial harm to Comcast and its subscribers. Comcast would have to incur substantial costs to carry MASN, including paying very high license fees for MASN and dropping one or more existing programming services to make room for the new network. These costs and programming disruptions would also adversely affect Comcast subscribers.

70. Fourth, issuance of injunctive relief will not further the public interest. As noted, both Congress and the Commission expressly and properly recognized the superiority of private commercial negotiations in addressing relationships between video programmers and program distributors and understood that only exceptional circumstances could justify entangling the Commission in these kinds of issues. This Complaint is certainly not a candidate for relief for the reasons set forth in this answer.



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**D. The Commission should deny TCR's motion for discovery and the associated requests for interrogatories and production of documents.**

71. The Commission was very clear in establishing its program carriage rules that the Commission will initially look only to the complaint, answer, and reply to resolve program carriage complaints as expeditiously as possible, and it was equally clear that discovery is not permitted as a matter of right.<sup>130</sup> Congress was explicit that the Commission should "provide for expedited review of any complaints made by a video programming vendor."<sup>131</sup> To effectuate this directive, the Commission has said that "*additional pleadings will not be accepted or entertained unless specifically requested by the reviewing staff*" and that discovery will be permitted "only as needed on a case-by-case basis, *as determined by the staff.*"<sup>132</sup>

72. Granting TCR's motion for discovery<sup>133</sup> would clearly run counter to congressional directive and Commission policy to consider program carriage complaints on an expedited basis. The wide-ranging discovery that TCR proposes<sup>134</sup> obviously would not contribute to a prompt resolution of this dispute.

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<sup>130</sup> See *Program Carriage Order* ¶ 23 ("Thus, we hereby adopt a system that promotes resolution of as many cases as possible on the basis of a complaint, answer and reply.") See also 47 C.F.R. 76.7(f)(1) (giving Commission staff discretion as to whether to order discovery in a particular case).

<sup>131</sup> See 47 U.S.C. § 536(a)(4).

<sup>132</sup> See *Program Carriage Order* ¶ 23 (emphasis added).

<sup>133</sup> See *In the Matter of TCR Sports Broadcasting Holding, L.L.P., Complainant, v. Comcast Corporation, Defendant*, Motion for Discovery, Request for Production of Documents, and Request for Interrogatories, File No. \_\_\_\_\_, (June 14, 2005).

<sup>134</sup> See Motion for Discovery (regarding depositions), Request for Production of Documents (regarding seeking documents going back to 20Q1), and Request for Interrogatories (regarding requests for information unrelated to the Complaint).

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73. Abuse of the discovery process is manifest in another respect. As detailed above, TCR's Complaint includes a number of particularly outlandish claims. Most significantly, TCR alleges that Steve Greenberg, a well-respected investment banker with close ties to MLB, was somehow acting as a secret agent for Comcast during discussions in late 2004 between MLB and the Orioles with respect to the Nationals' TV rights. TCR does not provide a scintilla of evidence in the Complaint to support this allegation and, as noted above, Mr. Greenberg and his firm, Allen & Company, have publicly repudiated this allegation in a letter to the Commission.<sup>135</sup> Now, TCR seeks discovery to harass Comcast with respect to a claim that is patently false and that MLB apparently warned TCR was false. This is a clear abuse of the discovery process.

74. In sum, there is simply no basis for the Commission to initiate discovery here as the pleadings provide all the information the Commission needs to make a decision in this case.<sup>136</sup> TCR's motion should be dismissed with prejudice.

#### V. RESPONSES TO NUMBERED PARAGRAPHS

¶ 1. Paragraph 1 of the Complaint consists of legal conclusions to which no response is required. Nonetheless, Comcast vigorously denies that it has violated § 76.1301(a) or (c) of the Commission's rules.

<sup>135</sup> See Greenberg Declaration ¶ 4; Allen Letter at 1. Comcast has repudiated this accusation, as well. See also Burke Decl. ¶ 10.

<sup>136</sup> See *RCN Telecom Serv. v. Cablevision Sys. Corp.*, Memorandum Opinion & Order, 16 FCC Rcd. 12048, ¶¶ 19-20 (2001) (upholding Cable Services Bureau's denial of RCN's request for discovery and supporting the Bureau's decision "[b]ased on the record before it"); *RCN Telecom Serv. v. Cablevision Sys. Corp.*, Memorandum Opinion & Order, 14 FCC Rcd 17093, ¶ 27 (2001) (Cable Servs. Bur.) (stating that the "pleadings and supporting affidavits submitted in these proceedings provide sufficient detail" and that the Bureau therefore did "not believe that discovery [was] necessary to supplement the record"), *aff'd* 16 FCC Rcd. 12048 (2001); *EchoStar Communications Corp. v. Comcast Inc.*, 14 FCC Rcd 2089, ¶ 31 (1999) (Cable Servs. Bur.) (denying EchoStar's motion for discovery because it failed to persuade the Bureau "that discovery [was] necessary or that the record compiled . . . [was] insufficient").

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¶ 2. Comcast admits that TCR purports to be a Maryland limited liability partnership with its principal place of business in Baltimore, Maryland, and that TCR was a party to a 1996 agreement with the Orioles that licenses rights to CSN. Comcast is without sufficient knowledge or information to admit or deny the remaining allegations of the first through fourth, sixth, and seventh sentences of paragraph 2 of the Complaint and therefore denies those allegations. Comcast denies the fifth sentence insofar as it suggests that TCR began operating as an RSN in 2001, but otherwise is without sufficient knowledge. The eighth sentence of paragraph 2 of the Complaint is a legal conclusion to which no response is required.

¶ 3. Comcast admits the first sentence of paragraph 3 of the Complaint. Comcast denies the second sentence; Comcast's phone number is (215) 665-1700. Comcast admits the fact asserted at the beginning of the third sentence of paragraph 3 of the Complaint, but the remainder of the sentence is a legal conclusion to which no response is required. Comcast admits the fourth sentence of paragraph 3 of the Complaint. Comcast admits that it owns or controls several RSNs; the remainder of the fifth sentence of paragraph 3 of the Complaint is a legal conclusion to which no response is required.

¶ 4. Comcast admits paragraph 4 of the Complaint.

¶ 5. Comcast admits, as asserted in paragraph 5 of the Complaint, that a declaration purporting to have been executed by Joe Foss is attached as Exhibit 4. Comcast is without sufficient knowledge or information to admit or deny whether that declaration was in fact executed by Mr. Foss.

¶ 6. Paragraph 6 of the Complaint is a legal conclusion to which no response is required. Nonetheless, Comcast denies that it possesses "dominant market position," that it has

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“misuse[d]” its position, that it has discriminated in favor of an affiliated programming vendor, and that it has “attempt[ed] to extract an equity interested in a rival programming vendor.”

¶ 7. Comcast denies the allegation in the first sentence of paragraph 7 of the Complaint but admits that it provides cable services in many of the communities of the Washington, D.C. metropolitan area. Comcast admits the second and third sentences of paragraph 7 of the Complaint, except to note that the Orioles also are a party to the contract with CSN regarding the rights to Orioles’ games through the 2006 season. Concerning the fourth and sixth sentences of paragraph 7, Comcast acknowledges that CSN and MASN “compete . . . with one another” for revenues associated with televising sporting events but notes that the sporting events, other programming, audiences, advertisers, and distributors for the two networks are by no means identical. Comcast is without sufficient knowledge or information to admit or deny the allegations of the fifth sentence of paragraph 7 of the Complaint and therefore denies those allegations.

¶ 8. Most of the discussion in paragraph 8 of the Complaint is erroneous, misleading, speculative, and/or irrelevant. With respect to the first sentence of paragraph 8, Comcast admits only that it proposed a rights deal to carry Nationals’ games on CSN, but denies the remainder of the sentence. Comcast denies the second through ninth sentences of paragraph 8 of the Complaint.

¶ 9. Paragraph 9 of the Complaint presents legal conclusions to which no response is required.

¶ 10. Comcast is without sufficient knowledge or information to admit or deny the allegations of the first sentence of paragraph 10 of the Complaint and therefore denies those allegations. Comcast has received what purports to be a copy of an “Emergency Petition for

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Temporary Injunctive Relief,” but does not know that it was in fact filed with the Commission; Comcast also notes that the Commission’s program carriage rules do not contemplate any pleadings other than a complaint, answer, and reply, except as may be specifically requested by the staff. The second and third sentences of paragraph 10 of the Complaint are legal conclusions to which no response is required.

¶ 11. Comcast admits the first and second sentences of paragraph 11 of the Complaint. Comcast denies the allegations in the third and fourth sentences of paragraph 11 of the Complaint; it appears that TCR has mistakenly assumed that the systems whose Form 325s it reproduced in Exhibit 7 of the Complaint are located entirely within the Washington DMA (within which Comcast in fact has approximately 722,000 customers<sup>137</sup>). With respect to the third sentence, TCR has overstated the number of homes that Comcast passes in the Washington, D.C. DMA, probably as a result of assuming that the Comcast entities that serve homes within the DMA have no other facilities outside the DMA. With respect to the fourth sentence, Comcast has approximately 722,000 customers in the Washington, D.C. DMA, not the 817,000 alleged by TCR. Comcast is without sufficient knowledge or information to admit or deny the allegations of the fifth and sixth sentences of paragraph 11 of the Complaint and therefore denies those allegations.

¶ 12. Comcast admits paragraph 12 of the Complaint, except that it denies the assertion in the first sentence that “Comcast has an ownership interest in *many* of the networks whose

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<sup>137</sup> See Comcast/Time Warner *Ex Parte*, filed in MB Dkt. No. 05-192 (June 21, 2005).

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programming it carries....” A more accurate statement would be that Comcast has ownership interests in a small fraction of the networks whose programming it carries.

¶ 13. Comcast admits paragraph 13 of the Complaint, but, with respect to the first sentence of paragraph 13, notes that the Orioles are a party to the contract with CSN and TCR, and, with respect to the second sentence of paragraph 13, clarifies that CSN’s rights to Washington Capitals’ telecasts runs through the 2016-2017 NHL season and CSN’s rights to Washington Wizards’ telecasts runs through at least the 2011-2012 NBA season.

¶ 14. Comcast admits the first sentence of paragraph 14 of the Complaint but would clarify that CSN does not sell “Orioles games” to other MVPDs; rather, CSN sells other MVPDs the rights to distribute to their customers a network that operates 24 hours a day, 365 days a year and whose programming *includes* Orioles games. Comcast denies the second sentence and notes that CSN is available to other MVPDs in the Washington, D.C. metropolitan area, including, but not limited to DirecTV, EchoStar, and RCN, which compete directly with Comcast for customers.

¶ 15. Comcast admits the first sentence of paragraph 15 of the Complaint, but notes that the Orioles also are a party to the 1996 license agreement. Comcast is without sufficient knowledge or information to admit or deny the allegations of the second sentence of paragraph 15 of the Complaint and therefore denies those allegations.

¶ 16. Comcast admits paragraph 16 of the Complaint, except that the name of the entity to which HTS changed its name is Comcast SportsNet Mid-Atlantic L.P.

¶ 17. Comcast admits the first through the fifth sentences of paragraph 17 of the Complaint, except to note that CSN negotiated with the Orioles for an extension of the 1996 agreement with the Orioles, TCR, and CSN and that the Orioles were a party to the 2001

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agreement regarding rights to over-the-air telecasts. Comcast is without sufficient knowledge or information to admit or deny the allegations of the sixth sentence of paragraph 17 of the Complaint and therefore denies the allegations. Comcast denies the seventh sentence of paragraph 17 of the Complaint.

¶ 18. Comcast denies the first sentence of paragraph 18. Comcast is without sufficient knowledge or information to admit or deny the allegations of the second through the fourth sentences of paragraph 18 of the Complaint and therefore denies those allegations, except that Comcast denies that TCR had any rights to retain during the time period referenced in paragraph 18 and notes that the first sentence of paragraph 43 is inconsistent with the claim here that TCR (rather than the Orioles) possessed rights to post-2006 Orioles' games. Comcast denies the fifth sentence of paragraph 18 of the Complaint.

¶ 19. Comcast denies the allegations in paragraph 19.

¶ 20. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 20 of the Complaint and therefore denies those allegations.

¶ 21. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 21 of the Complaint and therefore denies those allegations.

¶ 22. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 22 of the Complaint and therefore denies those allegations.

¶ 23. Comcast is without sufficient knowledge or information to admit or deny the allegation of the first sentence of paragraph 23 of the Complaint and therefore denies the allegation. Comcast admits the remaining sentences of paragraph 23.

¶ 24. Comcast denies paragraph 24 of the Complaint. Comcast only proposed a rights deal to carry Nationals' games on CSN. Comcast specifically rejected a proposal made by MLB

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involving the formation of a new RSN to carry Nationals' and Orioles' games that would be jointly owned by Comcast and the Baltimore Orioles.

¶ 25. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 25 of the Complaint and therefore denies those allegations.

¶ 26. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 26 of the Complaint and therefore denies those allegations.

¶ 27. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 27 of the Complaint and therefore denies those allegations.

¶ 28. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 28 of the Complaint and therefore denies those allegations.

¶ 29. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 29 of the Complaint and therefore denies those allegations.

¶ 30. Comcast admits the first sentence of paragraph 30 of the Complaint but only to the extent that Comcast worked very briefly with Allen & Company on a particular matter in 2003; the allegation is denied to the extent that it implies Comcast has been a continuing client of Allen & Company. Comcast admits the second sentence of paragraph 30 of the Complaint but emphasizes that Allen & Company represented Adelphia, not Comcast, in the acquisition described. With respect to the third sentence of paragraph 30 of the Complaint, Comcast admits that it filed the referenced Form 8-K but denies the allegation that this reflects a "relationship" between Comcast and Allen & Company; as the 8-K indicates, Allen & Company's fees were to be paid by Adelphia. Comcast denies the fourth sentence of paragraph 30 of the Complaint. Comcast is without sufficient knowledge or information to admit or deny the allegations of the fifth and sixth sentences of paragraph 30 of the Complaint and therefore denies those allegations;



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however, Comcast specifically denies the implication that Comcast was a client of Allen & Company during the events in questions. Comcast denies the allegation in the seventh sentence of paragraph 30 of the Complaint; Greenberg has not acted, at any time, as an agent for Comcast.

¶ 31. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 31 of the Complaint and therefore denies those allegations.

¶ 32. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 32 of the Complaint and therefore denies those allegations.

¶ 33. Comcast denies the first sentence of paragraph 33 of the Complaint insofar as it suggests that Mr. Greenberg represented Comcast in the transaction to create an RSN to televise New York Mets baseball games. In fact, Mr. Greenberg represented the New York Mets, not Comcast or Time Warner, in that transaction. Comcast admits the remainder of paragraph 33 of the Complaint, but clarifies that it holds an approximately 11% interest in the new RSN.

¶ 34. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 34 of the Complaint and therefore denies those allegations.

¶ 35. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 35 of the Complaint and therefore denies those allegations.

¶ 36. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 36 of the Complaint and therefore denies those allegations.

¶ 37. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 37 of the Complaint and therefore denies those allegations.

¶ 38. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 38 of the Complaint and therefore denies those allegations.

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¶ 39. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 39 of the Complaint and therefore denies those allegations.

¶ 40. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 40 of the Complaint and therefore denies those allegations.

¶ 41. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 41 of the Complaint and therefore denies those allegations.

¶ 42. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 42 of the Complaint and therefore denies those allegations.

¶ 43. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 43 of the Complaint and therefore denies those allegations.

¶ 44. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 44 of the Complaint and therefore denies those allegations.

¶ 45. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 45 of the Complaint and therefore denies those allegations, but Comcast notes that the first sentence of paragraph 43 is inconsistent with the claim here that "TCR . . . would continue to hold all rights to Orioles games"; rather, the Orioles would transfer their post-2006 rights to Orioles' games to MASN.

¶ 46. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 46 of the Complaint and therefore denies those allegations.

¶ 47. Comcast admits paragraph 47 except that Comcast is without sufficient knowledge or information to admit or deny the allegation that the Orioles and MLB negotiated "to preserve the financial viability of the Orioles franchise" and therefore denies that allegation.

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¶ 48. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 48 of the Complaint and therefore denies those allegations.

¶ 49. Comcast is without sufficient knowledge or information to admit or deny the allegations of paragraph 49 of the Complaint and therefore denies those allegations, except to note that Comcast understands that MASN has contacted MVPDs and entered into agreements for distribution of MASN.

¶ 50. Comcast admits the first sentence of paragraph 50 of the Complaint, except that (1) Comcast denies receiving a proposal from TCR (as opposed to MASN) and (2) Comcast denies that MASN is a "newly renamed regional sports network." MASN did not come into existence as an RSN until after the March 28, 2005 agreement among MLB, the Orioles, and TCR. Comcast admits the second sentence of paragraph 50 of the Complaint, except that (1) Comcast denies receiving a proposal from TCR (as opposed to MASN) and (2) Comcast denies that the CSN contract with TCR and the Orioles "expir[es]" in 2007. Specifically, Paragraph 16 of that agreement (which grants CSN exclusive rights to negotiate an extension to the agreement through November 1, 2005 and to match competing offers received after November 1, 2005 for the rights to televise Orioles' games beginning with the 2007 season) states that such paragraph "will survive expiration of this Letter Agreement." Comcast admits the third sentence of paragraph 50 of the Complaint. Comcast is without sufficient knowledge or information to admit or deny the allegations of the fourth sentence of paragraph 50 of the Complaint and therefore denies those allegations; Comcast otherwise denies the remainder of the sentence.

¶ 51. Comcast denies the first sentence of paragraph 51 of the Complaint. With respect to the second sentence of paragraph 51 of the Complaint, Comcast admits only that CSN filed

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the lawsuit whose Complaint is reproduced as Ex. 22, that CSN sent the letters reproduced as Exhibits 23 and 25, and that the letter reproduced as Ex. 24 was sent by Comcast. Comcast denies the remaining allegations in paragraph 51.

¶ 52. Comcast admits that CSN brought suit against TCR, MASN, the Orioles, and MLB on April 21, 2005, but denies the remaining allegations in paragraph 52 of the Complaint.

¶ 53. Comcast denies paragraph 53 of the Complaint.

¶ 54. Comcast admits the first sentence of paragraph 54 of the Complaint, but denies the implication that MASN's proposal to Comcast was limited to distribution only of Nationals' games. Comcast admits the second and fourth sentences of paragraph 54 of the Complaint. Comcast is without sufficient knowledge or information to admit or deny the allegations of the third sentence of paragraph 54 of the Complaint and therefore denies those allegations. Comcast denies the fifth sentence of paragraph 54 of the Complaint but agrees that MASN's proposal, if accepted by Comcast, would have compelled Comcast to carry MASN through March 31, 2011 regardless of the outcome of the litigation in Maryland state court.

¶ 55. Comcast denies the first and second sentences of paragraph 55 of the Complaint. Comcast admits the third, fourth, and seventh sentences of paragraph 51 of the Complaint. The remainder of paragraph 55 of the Complaint consists of legal conclusions to which no response is required; nonetheless, Comcast denies the fifth, sixth, eighth, and ninth sentences of paragraph 55 of the Complaint.

¶ 56. To the extent the first sentence of paragraph 56 of the Complaint contains factual assertions, Comcast denies it. To the extent the first sentence of paragraph 56 of the Complaint contains legal conclusions, no response is required; nonetheless, Comcast specifically denies it. With respect to the second sentence of paragraph 56, Comcast admits that it carries CSN on its

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Washington area cable systems, but denies the rest of the sentence. Comcast denies the third through the seventh sentences of paragraph 56 of the Complaint.

¶ 57. Comcast admits paragraph 57 of the Complaint except insofar as it suggests that CSN is sold mainly to MVPDs that do not compete directly with Comcast; RCN (incorrectly referred to as Starpower in the second sentence) and the major satellite services (referred to in the third) do in fact compete directly with Comcast.

¶ 58. With respect to the first sentence of paragraph 58 of the Complaint, Comcast admits only that CSN consulted with Comcast before sending letters to Washington area MVPDs apprising those MVPDs of the breach of contract by TCR and the Orioles, and tortious interference with contract by MLB and MASN. Comcast denies the second sentence of paragraph 58 of the Complaint; the contents of CSN's letters, as reflected in Ex. 23, speak for themselves.

¶ 59. Comcast denies the first sentence of paragraph 59 of the Complaint insofar as it refers to the intent of CSN's letter. Comcast is without sufficient knowledge or information to admit or deny allegations that TCR had approached other distributors or, if so, what "package of games" it offered them, and, therefore, Comcast denies the remainder of the first sentence of paragraph 59 of the Complaint. Comcast is without sufficient knowledge or information to admit or deny the allegations of the second sentence of paragraph 59 of the Complaint and therefore denies those allegations. Comcast admits the third sentence of paragraph 59 of the Complaint except insofar as it claims that that CSN "threatened DirecTV with legal action." As to that, Comcast denies the allegation.

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¶ 60. The first sentence of paragraph 60 of the Complaint presents legal conclusions to which no response is required but Comcast denies the claims of “intimidation” and “threats.” Comcast denies the second, third, and fourth sentences of paragraph 60 of the Complaint.

¶ 61. Comcast admits paragraph 61 of the Complaint insofar as it claims that Comcast communicated with one or more members of Congress, but denies the allegations in the first sentence that CSN “barraged local [MVPDs] with threatening letters” and in the second sentence that the cited letter “contained deliberately false statements intended to harm TCR.”

¶ 62. Comcast admits the first sentence in paragraph 62 of the Complaint but denies the remainder of the paragraph.

¶ 63. Comcast denies paragraph 63 of the Complaint.

¶ 64. Comcast denies paragraph 64 of the Complaint, except that it admits that it has described MASN as a “newly created local sports network named Mid-Atlantic Sports Network (MASN).”

¶ 65. Comcast denies Paragraph 65 of the Complaint.

¶ 66. Comcast denies the first and third sentences of paragraph 66 of the Complaint. With respect to the second sentence of paragraph 66, Comcast admits that it sent a letter to some members of Congress. Comcast denies the remaining allegations of paragraph 66 of the Complaint.

¶ 67. Comcast repeats and incorporates by references here its answers to paragraphs 1 through 66 of the Complaint above.

¶ 68. Paragraph 68 of the Complaint is a legal conclusion to which no response is required.

¶ 69. Comcast admits paragraph 69 of the Complaint.

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¶ 70. Comcast generally admits paragraph 70 of the Complaint except for the assertion that the regulation codified at 47 C.F.R. § 76.1301(c) is “relevant” to MASN’s claims; that is a legal conclusion to which no response is required.

¶ 71. Paragraph 71 of the Complaint is a legal conclusion to which no response is required.

¶ 72. Paragraph 72 of the Complaint is a legal conclusion to which no response is required.

¶ 73. Paragraph 73 of the Complaint is a legal conclusion to which no response is required.

¶ 74. The first, second, fourth, sixth, seventh, and ninth sentences of paragraph 74 of the Complaint are legal conclusions to which no response is required. Comcast denies the third and the eighth sentences of paragraph 74 of the Complaint. Comcast admits the fifth sentence of paragraph 74 of the Complaint.

¶ 75. Comcast repeats and incorporates by references here its answers to paragraphs 1 through 74 of the Complaint above.

¶ 76. The first sentence of paragraph 76 of the Complaint is a legal conclusion to which no response is required, except that Comcast denies that it has “attempted to cover its tracks by dealing through intermediaries” and that “the consistent pattern of its negotiating efforts has been to extract an equity position in TCR.” The remainder of paragraph 76 of the Complaint consists of legal conclusions to which no response is required; nonetheless, Comcast specifically denies them.

¶ 77. Paragraph 77 of the Complaint contains legal conclusions to which no response is required. Comcast denies the fourth and fifth sentences of paragraph 77 of the Complaint.

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¶ 78. Comcast admits the first sentence of paragraph 78 of the Complaint but clarifies that its only proposal to MLB was a “rights” deal, with Comcast paying to acquire the pay TV rights to produce and air Nationals games, and MLB in turn licensing those rights and collecting license fees; Comcast would not have acquired any new “equity interest in a network” but would of course have retained its ownership of CSN. Comcast is without sufficient knowledge or information to admit or deny the allegations of the second sentence of paragraph 78 of the Complaint and therefore denies those allegations.

¶ 79. Comcast denies the first sentence of paragraph 79 of the Complaint. Comcast is without sufficient knowledge or information to admit or deny the allegations of the second and third sentences of paragraph 79 of the Complaint and therefore denies those allegations.

¶ 80. Comcast denies the first sentence of paragraph 80 of the Complaint. Comcast is without sufficient knowledge or information to admit or deny the allegations of the second sentence of paragraph 80 of the Complaint and therefore denies those allegations. The third sentence of paragraph 80 of the Complaint is a legal conclusion to which no response is required.

¶ 81. Comcast denies the first and second sentence of paragraph 81 of the Complaint. The third sentence of paragraph 81 of the Complaint is a legal conclusion to which no response is required.



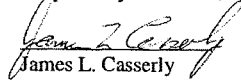
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**VI. CONCLUSION**

TCR's program carriage Complaint should be dismissed with prejudice for the reasons set forth above.

- As to TCR's first claim, Comcast has never demanded an equity interest in MASN as a condition of carriage, nor did it ever demand an ownership interest in TCR prior to the creation of MASN in March 2005. TCR's claims regarding Mr. Greenberg are completely without merit. TCR knew this was the case, and yet made the claim anyway. TCR should be sanctioned by the Commission for knowingly making false statements in its Complaint.
- As to TCR's second claim, Comcast did not unlawfully discriminate against MASN on the basis of affiliation. Comcast's decision not to carry MASN reflects entirely legitimate business judgments under the circumstances, including, among other things, the proposed carriage terms, the lack of a defined program schedule for MASN, and the breach of Comcast's contractual rights regarding the Orioles' games by TCR, the Orioles, and MLB. The fact that other MVPDs, including EchoStar and Cox, have also opted against carrying MASN further weakens TCR's claim.
- The Commission should also deny TCR's ancillary requests with respect to injunctive relief and discovery. The requests are improper under the Commission's rules and otherwise unwarranted.

Respectfully submitted,



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*Attorneys for Comcast Corporation*

July 14, 2005

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**CERTIFICATE OF SERVICE**

I, Robin Smith, hereby certify that, on July 14, 2005, copies of the attached "Answer of Comcast Corporation" were served by hand delivery or First-Class Mail, postage prepaid, to the following:

**FIRST CLASS MAIL:**

Michael K. Kellogg  
Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C.  
1615 M Street, N.W.  
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**HAND DELIVERY:**

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Washington, D.C. 20554

  
Robin Smith

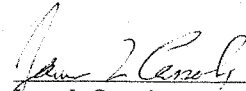
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VERIFICATION

I, James L. Casserly, do hereby declare and state under penalty of perjury as follows:

1. I am a Partner in the law firm of Willkie Farr & Gallagher LLP and
2. I have read the foregoing Answer of Comcast Corporation ("Answer"). To the best of my personal knowledge, information, and belief, the statements made in this Answer other than those of which official notice can be taken, are well grounded in fact and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. This Answer is not interposed for any improper purpose.

7/14/05  
July 14, 2005

  
James L. Casserly

**EXHIBIT 1:**

**DECLARATION OF STEPHEN B. BURKE**  
**EXECUTIVE VICE PRESIDENT AND CHIEF OPERATING OFFICER, COMCAST**  
**CORPORATION; PRESIDENT, COMCAST CABLE COMMUNICATIONS, LLC.**

BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C.

In the Matter of	)	
	)	
TCR Sports Broadcasting Holding, L.L.P.,	)	File No.
	)	
Complainant	)	
	)	
v.	)	
	)	
Comcast Corporation,	)	
	)	
Defendant	)	

**DECLARATION OF STEPHEN B. BURKE**

1. My name is Stephen B. Burke. My business address is 1500 Market Street, Philadelphia, Pennsylvania 19102.
2. I am Executive Vice President and Chief Operating Officer, Comcast Corporation, and President, Comcast Cable Communications, LLC. I manage a team of 59,000 employees who serve more than 21 million cable customers. I oversee all aspects of Comcast's cable and programming businesses. Prior to joining the Comcast, I served with The Walt Disney Company as President of ABC Broadcasting.
3. I was personally involved in discussions with Major League Baseball ("MLB") regarding the television rights to Washington Nationals' game between September 2004 and March 2005.
4. On September 14, 2004, MLB announced it was relocating the Montreal Expos to Washington, D.C. Over the next six months, I participated in several discussions with MLB regarding Comcast's interest in carrying Nationals' games. At no time during any such discussions did I ever propose, much less demand, that Comcast should receive equity in TCR, either "in exchange for carriage" or otherwise.

5. The main focus of my discussions with MLB was on a proposal, initiated by Comcast, to carry Nationals' games on Comcast SportsNet Mid-Atlantic ("CSN"). Under that proposal, Nationals' and Orioles' games would be carried on CSN and, when games were on at the same time, on an "overflow" channel. This would have been a "rights" deal only, with Comcast paying to acquire the pay TV rights to produce and air Nationals games, and MLB in turn licensing those rights and collecting license fees. My proposal included no transfer of "equity" from or to Comcast and contemplated no "carriage" of any network other than ones we were already carrying.

6. I underscored that CSN was a logical choice for carrying Nationals' games in the greater Washington, D.C. market, given its successful track record of producing telecasts of games (as well as pre- and post-game shows) for professional sports teams in the region (including the Baltimore Orioles, Washington Wizards, and Washington Capitals), its continuing rights to telecast the Orioles, Wizards and Capitals, its strong brand name with sports fans in the area, and its broad distribution on cable, satellite, and other multichannel video programming distribution ("MVPD") systems. In short, I emphasized that CSN could hit the ground running with the Nationals. This was an important consideration since the Nationals would begin playing in Washington, D.C. in the Spring of 2005 and there would be a relatively short time frame in which arrangements to televise the games could be finalized.

7. With respect to professional baseball, I noted CSN's longstanding relationship with the Baltimore Orioles. CSN (previously named Home Team Sports) has carried Orioles' games for more than 20 years. I underscored the fact that CSN pays substantial rights fees to carry the Orioles' games and invests significant resources to produce, distribute, and market these games throughout the Washington/Baltimore region. I made clear during those discussions

with MLB that CSN would be as strongly committed to the success of the Nationals. I emphasized that Comcast would dedicate similar resources to produce and distribute the highest quality Nationals' programming to fans and was willing to pay a substantial rights fee to carry Nationals games. Indeed, the rights fee offer presented by Comcast exceeds the fee that MASN is reportedly paying the Nationals.

8. At one point early in the discussions, MLB representatives presented a different proposal. Specifically, they raised the possibility of forming a new network to carry Nationals' and Orioles' games that would be jointly owned by Comcast and the Baltimore Orioles. I specifically rejected this proposal.

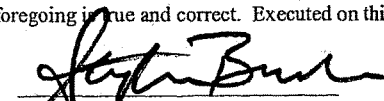
9. No proposals other than the two discussed above arose in the course of my discussions with MLB. Nor has Comcast ever sought an ownership interest in TCR. As noted, my proposal to MLB focused on CSN acquiring the TV rights to the Nationals. Comcast's sole objective was to procure rights relating to the Nationals, and TCR possessed no such rights.

10. During the approximately six-month period that Comcast negotiated with MLB, it conducted such negotiations through me. At no time did Comcast hire any outside consultant to help with these negotiations. There is absolutely no truth to TCR's claims that Comcast was conducting its negotiations through Mr. Steve Greenberg or that Mr. Greenberg was involved in any way on behalf of Comcast. Throughout this period, Mr. Greenberg -- both in his discussions with Comcast and in his discussions with the Orioles -- was representing *MLB*.

11. I am not aware of any circumstances where Comcast has hired Mr. Greenberg to represent, consult, or provide any other service for Comcast. In all of the dealings I have had with him since I joined Comcast, Mr. Greenberg has worked for the other side. As noted, he represented MLB in our discussions regarding the Nationals' TV rights. Likewise, he

represented Adelphia in the transaction with Comcast and Time Warner, and he represented the New York Mets in the negotiations to create a new RSN in New York. Comcast did speak with Allen & Company in August 2003 when Comcast was considering making a bid for Vivendi, but Mr. Greenberg was not involved in any way in that matter and Comcast worked only briefly with Allen & Company on the project.

14 I declare under penalty of perjury that the foregoing is true and correct. Executed on this day of July, 2005.

  
Stephen B. Burke



**EXHIBIT 2:**

**DECLARATION OF MADISON BOND**  
**EXECUTIVE VICE PRESIDENT FOR PROGRAMMING**  
**COMCAST CABLE COMMUNICATIONS, LLC**

BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C.

In the Matter of	)	
	)	
TCR Sports Broadcasting Holding, L.L.P.,	)	File No.
	)	
Complainant	)	
	)	
v.	)	
	)	
Comcast Corporation,	)	
	)	
Defendant	)	

**DECLARATION OF MADISON BOND**

1. My name is Madison Bond. My business address is 1500 Market Street, Philadelphia, Pennsylvania 19102.
2. I have served as Executive Vice President for Programming at Comcast Cable Communications, LLC, an indirect subsidiary of Comcast Corporation (“Comcast”) since December 2002. I am responsible for the negotiation of programming agreements for cable systems serving more than 21 million customers. Before joining Comcast, I served as Executive Vice President of Distribution for the Yankees Entertainment & Sports Network (YES) and prior to that was Executive Vice President for Programming at AT&T Broadband and President of Satellite Services, Inc.
3. I was personally involved in discussions with Mid-Atlantic Sports Network (“MASN”) regarding possible carriage of MASN on Comcast’s cable systems between April and June of this year.
4. On March 28, 2005, upon information and belief, MLB, the Orioles, and TCR reached an agreement to create a joint venture to produce and exhibit Nationals’ games and,

starting with the 2007 season, Orioles' games on a new RSN (now MASN). This agreement and the creation of MASN are the subject of a breach-of-contract complaint filed by CSN against the Orioles, TCR, and MLB in Maryland state court.

5. Since MLB and the Orioles reached the agreement on March 28, 2005 and MASN launched as an RSN, Comcast has had several communications with MASN regarding possible carriage of the network on Comcast's cable systems in the greater Washington-Baltimore region.

6. I had an initial discussion with Mr. David Gluck, a consultant handling negotiations for MASN, in early April 2005. We agreed that MASN would send Comcast a draft term sheet (which was sent on April 13, 2005), and that the parties would meet to discuss the proposed term sheet on April 14, 2005. Comcast met with MASN representatives in Philadelphia on April 14, 2005 to review and discuss MASN's initial carriage proposal. I and Alan Dannenbaum, Senior Vice President for Programming at Comcast, attended that meeting on behalf of Comcast. At that meeting, Mr. Joseph Foss, Vice Chairman of Baltimore Orioles Limited Partnership, made a presentation regarding the new network. Before discussing MASN's initial term sheet for carriage of MASN, Mr. Foss stated that MASN was committing to potential distributors that the Orioles' games would be distributed on MASN commencing with the 2007 season and that there was no possibility that MASN would not have the Orioles' games from the 2007 season forward absent a strike or other labor dispute. Hence, Mr. Foss noted that the proposed term sheet included fees for both Nationals' and Orioles' games.

7. The parties then discussed MASN's proposed term sheet, including, among other things: the number of Orioles' and Nationals' games to be delivered on MASN and/or a second channel for "overflow" games (for days where Orioles and Nationals games aired at the same time); over-the-air distribution of certain games; the length of the term; the requirement for

Comcast to place MASN and overflow games on the basic or expanded basic tier of service; the proposed rate structure; other programming that MASN plans to air on the network; MASN's plans for high-definition, video-on-demand, and interactive programming; territorial restrictions on distribution of the games in the greater Washington-Baltimore region; and marketing and launch support for the network. I concluded the meeting by thanking Mr. Foss and the other MASN representatives for their proposal and told them that Comcast would review the proposal and contact them with our response.

8. Subsequently, MASN sent Comcast a second term sheet on May 13, 2005. Comcast carefully reviewed the proposal. On June 7, 2005, I sent Mr. Gluck a letter raising a number of questions and issues regarding the revised term sheet. In particular, I highlighted, among other things, the uncertainty surrounding MASN's programming for the foreseeable future, the substantial subscriber fees sought by MASN, and the pending litigation involving CSN, MASN, TCR, the Orioles, and MLB. I specifically asked MASN for additional information about its service to help Comcast further evaluate MASN's carriage offer, including, among other things, MASN's plans with respect to carriage of additional live professional sports programming (including so-called "Surcharge" events for which Comcast would have to pay an additional fee), its timetable for becoming a full-time network, and the programming MASN anticipated offering when it became a full-time network.

9. Mr. Gluck responded to my letter on June 9, 2005. Despite my request for specific information on MASN's programming plans, Mr. Gluck indicated that the network would consist of unspecified "local, regional, and national sporting events, sports news and information, sports talk, and other related programming." He provided no concrete details as to what specific types of programming he had in mind for the network. He alluded to the

possibility of carrying the games of other major professional sports teams as well as ACC basketball games, but did not indicate whether the rights to telecast those games were expected to become available for distribution in the Washington-Baltimore region in the foreseeable future. Mr. Gluck concluded his letter by offering to provide Comcast “with whatever information . . . you may need to make an informed decision” about carrying MASN.

10. Then, on June 14, 2005 -- only five days after Mr. Gluck sent his letter -- TCR filed its program carriage complaint at the Commission. It is not the case (as TCR has asserted) that Comcast has “refused to negotiate.”

11. At no point during these discussions with MASN did Comcast ever express an interest in, let alone demand, an equity interest in MASN.

12. TCR’s claims that Comcast’s decision not to carry MASN are based on the unaffiliated status of MASN are completely without merit. As an initial matter, Comcast faces an RSN competitor in nearly every region of the country where it operates or co-owns an RSN, including: New York, Chicago, Boston, Detroit, Atlanta, and San Francisco/Sacramento. Comcast carries both the affiliated and non-affiliated RSNs on the cable systems serving these markets. In fact, the vast majority of all programming that Comcast carries on its cable systems is unaffiliated.

13. As MASN is well aware, carriage negotiations are highly complex, and carriage decisions are typically informed by a wide range of considerations relating to the overall value proposition of a particular service, including, among other things: an understanding of the nature of the programming involved, its target demographics, its likely appeal to consumers, its similarities and differences from other programming available to the MVPD, and its cost. Comcast’s decisionmaking process with respect to MASN has been guided by similar

considerations in addition to the fundamental concerns reflected in the Maryland state court litigation that CSN has initiated concerning the breach of its contractual rights with the Orioles and TCR.

14. As noted above, Comcast raised specific concerns regarding MASN in the course of its discussions with MASN representatives over the last two months. Among other things, Comcast expressed concern regarding the dearth of programming on MASN in the foreseeable future and the uncertainty as to the product contained on the channel. MASN has not presented a coherent plan for MASN's existence once the breach of CSN's contractual rights is remedied.

15. Likewise, Comcast expressed concerns about the proposed license fees for MASN and the potential impact that such fees have on Comcast's customers. Other MVPDs, including EchoStar and Cox, apparently share these concerns.

16. An additional concern is the likely displacement of an existing basic tier programming service to make room for MASN. Most of Comcast's cable systems are constrained by limited channel capacity on the basic tier. In some cases, an existing service would have to be dropped or re-tiered to accommodate MASN and the programming on a second channel might have to be modified to accommodate "overflow" games. Comcast's ability to delete or re-tier programming services in this manner is often constrained by its carriage agreements with existing programmers. Also, Comcast, like any MVPD, typically seeks to avoid dropping or re-tiering existing services. Subscribers generally do not like program service disruptions, and deleting or re-tiering an existing channel would almost certainly raise subscriber concerns.

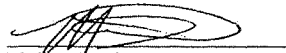
17. In sum, there are perfectly legitimate business reasons why Comcast has elected not to carry MASN under the terms that it has proposed. Indeed, I understand that other MVPDs

serving the Washington-Baltimore region -- including EchoStar, Cox, and Time Warner -- have also decided not to carry MASN (or, at least, have not yet reached agreement with MASN over carriage terms).

18. Comcast continues to be interested in carrying Nationals' games. Comcast is pleased with the early success of the Nationals this season and appreciates the strong and growing fan interest in the team. Comcast, however, will not be coerced into signing an agreement that is bad for its customers and its business and tramples on CSN's existing contractual rights with respect to Orioles' games.

[Remainder of the page intentionally left blank]

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 14th day of July, 2005.

  
\_\_\_\_\_  
Madison Bond



**EXHIBIT D  
TO  
TESTIMONY OF  
DAVID L. COHEN  
EXECUTIVE VICE PRESIDENT  
COMCAST CORPORATION**

**BEFORE THE  
U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON GOVERNMENT REFORM**

RECEIPT COPY



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July 11, 2005

**BY HAND DELIVERY**

Hon. Kevin J. Martin  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

RECEIVED - FCC

JUL 11 2005

Federal Communication Commission  
Bureau / Office

**RE: ALLEN & COMPANY LLC**

Dear Chairman Martin:

We are writing to you on behalf of our client, Allen & Company LLC ("Allen"), to respond to misstatements of fact regarding Allen that are contained in a Carriage Agreement Complaint ("Complaint") tendered to the Commission on behalf of TCR Sports Broadcast Holding, LLP ("TCR") on June 14, 2005.

The Complaint arises from a dispute between TCR and Comcast Corporation ("Comcast") regarding what TCR alleges is Comcast's unlawful refusal to carry the programming of TCR's Mid-Atlantic Sports Network on Comcast's cable systems in the Washington, DC Designated Market Area. TCR alleges that Comcast's actions have violated the provisions of Section 76.1301 of the Commission's Rules and Regulations.

Allen has no stake in the outcome of the Complaint. It has no interest in whether the Commission rules one way or the other on the merits of the Complaint. However, it does have a strong interest in insuring that the Commission's decisions are based on a full and complete record, and that no one profit from the abuse of the Commission's processes. This letter is submitted to you solely to address false claims TCR has made regarding Allen's role as advisor to Major League Baseball ("MLB").

**Background**

Allen is an investment banking firm. It has long been an advisor to media and telecommunication companies and has been involved in many prominent transactions involving broadcast, cable television, film and other media ventures. It is therefore important and only fair that the Commission be apprised of the truth as to allegations which go directly to Allen's integrity.

Hon. Kevin J. Martin  
July 8, 2005  
Page 2

In 2002, Stephen D. Greenberg, previously Deputy Commissioner and Chief Operating Officer of MLB and co-founder and President of Classic Sports Network, Inc., joined Allen as a Managing Director. In May 2004, Allen was retained by MLB to advise it on issues related to the television carriage of baseball games in the event the Montreal Expos were relocated to a city in the United States, as has subsequently taken place. Mr. Greenberg was responsible for Allen's day-to-day relationship with MLB, although other Allen representatives assisted Mr. Greenberg from time to time.

In the summer of 2004, MLB advised Mr. Greenberg that it was considering relocating the Montreal Expos to Washington, DC, and asked Mr. Greenberg to develop a plan for cable carriage of the relocated team.

Allen developed financial models for such carriage, one of which involved the creation of a new Regional Sports Network ("RSN") in the Washington market with rights to televise both the Baltimore Orioles and the Washington team. Mr. Greenberg believed this would best serve the interests of its client, MLB. Allen presented its concepts to MLB executives, and subsequently to Orioles representatives in August 2004. These meetings culminated in a presentation to the Major League Baseball Executive Council meeting in Milwaukee on September 23, 2004.

#### The Claims at Issue

In its Complaint and as outlined below, TCR makes a number of unsupported allegations about Mr. Greenberg and Allen. None of those allegations are supported by the affidavit of a person having actual knowledge of the facts. They are based on the supposition and surmise of TCR and the Orioles' management. All are false. Moreover, we understand that MLB officials told TCR they were false before the Complaint was filed.

TCR asserts in its Complaint that Mr. Greenberg only "purported to represent MLB" (Complaint, ¶ 26) and speculates "upon information and belief" that Mr. Greenberg "was in fact acting as an agent for Comcast" (Complaint, ¶ 30). To the contrary, Allen's only client in this matter was MLB, not Comcast, the Orioles or any other person or entity.

TCR's claim that Mr. Greenberg was an agent of Comcast is based on three purported "facts":

- First, TCR states Allen had advised Comcast regarding a possible bid for the assets of Vivendi (Complaint, ¶ 30).
- Second, TCR suggests Allen acted as advisor to Comcast in its current efforts to purchase Adelphia assets; and,

Hon. Kevin J. Martin  
July 8, 2005  
Page 3

Third, TCR claims Allen's presentation to MLB contains data which it could only have obtained directly from Comcast.

Each of these "facts" is irrelevant or demonstrably false as shown below.

First, regarding the claim that Allen previously represented Comcast, it is indeed true that Allen (although not Mr. Greenberg) has provided advice to Comcast on various matters from time to time. The specific allegation regarding the contemplated bid for Vivendi is false, however. Allen spoke with Comcast about Vivendi over a very brief period of time in 2003, but was never engaged and no transaction ever resulted. In any event, the fact that Allen may have worked with Comcast on unrelated matters from time to time is entirely irrelevant to its representation of MLB. It certainly does not support TCR's false allegations that Mr. Greenberg or Allen were secretly working for Comcast in their representation of MLB. Allen did not represent Comcast in connection with TCR or MLB; its only client was MLB and that representation was not compromised by any conflict.

Second, TCR states that Allen "was involved in a major acquisition by Comcast from Adelphia that would significantly expand Comcast's cable network" (Complaint, ¶ 30). To the extent this statement is intended to imply Allen was representing Comcast in the Adelphia matter, it is simply and patently false. Allen was indeed an advisor in the proposed sale of Adelphia to Comcast and Time Warner; however, it acted as advisor to Adelphia, not to Comcast. This is clear from Exhibit 17 of the Complaint, the April 20, 2005 Form 8-K of Comcast, in which the only reference to Allen is a contractual provision indicating that Allen's fee would be paid by the seller, Adelphia. Moreover, Allen's representation of Adelphia was widely reported in newspaper and magazine articles and other reports and on the Adelphia website. See, for example, Exhibit A.

TCR's third assertion is that Mr. Greenberg "appeared" to have internal data available only to Comcast, and that the way he relayed Comcast's "position" "suggested" that he had been in direct contact with Comcast officials (Complaint, ¶ 35) and that Mr. Greenberg had a "deep familiarity with Comcast personnel below the senior executive level" (Foss Declaration ¶ 11). TCR's summary and speculative statement is unsupported by any facts. Any data used by Allen to develop the concept of a new RSN with rights to the Orioles and the Washington team came either from the public record or from non-Comcast sources. None of the material in the presentation Mr. Greenberg made to the Executive Council of MLB came from Comcast itself. What was presented was Allen's analysis and proposal based upon an intimate knowledge of the sports and cable industries.

In addition, Mr. Greenberg did not "relay" the Comcast "position". As of September, 2004, neither he nor anyone else at Allen had ever discussed the concept of a new Washington RSN with Comcast. The information reflected his own good faith view, based on Mr. Greenberg's years of experience both with baseball and in the cable industry, as to what kind of deal could realistically be structured for MLB's benefit. As a

Hon. Kevin J. Martin  
 July 8, 2005  
 Page 4

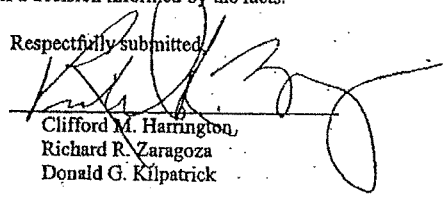
former cable programming executive and an investment banker focusing on the relationship between media and professional sports, it is hardly surprising that Mr. Greenberg would have extensive knowledge of the personnel of the nation's largest cable MSO, Comcast, and its regional sports networks. He had been dealing with many of those people for over a decade, both as a cable programming executive and in representing parties against Comcast. Indeed, it is the reason MLB retained Allen.

Summary

Allen and Mr. Greenberg have represented only MLB in connection with this matter. At all times they have acted in good faith in what they believed were the best interests of MLB. They did not represent Comcast in this matter or serve as its agent. It is indeed unfortunate that false accusations to the contrary were submitted to the Commission in a proceeding in which Allen is not named as a party.

We trust that the false allegations of TCR will not tarnish the reputation of Allen at the Commission or affect the Commission's consideration of future transactions involving Allen. Should the Commission desire, Allen would be pleased to cooperate further with the Commission so that it may reach a decision informed by the facts.

Respectfully submitted,



Clifford M. Harrington,  
 Richard R. Zaragoza  
 Donald G. Kilpatrick

Counsel to Allen & Company LLC

Pillsbury Winthrop Shaw Pittman LLC

2300 N Street, NW  
 Washington, DC 20036  
 202-663-8525

1540 Broadway  
 New York, NY 10036-4039  
 212-858-1235

cc: Hon. Kathleen Q. Abernathy  
 Hon. Michael J. Copps  
 Hon. Jonathan S. Adelstein  
 Donna C. Gregg, Esq. (Chief, Media Bureau)  
 Roy J. Stewart, Esq. (Senior Deputy Chief, Media Bureau)  
 William H. Johnson, Esq. (Deputy Chief, Media Bureau)  
 Robert Ratcliffe, Esq. (Deputy Chief, Media Bureau)  
 Michael K. Kellogg, Esq. (Counsel to TCR Sports Broadcast Holding, L.L.P.)  
 John E. Schmidlein, Esq. (Counsel to Comcast Corporation)

**Exhibit A**



For Immediate Release

Contacts:

(Media) Paul Jacobson (303) 268-6426

(Media) Erica Stull (303) 268-6502

(Investor Relations) Jim Buckley (303) 268-6424

**Adelphia Selects UBS Investment Bank LLC, Allen & Company LLC  
and Sullivan & Cromwell LLP as Advisors for Sale of Company**

***Adelphia Now Poised For Aggressive Auction***

*Greenwood Village, Colo., July 14, 2004* – Adelphia Communications Corporation (OTC:ADELQ) has selected UBS Investment Bank LLC and Allen & Company LLC as its financial advisors and Sullivan & Cromwell LLP as its legal advisors for the sale of the company, which is operating currently under Chapter 11 protection of the bankruptcy code. The selections are subject to review and approval by the United States Bankruptcy Court for the Southern District of New York (case number 02-41729).

As previously announced on April 22, Adelphia is exploring the sale of the company in order to maximize the value for the bankruptcy estate.

“The selection of these outstanding advisors paves the way for a robust and organized sale process,” said Bill Schleyer, chairman and CEO of Adelphia. “Although the selection was slowed somewhat by the constraints of the bankruptcy process, the company has been working diligently for the past several months preparing all the necessary information and documentation to facilitate the sale and accelerate the auction process. Under the leadership of this advisory group, we will continue to prepare the company to be sold. Once court approval for their retention is obtained, we will launch the official sale process.”

Schleyer added, “The UBS/Allen/S&C team brings together a uniquely qualified skill set of cable and merger and acquisition experts with billions of dollars in transactional experience. We are confident that this team will work closely with our management and Board of Directors to create the best possible outcome for our constituents.”

MORE

ADELPHIA ADVISORS  
JULY 14, 2004 – PAGE 2

As it has from the start, the New York-based law firm Willkie Farr & Gallagher LLP will continue as Adelphia's lead legal counsel for the Chapter 11 Bankruptcy process. Lazard Freres & Co. LLC will continue to provide financial advice to the company on its potential reorganization.

#### **About Adelphia**

Adelphia Communications Corporation (OTC: ADELQ) is the fifth-largest cable television company in the country. It serves customers in 30 states and Puerto Rico, and offers analog and digital video services, high-speed Internet access and other advanced services over Adelphia's broadband networks.

#### **Cautionary Statement Regarding Forward-Looking Information**

This document includes forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. All statements regarding Adelphia Communications Corporation's and its subsidiaries' and affiliates' (collectively, the "Company") expected future financial position, results of operations, cash flows, process for sale of the Company, restructuring and financing plans, expected emergence from bankruptcy, business strategy, budgets, projected costs, capital expenditures, network upgrades, products and services, competitive positions, growth opportunities, plans and objectives of management for future operations, as well as statements that include words such as "anticipate," "if," "believe," "plan," "estimate," "expect," "intend," "may," "could," "should," "will," and other similar expressions are forward-looking statements. Such forward-looking statements are inherently uncertain, and readers must recognize that actual results may differ materially from the Company's expectations. The Company does not undertake a duty to update such forward-looking statements. Factors that may cause actual results to differ materially from those in the forward-looking statements include the Company's pending bankruptcy proceeding, results of litigation against the Company and government investigations of the Company; the effects of government regulation including the actions of local cable franchising authorities, the availability of financing, actions of the Company's competitors, results and impacts of any process to sell the Company or its assets, customer response to repackaged services, pricing and availability of programming, equipment, supplies, and other inputs, the Company's ability to upgrade its network, technological developments, and changes in general economic conditions. Many of these factors are outside of the Company's control.

###





For Immediate Release

Contacts:  
 (Media) Paul Jacobson (303) 268-6426  
 (Media) Erica Stull (303) 268-6502  
 (Investor Relations) Jim Buckley (303) 268-6424

## Bankruptcy Court Approves Adelphia Sale Advisors

*Greenwood Village, Co*, September 14, 2004 – The United States Bankruptcy Court for the Southern District of New York today gave its final approval to the hiring of UBS Investment Bank and Allen & Company LLC as financial advisors for the Adelphia Communications Corporation (OTC:ADELQ) sale process.

“We are pleased that the Court has approved UBS and Allen as our financial advisors for the sale process, as we continue our efforts to maximize value for all Adelphia stakeholders,” said Bill Schleyer, chairman and CEO of Adelphia. “We have been working diligently with UBS and Allen since early July to assemble appropriate documents and information to accelerate the sales process. Based on preliminary widespread interest, we expect a robust sales process.”

As previously announced, Adelphia will accept bids for the whole company as well as for designated clusters through a formal process to be launched later this month. As part of that formal process, an information memorandum will be distributed to parties that have signed a confidentiality agreement with Adelphia. It is expected that final bids will be received by year-end.

### About Adelphia

Adelphia Communications Corporation is the fifth-largest cable television company in the country. It serves customers in 31 states and Puerto Rico, and offers analog and digital video services, high-speed Internet access and other advanced services over Adelphia’s broadband networks.

### Cautionary Statement Regarding Forward-Looking Information

This document includes forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. All statements regarding Adelphia Communications Corporation’s and its subsidiaries’ and affiliates’ (collectively, the “Company”) expected future financial position, results of operations, cash flows, process for sale of the Company, restructuring and financing plans, expected emergence from bankruptcy, business strategy, budgets, projected costs, capital expenditures, network upgrades, products and services, competitive positions, growth opportunities, plans and objectives of management for future operations, as well as statements that include words such as “anticipate,” “if,” “believe,” “plan,” “estimate,” “expect,” “intend,” “may,” “could,” “should,” “will,” and other similar expressions are

MORE

**ADELPHIA SALE-ADVISORS  
SEPTEMBER 14, 2002-- PAGE 2**

forward-looking statements. Such forward-looking statements are inherently uncertain, and readers must recognize that actual results may differ materially from the Company's expectations. The Company does not undertake a duty to update such forward-looking statements. Factors that may cause actual results to differ materially from those in the forward-looking statements include the Company's pending bankruptcy proceeding, results of litigation against the Company and government investigations of the Company, the effects of government regulation including the actions of local cable franchising authorities, the availability of financing, actions of the Company's competitors, results and impacts of any process to sell the Company or its assets, customer response to repackaged services, pricing and availability of programming, equipment, supplies, and other inputs, the Company's ability to upgrade its network, technological developments, and changes in general economic conditions. Many of these factors are outside of the Company's control.

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## FOCUS - 2 of 15 DOCUMENTS

Copyright 2004 The Washington Post  
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July 15, 2004 Thursday  
Final Edition

SECTION: Financial; E02

LENGTH: 1173 words

HEADLINE: House Passes Project Bioshield

BODY:

The House gave final congressional approval to a \$5.6 billion, 10-year plan to stockpile drugs to treat victims of a biological attack. Project Bioshield provides incentives for pharmaceutical companies to make drugs that counter exposure to anthrax, smallpox and radiation. The bill also allows the Food and Drug Administration to distribute experimental drugs during an emergency. The bill goes to President Bush for his signature.

Shares of MCI, formerly known as WorldCom, began trading on the Nasdaq Stock Market for the first time in almost two years under its new symbol, MCIP. The Ashburn-based telecommunications company was delisted in July 2002. The company emerged from Chapter 11 bankruptcy protection in April. MCI shares rose 13 cents to close at \$16.93.

Crude-oil futures rose to a six-week high in New York after the federal government reported the largest withdrawal of oil from storage in three months. U.S. oil inventories fell 2.1 million barrels last week as refineries operated at close to maximum capacity, the Energy Department said. Oil for August delivery settled just below \$41 a barrel.

United Airlines will defer \$72.4 million in pension funding, due today, but the airline said retirees won't be affected. In a filing with the Securities and Exchange Commission, United said deferring the quarterly minimum payment will help it exit Chapter 11 bankruptcy proceedings. United has until Sept. 15, 2005, to make up the payment.

Bayer pleaded guilty to its role in a chemical-price-fixing conspiracy and will pay a \$66 million fine, the Justice Department said. Prosecutors said the Germany-based company, known for its aspirin, and others conspired to fix prices on additives used in rubber products including tires, shoes and outdoor furniture.

CNET Networks said it will buy Webshots, an online digital photography service, for \$70 million. Webshots founder Narendra Rocherolle and his business partners sold the site to ExciteAtHome for \$82.5 million in 1999. When ExciteAtHome auctioned most of its assets to pay creditors during the dot-com bust, Rocherolle and his partners bought back Webshots at a 97 percent discount.

Jurors in the case against Mark A. Belnick, Tyco International's former general counsel, told the judge they don't expect to reach a verdict before next week. The judge said two jurors have "serious scheduling problems" if deliberations go past tomorrow. Belnick is charged with taking an unauthorized \$17 million bonus from Tyco, stock fraud and falsifying business records.

Bertelsmann lost a motion to dismiss a lawsuit filed against it by record companies. U.S. District Judge Marilyn Hall Patel, in San Francisco, refused to dismiss a lawsuit filed by Capitol Records and three other labels that say Bertelsmann, by subsidizing the music-sharing service Napster, contributed to copyright infringement.

Walgreen, the largest U.S. drugstore chain, raised its quarterly dividend 22 percent, to 5.25 cents, and said it will repurchase as much as \$1 billion worth of stock over the next four years. Last month, the chain reported third-quarter profit rose 16 percent.

The Washington Post July 15, 2004 Thursday

Atlas Air Worldwide Holdings, the largest U.S. freight carrier for airlines, won a bankruptcy judge's approval for its reorganization plan and intends to emerge from Chapter 11 bankruptcy protection before the end of the month. Atlas Air's reorganization plan already has been approved by creditors.

Adelphia Communications, the bankrupt U.S. cable-television operator, said it hired UBS and Allen & Co. as its financial advisers for the sale of the company, and Sullivan & Cromwell as its legal adviser.

David G. Gomach, chief financial officer of the Chicago Mercantile Exchange, will quit in November. Gomach, 45, has worked at the exchange since 1987.

Radio Shack said its chief financial officer, Michael Newman, will leave the company next week for a similar post at private-equity firm Blackstone Crystal Holdings Capital Partners.

Royal Philips Electronics, Europe's biggest consumer-electronics maker, said it filed lawsuits in the United States and Germany accusing Gillette of infringing on patents that it uses for its Sonicare line of electric toothbrushes. Gillette, the world's biggest seller of manual and electric toothbrushes, plans to begin selling a new electric toothbrush within two months.

The European Commission approved French and Italian government aid to suppliers for scandal-plagued Parmalat Finanziaria. The commission said the failure to receive payment resulted in "crisis" for some companies, justifying the rescue aid, which guarantees bank loans up to \$30 million.

British billionaire Philip Green walked away from his battle to win Marks & Spencer, Britain's largest clothing retailer, after the company rejected his three offers.

Granola bars and muesli cereals made by Grist Mill of Lakeville, Minn., were recalled because almonds they contain might carry salmonella. The products are sold under house brand names by many supermarket chains, including Giant and Food Lion. Further information is available at 800-233-7022.

Bank of America reported a 41 percent increase in its second-quarter profit with help from recently acquired FleetBoston Financial. Bank of America earned \$3.85 billion in the quarter, up from \$2.74 billion in the second quarter last year. Revenue was \$13.19 billion, up from \$9.79 billion.

Harley-Davidson reported a second-quarter profit of \$247.2 million, up 22 percent from the second quarter of 2003. Harley's redesigned Sportster motorcycle is selling well. Revenue rose 8.9 percent, to \$1.33 billion.

The New York Times Co. reported a 4 percent increase in second-quarter profit on higher advertising revenue, especially from help-wanted ads. The company, which also publishes the Boston Globe, the International Herald Tribune and several regional newspapers, earned \$75.7 million in the quarter, up from \$72.8 million in the second quarter last year.

SanDisk, the top maker of flash memory used in digital cameras, music players and other devices, reported second-quarter profit of \$70.6 million, a 71 percent increase from the second quarter of last year. Sales increased 85 percent, to \$433.3 million.

Advanced Micro Devices reported its third consecutive profitable quarter, driven by strong sales of computer microprocessors and flash memory chips used mainly in cellular phones. California-based AMD earned \$32.2 million, compared with a loss of \$140 million in the second quarter last year.

Cardinal Financial, parent of Cardinal Bank in Tysons Corner, said second-quarter earnings fell to \$634,000 (3 cents a share) from \$669,000 (5 cents) in the second quarter of 2003. For the first six months, earnings rose to \$1.4 million (7 cents) from \$1.2 million (9 cents). The company also said Domingo Rodriguez, chief financial officer since November, resigned. Carl Dodson was named interim chief financial officer.

Compiled from reports by the Associated Press, Bloomberg News, Dow Jones News Service and Washington Post staff writers.

LOAD-DATE: July 15, 2004

The Wall Street Journal July 15, 2004 Thursday

## FOCUS - 6 of 15 DOCUMENTS

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The Wall Street Journal

July 15, 2004 Thursday

SECTION: DEALS &amp; DEAL MAKERS; Pg. C4

LENGTH: 384 words

HEADLINE: Adelphia Hires UBS, Allen to Run Auction --- Comcast and Time Warner Already Express Interest;  
Deal May Take Months

BYLINE: By Robin Sidel

## BODY:

Adelphia Communications Corp., moving swiftly after a jury last week convicted two members of its founding family of looting the cable company, tapped UBS AG and boutique investment bank Allen & Co. to run its auction.

Adelphia has been operating under bankruptcy-court protection and previously said it was exploring a sale. The nation's fifth-largest cable company already has received expressions of interest from suitors, including Comcast Corp. and Time Warner Inc. Still, the process is in early stages and it could be months before a deal is struck, say people familiar with the matter.

Analysts estimate Adelphia could fetch as much as \$20 billion.

"Although the selection [of the advisers] was slowed somewhat by the constraints of the bankruptcy process, the company has been working diligently for the past several months preparing all the necessary information and documentation to facilitate the sale and accelerate the auction process," Bill Schleyer, Adelphia's chairman and chief executive, said in a news release. Adelphia also hired New York-based law firm Sullivan & Cromwell LLP for legal advice in the sale.

A federal-court jury last week convicted 79-year-old John Rigas, Adelphia's founder and former chief executive, of fraud and conspiracy for looting the company of more than \$100 million, hiding more than \$2 billion in debt the family incurred, and lying to the public about Adelphia's operations and financial condition. His son Timothy, the former chief financial officer, was convicted of the same charges. Prosecutors in the case are expected to argue that each should be sentenced to nearly 30 years in prison.

A mistrial was declared on 17 counts for Michael Rigas, also a son of the founder and the company's former chief operating officer. Former Adelphia executive Michael Mulcahey was acquitted on all charges.

Separately, the committee representing Adelphia's unsecured creditors yesterday sued the Securities and Exchange Commission in Manhattan's U.S. Bankruptcy Court to ensure the creditors stay at the front of the line for any claims that are paid out by the company. There are over \$1 trillion of claims against Adelphia, including a \$5 billion claim by the Securities and Exchange Commission.

Christopher Scinta of Dow Jones Newswires contributed to this article.

**NOTES:**  
**PUBLISHER:** Dow Jones & Company Inc.  
**LOAD-DATE:** December 5, 2004

## FOCUS - 5 of 15 DOCUMENTS

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The Wall Street Journal

August 9, 2004 Monday

**SECTION:** Pg. C5

**LENGTH:** 331 words

**HEADLINE:** Adelphia Holds Talks Involving Possible Bidders

**BYLINE:** Associated Press

**BODY:**

Adelphia Communications Corp., the nation's fifth-largest cable-television provider by subscribers, said Friday it has held preliminary talks with potential bidders and hopes to complete the discussions by year end.

Executives then will decide whether it would be best to sell all or part of the assets or emerge from bankruptcy-court protection as a stand-alone company, Adelphia spokesman Paul Jacobson said. He declined to identify or say how many bidders would be involved in formal talks with Adelphia's financial advisers. The discussions are scheduled to begin shortly after Labor Day, and the bidders all have been asked to sign confidentiality agreements.

Bids will be solicited for the entire company and for specific assets, with the goal of finding out by October who may be interested. (Time Warner Inc. and Comcast Corp. are potential bidders.) UBS Investment Bank and Allen & Co. are managing the sale process under direction of the board. Adelphia, which relocated to Greenwood Village, Colo., from Coudersport, Pa., serves customers in 30 states and Puerto Rico.

Adelphia filed for bankruptcy protection two years ago in New York after founder John W. Rigas and others were accused of looting the company and cheating investors out of billions of dollars. John Rigas and his son Timothy were convicted July 9 of conspiracy, bank fraud and securities fraud. Another Rigas son, Michael, was acquitted of conspiracy charges, but the case ended in a mistrial with jurors deadlocked on 17 counts against him. A fourth executive was found not guilty of conspiracy and securities fraud.

Adelphia filed its long-awaited reorganization plan in February but ran into immediate opposition from stockholders who preferred to see the company liquidated.

Adelphia has secured \$8.8 billion in exit financing from four banks and hoped to emerge from Chapter 11 by the end of the year.

In April, it agreed to investigate a possible sale to determine if it would create more shareholder value.

**NOTES:**

**PUBLISHER:** Dow Jones & Company Inc.

**LOAD-DATE:** December 5, 2004

## FOCUS - 1 of 15 DOCUMENTS

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The Wall Street Journal

February 3, 2005 Thursday

**SECTION:** Pg. A6

**LENGTH:** 361 words

**HEADLINE:** Time Warner Plan Is to Merge Assets With Adelphia's

**BYLINE:** By Peter Grant

**BODY:**

The joint bid for Adelphia Communications Corp. by Time Warner Inc. and Comcast Corp. calls for merging Time Warner's cable operation into Adelphia to form a new company that would be mostly owned by Time Warner, according to people familiar with the matter.

Comcast has agreed to contribute \$1 billion to \$2 billion in cash and its 21% stake in Time Warner Cable to the deal, which is valued by Time Warner and Comcast at \$17 billion to \$17.5 billion, people say. In exchange, Comcast would get 2 million to 2.5 million subscribers, the people say.

The Time Warner-Comcast bid is believed to have the inside track in the closely watched auction of the country's fifth-largest cable operator, which has been operating under bankruptcy protection since 2002. A bid for the entire company also was submitted Monday by a venture of private-equity firms Kohlberg Kravis Roberts & Co. and Providence Equity Partners. New details of the Time Warner-Comcast bid emerged yesterday in a report by Niraj Gupta, an analyst with Citigroup Smith Barney. They were confirmed by people familiar with the bid.

Time Warner has been taking the lead role in its bid with Comcast because Time Warner, as the country's second-largest cable operator with its 10.9 million subscribers, is under more pressure to grow. Comcast has more than 21 million subscribers and already can use its size to extract better terms from programmers and other vendors. Assuming Comcast takes two million subscribers, the combination of Time Warner Cable and Adelphia would be a company with more than 14 million subscribers.

Time Warner and Comcast designed their bid as a merger of Time Warner Cable into Adelphia to take advantage of Adelphia's structure as a public company. In the past, Time Warner considered splitting off its cable unit in an initial public offering. Critical details of the Time Warner-Comcast bid are still unknown, particularly the total cash contribution and how much of the merged company's debt and equity would go to creditors.

Adelphia and its bankers, Allen & Co. and UBS AG, are expected to continue evaluating bids for a few more weeks before a decision is announced.

**NOTES:**

**PUBLISHER:** Dow Jones & Company Inc.

**LOAD-DATE:** February 3, 2005





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Richard R. Zaragoza  
202-663-8266  
richard.zaragoza@pillsburylaw.com

July 13, 2005

RECEIVED - FCC

JUL 13 2005

Federal Communication Commission  
Bureau / Office

BY HAND DELIVERY

Hon. Kevin J. Martin  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

RE: ALLEN & COMPANY LLC

Dear Chairman Martin:

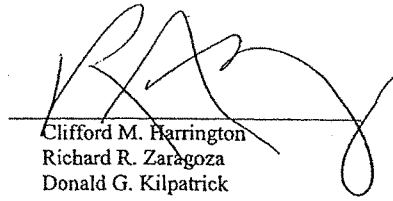
We are again writing to you on behalf of our client, Allen & Company LLC ("Allen"), in connection with the misstatements of fact regarding Allen that are contained in a Carriage Agreement Complaint ("Complaint") tendered to the Commission on behalf of TCR Sports Broadcast Holding, LLP ("TCR") on June 14, 2005.

In our letter to you dated July 11, 2005, we pointed out and refuted the false claims TCR made in the Complaint regarding Allen's role as advisor to Major League Baseball ("MLB"). The purpose of this letter is to provide you with the Declaration of Stephen D. Greenberg, verifying what we told you in our letter of July 11, 2005. Accordingly, please associate this letter and enclosure with our July 11, letter.

Hon. Kevin J. Martin  
July 13, 2005  
Page 2

We trust that the false allegations of TCR will not tarnish the reputation of Allen at the Commission or affect the Commission's consideration of future transactions involving Allen. Should the Commission desire, Allen would be pleased to cooperate further with the Commission so that it may reach a decision informed by the facts.

Respectfully submitted,



Clifford M. Harrington  
Richard R. Zaragoza  
Donald G. Kilpatrick

Counsel to Allen & Company LLC

Pillsbury Winthrop Shaw Pittman LLC

2300 N Street, NW  
Washington, DC 20036  
202-663-8525

1540 Broadway  
New York, NY 10036-4039  
212-858-1235

Enclosure

cc: Hon. Kathleen Q. Abernathy  
Hon. Michael J. Copps  
Hon. Jonathan S. Adelstein  
Donna C. Gregg, Esq. (Chief, Media Bureau)  
Roy J. Stewart, Esq. (Senior Deputy Chief, Media Bureau)  
William H. Johnson, Esq. (Deputy Chief, Media Bureau)  
Robert Ratcliffe, Esq. (Deputy Chief, Media Bureau)  
Michael K. Kellogg, Esq. (Counsel to TCR Sports Broadcast Holding, L.L.P.)  
John E. Schmidlein, Esq. (Counsel to Comcast Corporation)

DECLARATION OF STEPHEN D. GREENBERG

I, Stephen D. Greenberg, hereby declare as follows:

1. My name is Stephen D. Greenberg. I am over 21 years of age and have personal knowledge of the facts contained herein.

2. I am presently employed as a Managing Director of Allen & Company LLC ("Allen"), an investment banking firm. Previously I served as Deputy Commissioner and Chief Operating Officer of Major League Baseball ("MLB"). I was also co-founder and President of Classic Sports Network, Inc.

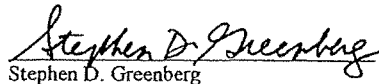
3. In May 2004, Allen was retained by MLB to advise it on issues related to the television carriage of baseball games in the event the Montreal Expos were relocated to a city in the United States, as has subsequently taken place. I was responsible for Allen's day-to-day relationship with MLB, although other Allen representatives assisted me from time to time. Allen continues to represent MLB on matters relating to television carriage of the new Washington Nationals baseball club.

4. I have reviewed the Complaint of TCR Sports Broadcasting Holding, L.L.P. ("TCR"). The claims set forth therein that I was secretly employed by Comcast Corporation ("Comcast"), or acted as the agent of Comcast Corporation, are false. Throughout the period in question my client, and that of Allen, was MLB and no one else.

5. As a representative of MLB I have acted in good faith and in the best interests of MLB. TCR's supposition that my advice to MLB was somehow tainted by former contacts between Allen and Comcast is incorrect and based on irrelevant or erroneous assertions. As to TCR's claim that I knew too much about Comcast's likely negotiating position and its management team, the truth is that I was familiar with Comcast's likely positions and personnel through years of experience negotiating across the table from Comcast in the cable programming arena.

6. I have reviewed the letter of Allen's counsel, Pillsbury Winthrop Shaw Pittman LLP, to FCC Chairman Kevin Martin, dated July 11, 2005, which responds in detail to the assertions made by TCR. The statements of fact set forth therein are true and correct.

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 11, 2005.

  
Stephen D. Greenberg

Chairman TOM DAVIS. Thank you very much.  
Mr. McCollum, thank you very much for being with us today,  
and thanks for bringing the Nats to Fairfax.

#### STATEMENT OF GARY McCOLLUM

Mr. McCOLLUM. Thank you, Mr. Chairman and distinguished members of the House Government Reform Committee. I am Gary McCollum. I am the vice president and regional manager of Cox Communications, and I am responsible for all local operations.

Cox is a major contributor to the local economy. We employ 900 local citizens in the Fairfax area. We contributed \$13 million in cash and in-kind donations to the local community last year. Since 1996, Cox has invested more than \$640 million in northern Virginia to upgrade our technology to provide more bandwidth, not only for digital cable, including high-definition television, but also for high-speed data and telephone service.

Again, thank you for the opportunity to testify about sports programming and the Mid-Atlantic Sports Network. There is no question that sports are deeply imbedded in our social fabric.

Likewise, America's love affair with television is a way of life. The vibrant cable TV industry has done a lot for sports. First and foremost, we extend its reach by creating front row seats for every game in the living rooms of millions of Americans. And we create excitement about the teams and their players. Sports wouldn't be the mega-business it is today without cable television.

It is important to understand that Cox is a retail distributor of a wholesale product—cable programming—including channels like Fox News, Nickelodeon, and ESPN. As you know, any business that retails a wholesale product is subject to market forces. Gas prices rise at the pump when the cost of a barrel of oil rises. Likewise, cable prices increase when programming costs escalate. This year our programming costs are projected to increase 13 percent, and with the addition of MASN, that increase will grow to nearly 18 percent.

The sports leagues and team owners are able to pass their uncontrolled costs through the cable operators, insulating them from consumer backlash. Since these costs are passed through to the consumer without consequence to the owners, the owners are uninhibited about controlling such costs.

Cox is no longer willing to be the scapegoat for the real culprits. Now more than ever we are telling our customers why their bills are rising and how sports programmers are holding the fans hostage.

We know our customers want to watch the Nationals, and with those customers squarely in mind, we attempted to negotiate a long-term deal to show the games. On March 8th, we announced an agreement to make available MASN's telecasts of Nationals games on our Expanded Basic service to nearly 260,000 customers in northern Virginia. While the terms of that agreement are confidential, I can assure you that this programming did not come cheaply and will affect cable prices.

Clearly, the added cost of this programming is not a good thing for our customers. But our baseball-starved community is hungry for televised games. Are fans willing to pay this unreasonably high

cost for sports programming? Well, they may not see the connection, but the high rates for which customers express concern are, in fact, driven largely by these out-of-control sports costs. So, on the one hand, our customers want the games. And, on the other hand, they criticize our rates increasing directly because of the games. This is a no-win situation to cable operators.

So let me be clear. While the agreement contains costs and channel space requirements that remain very onerous to Cox, it simply reflects the realities of our customers' desire for Nationals games and our relative inability to negotiate better terms and conditions.

For the sake of all cable customers in this market, Cox had hoped that MASN would realize the efficiency of joining with Comcast SportsNet to occupy one channel on everybody's lineup. That would have allowed us to better manage network capacity and programming costs that drive up cable rates.

We entered into a deal with MASN because we had little or no negotiating leverage as a small player in the very large Washington metro market. Remember, a reasonable deal eluded Cox and our customers for an entire season. This year, in spite of the outrageous costs, it was time for us to deliver the games of our local major league team to our hungry customers. We broke down and concluded an agreement with the fervent hope that if anybody can change or improve the deal, it is the metro area's biggest player—Comcast.

But, Mr. Chairman, I must put this urgent question before the committee. The owners of Major League Baseball and Commissioner Selig have granted to the owner of the Baltimore club what appears to be a sweetheart deal. TV revenues from the broadcast of the Washington Nationals baseball games are transferred from the pockets of the new entrant Washington Nationals to the pockets of their neighboring Baltimore team through its interest in MASN. So if monopoly rates are paid to MASN, Mr. Angelos wins. And if there is no agreement to pay these monopoly rates and the fans of the Washington Nationals are cheated of the opportunity to see their team, the neighboring Baltimore team wins as well. So what is MASN's incentive to moderate its behavior? None.

Mr. Chairman, sooner or later, the underlying problem of escalating sports entertainment costs must be addressed. It is a very serious problem for all of us, including Comcast, in the business of trying to provide such entertainment to the American consumer at a reasonable price.

Cox's mantra is that we are "Your friend in the digital age." Our relationship with our customer is our primary advantage. Our customers trust us. They depend on us, and I am directly accountable to these customers. And for their sake, I implore all of those involved in the sports supply chain to rein in prices and stop holding the fans hostage.

Thank you very much for allowing me to address you today.

[The prepared statement of Mr. McCollum follows:]

April 7, 2006

Testimony of Gary McCollum of Cox Communications of Northern VirginiaBefore the House Government Reform Committee

Mr. Chairman and distinguished members of the House Government Reform Committee, I am Gary McCollum, the Vice President and Region Manager of Cox Communications of Northern Virginia. I am responsible for our local operations.

Cox adds significantly to the local economy. It employs 900 local citizens and contributed \$13 million in cash and in-kind donations to local community organizations last year. Since 1996, Cox has invested more than \$646 million locally in Northern Virginia to upgrade our technology to provide more bandwidth -- not only for digital cable, including high definition television -- but for high-speed data and telephone service.

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Thank you very much for allowing me to address you today.

Chairman TOM DAVIS. Thank you very much.

Well, we certainly heard four different perspectives on the issue, and I think the question for us today is can we work toward a resolution of this in a timely manner.

I am going to start with Major League Baseball, Mr. Dupuy. Let me first start, before I get here, and just say I don't know if this would add to it. Are we any closer to naming an ownership entity for the Nationals? Because I think that would help.

Mr. DUPUY. We are certainly closer. I mean, every day we get closer. But, yes, now that we have, as I mentioned, thanks to the hard work—

Chairman TOM DAVIS. Everything is done—

Mr. DUPUY [continuing]. Of Mayor Williams, Chairman Cropp, and other members of the council, we have a signed lease, we have a signed MOU. I have met with four of the groups over the last week and a half. I have had extensive discussions with the commissioner, and I would expect it to happen within the next couple of weeks.

Chairman TOM DAVIS. I just feel that a lot of these problems could get resolved if we could get ownership on the table or, you know, and I think enough said. And I think the mayor has expressed that, and all of us have.

Mr. DUPUY. We are all anxious to have that happen, Mr. Chairman.

Chairman TOM DAVIS. Mr. McCollum, let me start. Is MASN more expensive than Comcast cable, Comcast SportsNet? Do you know offhand, are you paying more for the games on a per-game basis than you would under—because you carry them, but you carry them both.

Mr. MCCOLLUM. I carry them both, but, again, those—

Chairman TOM DAVIS. You don't want to get into the confidentiality agreement?

Mr. MCCOLLUM [continuing]. Agreements are confidential. I can honestly say, Mr. Chairman, that the deal was a very onerous deal and the price was very costly.

Chairman TOM DAVIS. Is Comcast Cable also an onerous deal?

Mr. MCCOLLUM. I would say it is apples and oranges because—and Mr. Cohen alluded to this—what is on Comcast SportsNet in terms of content is clearly different than what you see on MASN. MASN for the most—when there is not a game shown, there is nothing on the screen.

Chairman TOM DAVIS. Our biggest frustration is everybody has come at this from such different directions. I mean, one group is talking here, another group is talking over here, and there is no way that we are going to intersect these lines. I am trying to figure a way that we could get closer on this. For example, pay-per-view, is that an option?

Mr. COHEN. Let me take a first shot at that. I think—are you talking about pay-per-view or literally on a per-game basis, or—

Chairman TOM DAVIS. Either on a per-game basis or a different tier or level, or whatever.

Mr. COHEN. A la carte or per tier basis. Well, I think, Mr. Chairman, you have heard the cable industry's view on a la carte pro-



gramming. You have probably heard me express this view. I think for a long-run—

Chairman TOM DAVIS. Right. Just from a fan's perspective.

Mr. COHEN. I understand.

Chairman TOM DAVIS. Everybody is a businessman here, but the fans are kind of getting left out. Go ahead.

Mr. COHEN. From a long-run public policy perspective, I believe and the industry believes that an a la carte approach to programming will result in less choice for the consumer at greater expense. As a short-term bridge, while other issues are worked out, you know, if somebody wants to talk to us about offering Nationals games on a more limited basis, it is certainly something that we would be willing to talk about. Our primary interest—and I am going to reiterate this—is to make sure that the Nationals, their fans, our customers, and your constituents are treated properly and are successful. And so we are open to any discussion, any idea that would permit those objectives to be achieved.

Chairman TOM DAVIS. But you have not been talking to Mr. Angelos. Is there any way we can get together and put some of these on the table and go back and forth? Maybe Major League Baseball could be the adult here in trying to oversee this.

Mr. COHEN. I am happy to have Major League Baseball be another adult in the process. I think Mr. Angelos and his representatives and Comcast and our representatives have been adult as well. I think—

Chairman TOM DAVIS. But you are not talking.

Mr. COHEN [continuing]. I would quibble a little bit with Mr. Angelos' characterization that there have been no discussions. There have been discussions. This week, when we received our latest offer from MASN—and let me be clear. Our offer from MASN is the same offer that MASN has always given us. They have never given us anything other than their original offer. But a meeting has been scheduled between representatives of MASN and representatives of Comcast in response to that.

Chairman TOM DAVIS. Well, let me ask this: Is the offer to Comcast any different than the offer to Cox, Mr. Angelos?

Mr. ANGELOS. No, it is not, and the communication that Mr. Cohen refers to occurred 2 or 3 days ago. We finally got a response 2 or 3 days ago, clearly in anticipation of this meeting. And I notice that Mr. McCollum does not want to answer the question. Are our rates any different than Comcast? And I will answer it. The answer is no, they are not different. They are actually just the same. And they are that way purposely because we were careful to make sure that we did not charge any more than the going rate so we would be fair and concerned about the subscribers.

Chairman TOM DAVIS. But, Mr. Angelos, Comcast is 24/7. SportsNet is 24/7.

Mr. ANGELOS. I can answer that. You are going to have only—

Chairman TOM DAVIS. No, I am just trying to get—I am not trying to take sides. I really—go ahead.

Mr. ANGELOS. I would like to respond. We have under construction presently a full facility for the purpose of presenting 24/7 of the kind that Mr. Cohen refers to, and he is correct that at this moment that is not in place, but we have only been at it for a year,

Mr. Chairman. And despite the absence of cooperation from our monopolists here, we have not—we have been pretty busy. We have been sued. We have been castigated. We have been vilified. We have been everything that one can imagine has been done. We have had lawsuits filed against us totally without merit, and we have constant indications publicly that somehow or other we are about—or involved in an inappropriate business or being unfair and so on.

Chairman TOM DAVIS. Well, let me ask you this. Let me fast forward this a year. As I understand, next year at this time MASN will have the Orioles rights as well as the Nationals rights. Is that correct?

Mr. ANGELOS. Yes, Mr. Chairman, and I did not answer your question properly. We will have 24/7 as of July 15th of this year.

Chairman TOM DAVIS. OK. That is fine. But I am just fast forwarding this a year. As we go a year from now, MASN will have both the Orioles and the Nationals rights. If Comcast still refuses to carry it at that point because it is not on Comcast SportsNet, fans will be deprived of the Orioles and the Nationals. Is that correct?

Mr. ANGELOS. Our system will have both the Orioles and the Nationals, and they will be shown. Both teams will be presented throughout that entire territory. If you are in Washington—

Chairman TOM DAVIS. You present it, but if the local cable affiliate does not carry it—

Mr. ANGELOS. I am sorry?

Chairman TOM DAVIS. If the local cable affiliate, whether it is Comcast or whoever, does not carry it, then people that are receiving it on Comcast SportsNet this year would have to receive it under MASN next year, right? The Orioles.

Mr. ANGELOS. Yes, or any distributor that is carrying MASN.

Chairman TOM DAVIS. Exactly. But I guess my point is, if we do not breach this, this could widen next year where fans won't even be able to get Orioles games on Comcast. Do you want to comment on that, Mr. Cohen?

Mr. COHEN. Obviously, I have a different view about what will happen next year.

Chairman TOM DAVIS. Well, I will be happy to hear it.

Mr. COHEN. Our belief is that we have clear contractual—that Comcast SportsNet has clear contractual rights to continue to carry the Orioles games. Although Mr. Angelos has accurately characterized what happened in the courts below, we believe that the lower court was mistaken. That is why we appealed. And we believe that we will be in a position to vindicate our rights.

Chairman TOM DAVIS. And if you aren't?

Mr. COHEN. And if we aren't, then the situation you describe is accurate unless we are able to reach an agreement with MASN before the beginning—

Chairman TOM DAVIS. Would reaching an agreement this year while the case is pending prejudice the court case, in your opinion?

Mr. COHEN. I think the answer—to be fair, I think the answer to that is probably not. I think the relevance of the court case to us is that we believe that MASN is in part spawned by a breach of our contractual rights, and we are not eager to do business or

continue business with an entity that would flout those rights. I don't think I can point to a prejudice of the court case from entering into a deal.

Chairman TOM DAVIS. And even if it were, you could enter into an agreement, the two of you, that it would go ahead without prejudice, correct?

Mr. COHEN. We would not assert the existence of the litigation or the merits of the litigation or effect on the merits of the litigation as a reason why we are not carrying MASN.

Chairman TOM DAVIS. But you don't like MASN and what they have done and the way the deal has been set up, correct?

Mr. COHEN. Again, with—and it is funny. I said—

Chairman TOM DAVIS. I don't mean personally. I just—

Mr. COHEN [continuing]. Before the hearing. It isn't personal, and we respect the rights of MASN to exist in the marketplace. We respect the competitive element that they bring to the marketplace. I think we, as anyone would, resent being called a monopolist. I think that when you have a network that, according to the structure of the agreement between Major League Baseball and the Orioles has the rights in perpetuity for two teams—the Baltimore Orioles, because they are owned by the majority owner of the network, and the Washington Nationals, because those have been granted—where neither of those rights ever has to go out in a process where anyone else in the market has an opportunity to be able to carry those rights, I think—I mean, I hate to say this, but I think MASN is sitting in the unfair competitive advantage and not Comcast SportsNet.

Chairman TOM DAVIS. Well, I think you could make an argument we are dealing with two monopolists, Major League Baseball, which is granted a monopoly under antitrust exemption, and your cable franchise, which basically has a monopoly, and part of that is before Congress now, depending what the openness is going to be. But not—

Mr. COHEN. I do not think—let me say this, because let me give the numbers to be fair. I don't think Mr. Angelos was saying that our cable system is a monopolist, although maybe he was. I think he was referring to Comcast SportsNet as a monopoly regional sports net.

If you look at this whole market that Major League Baseball has defined—and let's understand this. This is not a natural market.

Chairman TOM DAVIS. Right. Correct.

Mr. COHEN. This is a Major League Baseball defined market.

Chairman TOM DAVIS. There are local cable franchises that—

Mr. COHEN. But we are—and in that entire market, there are 6.9 million television households—

Chairman TOM DAVIS. But if you are in Prince William County or you are in Montgomery County—

Mr. COHEN. If you want to go on a county-by-county basis, you might reach a different conclusion. But we control less than a third of the households in that entire—

Chairman TOM DAVIS. Well, I agree, but a lot of these other companies have been able to reach agreements, and they are smaller than you. They don't have pending lawsuits.

Mr. COHEN. I think you heard from Mr. McCollum—

Chairman TOM DAVIS. I am not saying it is cheap. I am not saying it is cheap.

Mr. COHEN. And I think—and I am going to say this again. For the benefit of everyone in the market, for the benefit of the customers in the market, for the benefit of the Nationals and their fans, and with all due respect, for the benefit of your constituents, somebody has to stand up and say no, enough is enough, and it is time to protect the customers' rights. And it is not fair, it is not appropriate—it may be convenient—to characterize this as a dispute between a corporate giant and a business leader in the Baltimore market. I think it is unfair. I think that this is a situation that has been created by the third party at this table, by Major League Baseball in the way in which they have structured this. And I think that it is totally appropriate for us, as Mr. McCollum said, the company that does have an ability to stand up and say we are going to try and protect the rights and the positions of our customers and of your constituents.

And, by the way, my bet is, although I don't know, my bet is that Mr. McCollum has a most-favored-nations clause, what is called an MFN, in his agreement and he may well get the benefit of whatever it is we are able to—

Chairman TOM DAVIS. I think that is accurate. I don't think there is any dispute on that.

Mr. COHEN. And so even though everyone may have reached agreements, if—

Chairman TOM DAVIS. If you can drive a better agreement, they benefit.

Mr. COHEN. Everyone is being honest about it—

Chairman TOM DAVIS. OK.

Mr. COHEN [continuing]. They are all hoping that we are going to take care of this problem.

Chairman TOM DAVIS. My time is up. I am going to yield to Mr. Van Hollen, but let me just say, Mr. Dupuy, this would really be helpful for Major League Baseball, who is the owners of the Nats at this point, to step in here and try to look after the fans. We have waited in this region for over 30 years for a Major League Baseball team, and to get fewer games this year over the air than we got last year, it is a slap in the face. It is like giving us half a team. Major League Baseball can step in here and try to get these parties together, if only for a 1-year agreement, holding harmless everything else, so that our fans can see the games.

Mr. DUPUY. We would be delighted to help in any way possible, as long as that help does not assume breaching contractual obligations.

Chairman TOM DAVIS. I am not asking anybody to do that. We are going to have to be outside the box on some of this stuff, I think, if we are going to get this done, because you are coming at this from such different perspectives. I do not need to remind Comcast and I think the cable industry has a lot of issues pending up here. You know, this is not helpful to anybody over the long term, not being able to reach this agreement.

OK, Mr. Van Hollen.

Mr. VAN HOLLEN. Well, thank you, Mr. Chairman. I want to thank all of you for your testimony. I do think it is helpful both for us and for the public to get the facts on the table in this way.

Now, Mr. Burton in that opening statement he read made a comment that related actually to the question that the chairman just asked of Mr. Cohen regarding the effect of the ongoing litigation on Comcast's willingness to try and sit down and work out a solution right now as opposed to waiting until that litigation is resolved.

As I understood the statement that Mr. Burton had read that was a Comcast statement, he said that Comcast was not willing to enter into those kinds of discussions because they believe that the MASN network was the result of a breach of contract.

Putting aside your legal position on that, is your position today that you are willing to go forward now to try and work out an agreement to air the—

Mr. COHEN. Congressman, I think I tried to at least touch on that answer in response to the chairman's question. There are a whole host of reasons and a whole host of problems that we have with negotiating a deal with MASN. And certainly the pendency of the lawsuit but, more importantly, the breach of our contractual rights is one of those reasons. Standing up for our customers is another reason. The price is a third reason. The programming that is available is a fourth reason. And our willingness and our ability to do what is right for the Nationals, for their fans, and for our customers and your constituents, and make sure that we end up—that all of us end up—we are big citizen of Washington, DC. That is why we were a big fan of bringing the Washington Nationals to Washington. I want to say this. If we go and we sign a deal with MASN, we are the last thing standing in between a protection of the Nationals' long-term rights and the status quo for them. And if we sign that deal, 5 years from now, 10 years from now, mark my word: Washington, DC, and the Nationals is going to have a second-class franchise in a first-class city, and somebody is going to be standing around screaming: How did this happen? Who let this happen?

I am willing to say, in addition to all the other reasons that I have noted, that we are willing to stand up and try and create the incentive for the right thing to happen.

Let me ask this question. If we had signed a deal with MASN—all right? And, by the way, I heard all the opening statements. A lot of people properly said we have questions about this deal with Major League Baseball. We have questions about what this means to the Nationals, the future of the team, questions about the public investment that Mayor Williams so artfully guided through City Council. I heard all of that. If we had signed a deal with MASN last summer, the end of the baseball season, before this season, would this hearing be taking place? Of course not.

Our unwillingness to sign a deal is keeping a spotlight on the original sin here, and that is this extremely unusual structure that has been created, and resolution of that problem will solve this faster than anything else.

Mr. VAN HOLLEN. Well, let me just—I was not—I understood your answer to the chairman's question to be different than the way Mr. Burton had characterized Comcast's position, which is

why I was asking you the question. Taking everything you just said, are you willing to sit down with Mr. Angelos or is Comcast willing to sit down with the Orioles and taking all those variables you mentioned into consideration, tomorrow sit down and try and—or at least talk?

Mr. COHEN. As I also mentioned, we are willing to sit down with anyone. Our only given is that we would like to get a deal done, and as I mentioned, there is a meeting scheduled between representatives of MASN and representatives of Comcast. But I have tried to put on the table here the whole host of concerns that we have, some of which are resolvable in discussions with MASN, but some of which are not resolvable in discussions only with MASN. Major League Baseball needs to have a seat at that table and needs to be involved in that process.

Mr. VAN HOLLEN. I understood Mr. Dupuy to say he would be willing to sit down in that process. But I also understand your position to be unless Major League Baseball sort of undoes what you have termed the original sin, you are not willing to reach—

Mr. COHEN. I think we are asking for Major League Baseball and the Baltimore Orioles to do what is right for the Nationals and their fans.

Mr. VAN HOLLEN. OK. Let me get to this price issue because I think there is the apples and oranges issue, and we do hear that. Mr. McCollum, you mentioned—as I understand the testimony so far, the rate amount that you are being charged by Comcast, just the rate—put aside the apples to oranges—is comparable to what you are paying MASN. Is that correct?

Mr. MCCOLLUM. Again, Congressman, I cannot comment on the specific rates. I think the point is that the deal that we have with MASN is a very onerous deal and does put significant pressure on our rates.

The other thing I would say is that it is not an apples-to-apples comparison when you look at what they are offering in terms of the content. Again, at home last night, looking at this network, there is nothing—it is not a black screen. It is a blue screen with a computer-generated message saying “This is MASN.”

Mr. VAN HOLLEN. I want to get to that, but let me just ask you this. I mean, your customers also pay more, do they not, because of the fact that you carry Comcast SportsNet?

Mr. MCCOLLUM. That programming—

Mr. VAN HOLLEN. OK. I mean, they pay more—

Mr. MCCOLLUM. All of our programming costs impact—

Mr. VAN HOLLEN. Look, I am just trying to figure out what the impact on our consumers, our constituents is going to be. So they pay more because you have Comcast SportsNet, and now you are saying they are going to pay more if they carry MASN. Let's get to the apples-and-oranges issue here. As I understand what Mr. Angelos just said, they have a plan in the works to have 24/7 programming. I have two questions here. One, won't that make a difference? Will that then make it apples to apples? And, second, they are a startup, as I understand it, and I guess my question to Mr. Cohen would be, Comcast, when it started up some of its sports nets in different cities around the country, have you never had a

cable channel that just showed games, or has it always been—in every case, has it been 24/7 programming?

Mr. COHEN. My history in the cable industry does not go back far enough to answer that question with 100 percent certainty, but I can tell you that in the last 18 months we have launched two regional sports nets—one in Chicago, a four-team regional sports net, by the way, and one in New York, a one-team regional sports net. In both cases, immediately upon launch, both networks were 24/7 networks.

Mr. VAN HOLLEN. OK.

Mr. COHEN. We don't go out to the market and try and collect the types of pricing that regional sports nets command without 24/7 programming.

Mr. VAN HOLLEN. If it turns out MASN is going 24/7, would that make it apples to apples?

Mr. MCCOLLUM. Well, I think the difficulty, Congressman, will be—and, again, I would love to see the Nationals playing in October. The fact of the matter is baseball is a summer sport. 24/7 assumes 365—it assumes a year-round network. And Comcast SportsNet clearly has Caps, it has Wizards, and it has Orioles today. So I think when you really look at—I am encouraged by what Mr. Angelos said today about what is going to happen on July 1st, but I am more interested in what is going to happen on December 1st.

Mr. VAN HOLLEN. All right. Let me also, if I may, Mr. Chairman, just on this price issue, Mr. Cohen, as I understand it, you said that Comcast proposed to pay more for the rights. Is that right?

Mr. COHEN. Correct.

Mr. VAN HOLLEN. Now, as a result of that, won't my constituents be paying more to Comcast?

Mr. COHEN. The answer—it is a very good question, a very important question. I think the experience around the country has been that in markets with duplicate regional sports networks, the customers end up paying more as a result, more for regional sports net programming than they would pay in single regional sports net markets. So although your constituents might have paid more—and, by the way, a lot of this has to do with channel capacity as well as Mr. McCollum referred—and, understand, I do not want to—Mr. McCollum and I have met once before. We did not talk at all before his testimony. I had no idea what he was going to say. But notice that he pointed out from an independent cable provider that has no regional sports net interests in this market—and I don't know that Cox has anywhere—that he said that he was hoping that there would be a single regional sports net in this market because it would be most efficient to him and to his customers. And that has been the national experience.

I would note, by the way—and I am not—we are a little constrained here, and I think we all understand the awkwardness of it, not to get into the confidentiality of pricing. But I will tell you and I will represent to you—and I hope all of you know me well enough that I would not make this up—that we are in Comcast of 10 two-team regional sports nets in the country. And looking at the pricing that MASN is proposing for next year, starting when it would be a two-team regional sports net, it would have the highest

pricing of any of those 10 regional sports nets anywhere else in the country.

Mr. ANGELOS. I am reluctant to say it, but I will. Mr. Cohen's most recent statement is an absolute untruth. Moreover, his contention that more than one regional sports network in a given area just is simply not the right thing to have, and he says that under oath when his company is involved in a number of places in which they have a regional sports network and there is an additional one or additional three or even four. But he sanctimoniously sits here under oath and tells you that what is really wrong here is that there will be two regional sports networks in this area and somehow that is going to be catastrophic for the consumer.

And let me address Mr. McCollum's position. The only reason that they finally came to the table to put the Nationals on is because Verizon has brought the competition that this industry—their industry—has needed for maybe further back than Mr. Cohen was talking about, which he won't have too much information on.

The competition has come to Fairfax County, and that brought Mr. McCollum—Mr. Wilson to the table to make the arrangements with MASN to put the National games on. No Verizon, there would not be any deal with Cox. It is that simple. And that is what Mr. Cohen's people need, and that is what Mr. McCollum's people have to have, and all of these cable companies need to have—competition. And that is why they do not like us. That is why we have been castigated and vilified and so on, because we also present competition.

Mr. Congressman, we are not gouging anybody, and we are not reluctant to show you numbers. I will be delighted to show you numbers. Maybe not here, that is, openly. There may be some concern on the part of these gentlemen that should not be an open matter. But I would be delighted to sit with the chairman and members of the committee and show you exactly where we are coming from them. But I will also show you what their numbers are. We have nothing to hide, and we do not deal in statements that simply are untrue, inaccurate, and deceptive.

Mr. Cohen's position, while well articulated, is a false one, just like his litigation is a false one.

Chairman TOM DAVIS. Thank you. It looks like when we have that meeting, Mr. Angelos, with you and Mr. Cohen, we are going to need Major League Baseball there. [Laughter.]

Mr. RUPPERSBERGER.

Mr. RUPPERSBERGER. First, I do think this hearing has been helpful because we are getting a lot of the facts out on the table. I know that we cannot agree with the other person's positions, but maybe we can find a way to move forward somehow. I think from what I am hearing now, we need a short-term solution and long-term solution.

The first thing, Mr. Cohen, I would like to address your argument about Major League Baseball and a bad deal for the Nats, and I might agree with you. But on the other side is that the Baltimore Orioles gave up a lot. They gave up 25 percent of their market, and that is going to be a financial loss. When Mr. Angelos or any owner buys a team, they are going to buy the team, and they enter into a contract, and they have a certain market, and that is



something of value. And there is no good businessman who has the money to buy any team, I am sure, that is going to try to go in and have a losing proposition.

I would agree with you, though, that I think if anybody is going to help move this on, it might be Major League Baseball. Whatever Major League Baseball and Mr. Angelos did, Mr. Angelos, I am sure, has a contract or understanding, and he is not going to give that up because he needs to generate money to compete with the Yankees and to compete with Boston and those other teams.

Now, Major League Baseball also has an obligation to the Nationals, too, and they don't want the Nationals to fail. And neither do the gentlemen sitting to my right or left want the Nationals to fail either. So it is up to Major League Baseball on a long-term solution to look and analyze.

But I can guarantee you, knowing Mr. Angelos' ability to be a good negotiator, he is not going to give up what he already has in his pocket to help his team.

So I think that argument, even though it might be a good argument, I don't think that argument is going to go anywhere. So where do we go from here?

The first thing, Comcast, as I said in my opening statement, is a very good corporate entity within at least the jurisdiction that I represent, and I think a lot of your reputation is because you have put back in. And most of those corporations that do well put back into the community. And I think you really have to look long term whether or not, you know, this position that you are taking, that you are saying to save the Nats or whatever, is going to affect you and also your reputation. How much is that worth?

But, on the other hand, as a good businessman, you have to look at the margins. You have to look at the long term.

Now, you know, we are talking about where to go on the long term or whatever. I would think right now, my recommendation is that somehow you move forward and try to resolve a short-term situation. Now, I know long term you have to wait for the lawsuits and see where they are going to go. That might make a decision where a lawsuit goes. I know there are other issues about what is MASN and where we are, and I am sure it is an issue with you. What is going to happen when the Orioles contract expires? And I hope as an Oriole fan you work it out before we get to that level again.

But I do think—and I think that Major League Baseball has to step up a lot more, maybe, about where we are going, but they are not going to be able to do that until you have an owner. And I think once you have an owner, you have an advocate, and a lot of the things might be able to move forward. But, you know, how much you pay for advertising, how much you pay for public relations, all that could go away if you irritate the average person, who really does not care about anything we are talking about here today other than having their team on TV. That is bottom line.

Now, let me ask you, Mr. Dupuy, as far as where you think—you have heard what I just said. Where do you think you can be to move this or do you have recommendations on what to do from a short-term perspective and then from a long-term perspective? Because if the Nats cannot generate revenue enough to be competi-

tive, that does not help you either. And, again, if that is the case, I mean everything has a price. Maybe you have to look at how you can compensate Mr. Angelos, and I want him to be compensated because I want the Orioles to be competitive.

Mr. DUPUY. Congressman, addressing several of your comments in a single answer, despite the disclaimer that there was no attempt to ascribe blame today, I keep hearing the phrase, you know, "original sin," that we committed the original sin. Well, we don't think we committed a sin, and what we did certainly wasn't original, because there are lot of models for it around the country, including several that Comcast is involved in individually.

I think the short-term solution is there needs to be a commercial resolution. This is a commercial dispute. There needs to be a commercial resolution between MASN and Comcast as to what a fair rate is for this year's coverage with regard to the coverage of the team. MASN has been able to reach that resolution with at least five other carriers. They ought to be able to reach a resolution with Comcast over the broadcast of the games this year until, as you mentioned, the various claims and litigations are either compromised or are determined.

In terms of a long-term solution, that is what we believe we did, and what we believe we did is something that is both pro-fan and pro-competition. In the sense of being pro-fan, we expanded the territory. We allowed all of the fans in the entire territory to be fans of both the Orioles and the Nationals. We allowed fans to choose based on the performance of the teams on the field, based on stars, based on allegiances, based on presentation of the product on the field. We did not split it up. We said fans could be fans of the entire area. We tried to deal with the compensation of the Orioles for the losses—

Mr. RUPPERSBERGER. But how do you deal with Mr. Cohen's argument that you have as a result of this arrangement you have with the Orioles, that it is not a monopoly? How do you deal with the issue of a fair competitive price? Because you are part owner of MASN, too.

Mr. DUPUY. The Nationals are part owners of MASN, just as the Cubs and the White Sox and Comcast are part owners of the joint venture in Chicago that we modeled this after. This is a joint venture. It is a joint business venture.

Mr. RUPPERSBERGER. We know that Comcast has the Flyers and the 1976ers, and they don't allow anybody to come in on their side. So it is a different story here. But I do not really—I am not concerned about their rights and the fact that they need to be a competitive company. It is just about what is fair and reasonable.

You know, whether we like it or not, electricity, telephone, and sports, believe it or not, seem to be quasi-governmental, even though they are not. And we know you have to make a profit. But when it comes to this type of thing, people are not—this is not going to go away. And I think you have to step up more than anybody and get these games on in the short term and then start working it through when you get another owner. That is the only—

Mr. DUPUY. Again, we are happy to do whatever we can—

Mr. RUPPERSBERGER. I see my red light is on. It goes so quickly. I do want to say this, though. I think everybody at the table needs to understand this. The airwaves are not privately owned, and they belong to the public. And we need to understand that. These airwaves are making a lot of people a lot of money, but they do belong to the public. And we do not want Congress or the FCC to have to get in, which could hurt everybody. I believe that we need free enterprise to move forward, let the market share move where it is, negotiate based on the market share. But if it goes too far and you irritate fans and it looks like people feel, even though it might be the case, that you are being gouged or whatever, then that is when we step in because we represent the people.

So let's get it together because we do not want to get to that next level.

Chairman TOM DAVIS. Mr. Moran.

Mr. MORAN. Thank you, Chairman Davis, and just a segue from what Dutch says, you know, it does fall on us to represent the fans, because it is the fans that are really getting the short end of the stick here.

Let me first ask Mr. Dupuy with regard to Major League Baseball's role. You make a deal that gives 90 percent of the broadcasting rights to the owner of a competitive team, the Orioles.

Mr. DUPUY. No, sir. We gave 90 percent, beginning 90 percent of the control of the corporation, 90 percent of the profits of the corporation, not 90 percent of the rights. The rights were given to a joint venture.

Mr. MORAN. All right.

Mr. DUPUY. This is a joint venture.

Mr. MORAN. All right. Then let me rephrase it. You give 90 percent of the profits for broadcasting rights from the Nationals to the owner of a competitive team.

Mr. DUPUY. Only after first ensuring that the Nationals would receive, unlike any other team in baseball—there is no other team in baseball that has a guarantee that they will get a market right fee for their product.

Mr. MORAN. But, Mr. Dupuy, isn't it correct that the two principal sources of revenue for a baseball team are the real estate that it owns and the revenue generated from that and the broadcasting rights, that the broadcasting rights are essential to the revenue that a baseball team owner receives?

Mr. DUPUY. Precisely so. Ticket sales and broadcast rights are the two economic drivers.

Mr. MORAN. And yet the deal that you make gives the new owners of the Nationals 10 percent of the revenue from television, which means that they are not going to be able to compete in terms of buying the best players, fielding a competitive team. Now—

Mr. DUPUY. With all due respect, sir, quite the opposite. The Washington Nationals do not have the wherewithal, do not have the product to set up a competing RSN to Comcast. A single team in this market would have had difficulty setting up an RSN.

What the Nationals have done is combined and formed with the Orioles, given the critical mass to be able to form a competing RSN. They are getting a full rights fee, but they are also getting a plus. They are getting 10 percent of an entity and eventually 33

percent of an entity they never would have had but for the negotiations.

Mr. MORAN. Baltimore is the 23rd market. Washington is the 8th market. The income level in Washington is twice what it is in Baltimore, and there are twice as many TV sets in the Washington area, immediate Washington area, as in the Baltimore area. And yet it seems to us that you have set up a situation where the revenue that would normally go to the team owner, grant you at some point, is constricted, limited to only 10 percent, 33 percent in the future, but Mr. Angelos has into perpetuity—

Mr. DUPUY. No, I—

Mr. MORAN [continuing]. A control over the revenue that is coming from the network that he owns.

Mr. DUPUY. Again, sir, I would disagree. Just as in Chicago the White Sox have a certain percentage, the Cubs have a certain percentage, the Bulls have a certain percentage, the Black Hawks have a certain percentage, Comcast has a certain percentage, so too here the Nationals have a certain percentage of an upside that was created by this joint venture. They are getting a full market rate for their rights, and we have created value rather than diminishing value in my opinion.

Mr. MORAN. I just cannot understand how you can say that, for the team owner—any team owner in their right mind who is a businessman is going to have to buy from Mr. Angelos the right to get more than 10 percent or even 33 percent of the revenue that is generated by this television market.

Now, Mr. Angelos wants to say something, and you can address that, Mr. Angelos. But let me also ask you, because it seems to me there is another factor here in terms of the revenue that will offset the cost that Mr. McCollum and Mr. Cohen's network are going to have to bear, and that is advertising.

Now, if you let them advertise and they get a fair share of the advertising revenue, then that covers, that could cover their costs. Certainly it covers part of their costs. But, on the other hand, if you say, well, you can get a share of the advertising revenue when we present the International Dog Show at midnight, but you cannot get the revenue from the baseball game, that is a different situation. And that is a factor that we need to understand because it seems to me there are ways that you can compensate, enable Cox and Comcast to get back their revenue—excuse me, get revenue to cover that extra expense that you are charging them per subscriber if you let them have a fair share of advertising revenue.

Now, how have you structured that, Mr. Angelos, if you would not mind telling us?

Mr. ANGELOS. The division of the advertising revenues between an RSN and a distributor such as Cox is on a 75/25 percent break: 25 percent goes to the entity like Cox, and the rest goes to the RSN.

Mr. MORAN. Well, and that is of all the advertising?

Mr. ANGELOS. What is that?

Mr. MORAN. They cannot distinguish between—in other words, all the advertising that is on the games, that is on the dog shows, that is on everything, you split it the same?

Mr. ANGELOS. Congressman, we did not originate this approach, neither with respect to the rates nor the division of the advertising revenues. That is a standard arrangement in the particular business we are discussing, which is a regional sports network. We have not innovated anything. We have followed the system which has been developed over the years, and that is the arrangement.

Mr. MORAN. OK. If you were to buy the Nationals, would you not see it as essential in your interest to try to acquire the broadcasting rights for the Nationals so that revenue would be going to the benefit of the Nationals team and not primarily going to the benefit of the owner of the Orioles team?

Mr. ANGELOS. Congressman, let me try to answer the other question as well as this one that you asked before. Let me point out that the territory that we are discussing, which I enumerated earlier, running from Lancaster all the way through central Pennsylvania, in Maryland, in D.C., in Virginia, and so on, that has been—

Mr. MORAN. Chairman Davis covered that.

Mr. ANGELOS. That has been, sir, the Oriole home television and cable territory for 30 years, and every team in Major League Baseball has a territory like that, similar to that.

Mr. MORAN. No, no. There is not another situation where you have as large a metropolitan area as Washington that has been shut out from baseball for 30 years, and much of the reason they have been shut out is because you have worked with the other baseball club owners to shut them out.

We have been at your mercy because you had a financial interest in Washington not having a team, Mr. Angelos.

Mr. ANGELOS. May I respond? Let me say that in 1993, when we purchased the Oriole team out of bankruptcy, we paid \$173 million for that team—if you would let me finish, please—and we also assumed certain obligations that were outstanding. At that time, the Oriole home television territory was essentially as I have described it here today.

The purchase of that team, along with that territory, the home territory of the Orioles, was one of the reasons we made that kind of an investment, and at that time what we paid was the highest number ever paid for a ball club in the history of Major League Baseball.

Mr. MORAN. I understand the history, but I also understand the history of the last 30 years. The last thing I want to say is I have to conclude, Mr. Cohen, that the fact that there is a lawsuit pending, which if it prevailed on your side would substantially weaken the leverage that MASN has, Mr. Davis suggested it, and you pooh-poohed it, but I have to believe that you have a substantial vested financial interest in not showing games until this lawsuit is concluded because you think that you are going to prevail, and if you are able to maintain that contract, then, of course, you are not going to have to pay anywhere near as much to MASN as you would have to today, and as Mr. McCollum has had to.

So I do think that Comcast has culpability here, to be honest with you, and I think it is you that is going to have to yield.

Chairman TOM DAVIS. Thank you.

Ms. Norton.

Ms. NORTON. Thank you, Mr. Chairman. I am going to start with Mr. Dupuy. You have gotten off pretty easy here. But if you happen to represent the District of Columbia, when I look at you, sir, the first thing I think of is \$611 million that this city paid for a stadium, the price of bringing baseball back to Washington. And, of course, this city is the core of the region and doing very well, but it pales beside the wealth of the rest of the region. And yet who put the \$611 million on the table was the District of Columbia.

I am sure you watched very carefully the council to see whether it would get through those proceedings, because for you that meant \$450 million. We put \$611 million. You immediately have a team that could go for—at least it is estimated as much as \$450 million. We have not seen much of you in this dispute. You have not played any of the roles that one might expect Major League Baseball to play, largely because it is unarguable, it seems to me, that the present deal does take resources away from the Nationals in particular and will have a negative effect upon their ability to compete.

But, you see, I know Mr. Angelos, and I understand that the delay in bringing baseball to Washington had to do with the fact—and he has laid it out very clearly. Here was coming a team very close to his team, so he was in a position to drive a very hard bargain, and of all the bargainers I know, you all aren't nearly as good as Mr. Angelos, even though everybody in the District gives you a lot of credit for the kind of bargain you drove against the taxpayers of the District of Columbia. We were not match for Mr. Angelos, and he came out with something that he believes will at least not prejudice him in the long run.

Members here have raised all kinds of Federal interests that are on the table—airwaves interests, the monopoly and antitrust exemption that has favored you. One way, of course—the thing that stands out, though, is that in this dispute there is nobody to speak for the Nationals. So, you know, obviously Mr. Angelos is going to speak for the Orioles. You, of course, have money on Mr. Angelos. I am not criticizing that. I understand business deals.

Meanwhile, here are the Nationals, playing baseball every day, and not at the table during a dispute that means real dollars for them. In any fair dispute, at least they would be at the table. Maybe they are no match for Mr. Angelos, but he has a situation where he is bargaining with himself because you will not even bargain for him, and I can understand that. And when you were asked by the chairman when are you going to name an owner for the team, you came out with a month, a true insult given the nature of this dispute.

Sir, I must ask you to detail where you are, what discussions have taken place, and to give us a date so that we can have somebody at this table. We have paid for this team. We deserve to have a voice and to have somebody who can speak for us. We are used to not having anybody who can speak for us on the floor of the House and Senate. I will be darned if when you give this kind of money to build a stadium you do not deserve more than vague notions anytime soon, maybe in a couple of weeks. I am asking you to be far more specific than that out of fairness to the people I represent.

Mr. DUPUY. Thank you, Representative Norton. A couple of comments.

First, I believe that the deal that was negotiated with the city, the City Council, the mayor, the sports commission, that because of the unique circumstances of D.C. government, was renegotiated four or five times during the course of a year and a half, is a fair deal.

Ms. NORTON. I bet you do.

Mr. DUPUY. And with regard to the \$611 million, over 70 percent of that will be paid for by the team through rent payments, through ticket taxes that would not otherwise exist, and we believe will spur development of the entire Anacostia Basin to the benefit of all of the D.C. residents and the city of D.C. We are proud to be here. We think the deal was fair, and we believe that the team and the city were very well represented by the mayor, by the sports commission, and by—

Ms. NORTON. Now will you answer my question?

Mr. DUPUY. And in response to your question, that decision will be made by the commissioner. Until last week, Representative Norton, we did not have an asset to sell. We did not have a lease. We did not have—

Ms. NORTON. What do you mean by that?

Mr. DUPUY. We did not have a document. We did not have anything to give to a new owner. We had promises. We had, "Oh, yes, we can do that." But last week, for the first time all the documents were signed.

As you recall, because I did participate and watched the hearings, as you did, this has gone on for some time now. There have been protracted hearings. There have been protracted changes. There have been renegotiations. Major League Baseball itself for the first time ever is putting up \$20 million. Now, \$20 million may not be a lot of money, but \$20 million is the first time we have ever contributed to a stadium—

Ms. NORTON. Now that a deal—

Mr. DUPUY [continuing]. And we did that trying to bridge the gap.

Ms. NORTON. Now that you have a lease—and that is, of course—you are arguing you could not have named an owner without a lease. Now that you have a lease, now would you answer my question?

Mr. DUPUY. Yes, and we have assembled all the documents in New York, all the new documents, the new lease, the MOU, the groups have come in this week. I believe we had five groups in New York this week. As I mentioned, I spent the last week, apart from getting prepared for this hearing, meeting with the various groups. And as I also indicated, this is the commissioner's decision. He has indicated he will make this decision within a couple of weeks. I tried to be as specific as I could.

Ms. NORTON. So within a couple of weeks you expect—

Mr. DUPUY. That is what the commissioner has indicated, yes, ma'am.

Ms. NORTON. We cannot expect—I never expected Major League Baseball, given the incestuous relationship they have with this deal, given the fact that, frankly, Major League Baseball represents

all of the teams, to be a legitimate third party to help resolve this matter. And I am trying to find how it is going to be resolved.

Mr. COHEN, you know the respect I have for you because of your Philadelphia experience. Sir, are you a lawyer?

Mr. COHEN. I am.

Ms. NORTON. In that case, I am truly astonished by what you had to say about how the matter should be resolved because—and here I am reading from your own testimony. The way you think it ought to be resolved, as I see it, is to nullify the agreement that has been made. This is an agreement which I agree is unfair, and I must tell you, I have to sit through a lot of unfairness in the House of Representatives that I can do nothing about. And unfair contracts, when you and I went to law school, we were taught as long as the parties were free and 21, is something in which the law cannot intervene. Wish it could. But there is a reason for that in a market system.

You said that Mr. Angelos should return control of the Nationals television rights to the Nationals, their rightful owner. Then MASN can bid on those rights. You can bid on the rights. He deserves compensation. Let them pay directly, Major League Baseball.

Now, it is hard for me to regard that as anything but a negotiating position. Do you agree that is what it is and that you would have to move from there if you were sitting down with any party in order to try to resolve this dispute?

Mr. COHEN. Congresswoman, two things. First of all, I am a good enough lawyer to know that I was not asking for a court or this Congress or anyone independent—

Ms. NORTON. So if a court—you expect them to do it willfully?

Mr. COHEN. That is exactly correct.

Ms. NORTON. Why? Why is it in their interest to—

Mr. COHEN. Because—and let me be clear. Notwithstanding Mr. Angelos' comments, I have tried very hard not to castigate him because I don't think Mr. Angelos is taking an unreasonable position in seeking to make the best deal that he can on behalf of his team.

Ms. NORTON. You understand I looked at this—you know, I tried to take away my bias in favor of my own jurisdiction. I looked at what Mr. Angelos did when you all filed suit, and your original complaint, as I read it, said you deserve first rights, and you didn't get it.

Mr. COHEN. That's on the Orioles, not the Nationals.

Ms. NORTON. And, you know, the clear answer is, yeah, I deserve first rights, but obviously somebody can do it himself if he has the rights. So one goes into court on that kind of theory, and one wonders why is this a legal dispute and does anyone expect the matter to be resolved in this way? And if not, then what is it that you—how do you expect a resolution to come by?

Mr. COHEN. Congresswoman, this is a different issue.

The legal dispute around the Orioles' rights relates precisely to whether Mr. Angelos and the Orioles in fact did do this themselves. You've heard, in response to Congressman Moran's question, Mr. Dupuy's testimony that in fact this was not the Orioles doing this themselves, this was a joint venture. It was a third party that gained control of these rights, different from the Orioles, and you



can't have it both ways. Either it's fair to the Nationals or it's not fair to the Nationals.

Ms. NORTON. And the third party?

Mr. COHEN. Is this new joint venture between Major League Baseball/Nationals and the Baltimore Orioles. But this is a matter of—

Ms. NORTON. That was done pursuant to a legal contract.

Mr. COHEN. That is—well—

Ms. NORTON. Legal negotiations.

Mr. COHEN. Well, an illegal legal contract in our view, OK?

Ms. NORTON. I really don't want to—

Mr. COHEN. I think that's it. But let me answer. The question you asked is we are asking Major League Baseball and the Orioles to do the right thing for the Nationals and their fans, and to figure out a different way to compensate or to give the Orioles whatever compensation they're due, and not use as a mechanism to do that, the wallets of cable customers and your constituents. That's what our request is.

Ms. NORTON. I understand that is how anybody would begin negotiations. I don't understand that somebody like you in Philadelphia, who worked all kinds of deals in the public sector would regard that as the way to move—

Mr. COHEN. And I—

Ms. NORTON. Maybe that isn't your job. Maybe your job is to put that on the table—

Mr. COHEN. But I can say, Congressman, I've also sat here today, and I want to repeat, our—we are willing to talk and to discuss and to be flexible in this entire area. We have in front of us though the interest of the Nationals, their fans and our customers. That is really what we're trying to focus on.

Ms. NORTON. Let me continue if I just might, because I want to—precisely because I thought at least Mr. Cohen's reputation as being a problem solver, I want to see what can happen here. So I looked, I asked my staff to find out about your own behavior in your home jurisdiction, and as you know, that is Philadelphia. And I was really quite astonished to learn that in Philadelphia, for example—this is among other jurisdictions—where you own the rights to the Flyers, the Philadelphia Flyers and the Philadelphia 76ers, you have refused to allow other cable providers to televise the games.

Mr. COHEN. That's not true.

Ms. NORTON. And that the opposite is here because we have kind of a turning-it-on-its-head situation here. That is not true now?

Mr. COHEN. Congresswoman, that is not true. In Philadelphia—and Comcast SportsNet is a unique regional sports net in the country—but Comcast SportsNet is made available to all cable providers in the market, to all over-builders in the market, including RCN. The only entity that we do not make Comcast SportsNet available to are the DBS providers, DirecTV and EchoStar, and that is pursuant to terrestrial exemption in the Federal Telecommunications Act, which was designed to encourage investments in existing terrestrial networks, which is what Comcast SportsNet was when we purchased it, but it is a regional sports net that is

available to all cable providers in the market, including competitive cable providers to Comcast.

Ms. NORTON. In your own testimony, when we got past what they ought to do, which is to tear up their contract, you said in your own testimony that independent analysts reported last week, believe that MASN is, "asking too much for carrying the network." So basically what we are talking about is a necessity for some kind of negotiation over price. Is that not right, sir?

Mr. COHEN. I think that is part of the issue, Congresswoman, but I've identified a whole series of issues that we have with this network, of which price is only one factor.

Ms. NORTON. What is the other one?

Mr. COHEN. The other factors—

Ms. NORTON. You are in business here, what is the other one?

Mr. COHEN. The other facts that I've identified is protection of our customers, and to make sure that we deliver the highest quality service to them at the best price. Price, quality, the extent of programming and the quality of programming, and the fact that his network, we believe, has fundamentally been spawned by a violation of our contractual rights. And last, our interest in standing up and protecting the interests of the Nationals and their fans, and keeping the spotlight focused on the structure of this deal. Those are the five items I've identified over the course of this hearing.

Ms. NORTON. Well, Thank you very much, Mr. Cohen, but unless I am hearing you wrong, it still all comes down to cost and price. Anyway, I understand how you are framing the issue. Allow us to frame it, given the amount of money we put on the table as we do.

Mr. Angelos, you have already been beaten up a lot in the region, and I don't want to flog you any further. You know how I must feel about this. Let me ask you though about this new MASN, because you said that it was going to be 24/7 this year, so I would like you to elaborate on that. How are you going to maintain a profitable regional sports network and competition with another that has such a head start, going 24/7, and what conceivable programming, if you are going to do it as soon as July, do you have in mind?

Mr. ANGELOS. We will have a full range of what is referred to in the industry as shoulder programming, which includes college football and college basketball, ESPN programming. Potentially we will also have Fox programming. We're interested in putting together 24/7 operation with the two baseball teams, which includes all of the kinds of sports programs, sports news, sports magazine, that fans want to watch on a regular basis. So basically, we're in the process of doing that. We've only been in operation for a little bit better than a year. We need another few months and we will have all of that put together, and we'll be glad to report that to you personally if you would like, as to our progress.

Ms. NORTON. Mr. Angelos, you, and perhaps Mr. Dupuy, could answer this question, if you could answer this for us. You've done your own network, I understand that. I understand the reasons. I understand the initiative. I understand the negotiating position it puts you in. All things being considered, if you could strike a deal with an already-established network, that you think would satisfy your interests, as opposed to having your own startup network, would that not be preferable?

Mr. ANGELOS. I think we—

Ms. NORTON. If you could get a deal now. I am not—

Mr. ANGELOS. Congresswoman, with all due respect, I think we've made our decisions, we have joined in a contract with MLB, which eventually will be the contract of the Nationals directly, and we intend to see that contract is enforced.

The proposal that has come from Comcast for purposes of preserving its monopoly, we absolutely find to be, one, if you want to speak of illegalities, grossly illegal and improper, because what the solution is that is being offered by Comcast is that Major League Baseball should breach its agreement with us, and we in turn would then have to breach our agreement with the five distributors that we have executed contracts with, including Cox, for periods of 7 years. They have signed for 7 years to put the MASN games, the two baseball teams in 2007, and the full 24/7 that I described to you just a moment ago.

So we offer, and we will deliver to the Nationals, not just a rights fee that is market rate and increasing almost annually, but we also will produce for them an ownership interest. They're going to own part of this RSN.

Ms. NORTON. Mr. Angelos, I don't know if you are telling me that you are in so deep that—we have just heard now that Comcast is willing to sit down, whatever that means. And then, of course, you have justified the position you have and you think it ultimately is a position that will be profitable. Does that eliminate the possibility of sitting down with Comcast?

Mr. ANGELOS. Yes, ma'am. We would be delighted to sit down with Comcast at their earliest opportunity. We didn't hear from them for a year, but Mr. Cohen is correct, they called a couple of days ago and indicated that maybe they'll have a meeting with us. We're delighted to hear that. We're prepared to meet with them.

Ms. NORTON. That is progress, Mr. Angelos.

Mr. Dupuy, I only have a couple more questions.

Chairman TOM DAVIS. Ms. Norton, Mr. Cohen only has just a couple more minutes to check with his staff—

Ms. NORTON. I have no more questions for Mr. Cohen, but I do have two more questions. They are very short, Mr. Chairman.

I have heard the whole region that didn't pay a dime for this team usurp all the time, and I got two more—

Chairman TOM DAVIS. Well, why don't we get questions for Mr. Cohen so that he can make his train, which he had promised him.

Mr. ANGELOS. May I finish my sentence, please?

Ms. NORTON. Yes, but then we will go to Mr. Cohen.

Mr. ANGELOS. Let me say we're delighted to meet with Comcast at their convenience wherever they designated. We're prepared to put the games on Comcast for the same rate that Cox is paying and Verizon is paying and so on.

Ms. NORTON. OK. We have heard your negotiations issue.

Mr. ANGELOS. No, wait. Well, let me finish—

Ms. NORTON. We have heard Mr. Cohen's—

Mr. ANGELOS. May I finish? Please, Ms. Congresswoman. In addition, we're prepared to talk about a potential amalgamation of the two systems under the appropriate arrangements, and that may be a long and difficult negotiation, but I think we can get

there, assuming there's good faith on the side of Comcast. We are interested in doing that. We are prepared to work at it diligently and come back and report to your committee our progress with the chairman, who obviously can disseminate the information to the members of the panel.

We think that the two ought to be put together. We will work toward that, but let them put the games on now.

Chairman TOM DAVIS. That was a good question, Ms. Norton.

Let me just ask Mr. Cohen, could you respond? I mean when we talk about an amalgamation of the two systems and getting the games on, while you talk about, are we at least in the same room? You don't close the door on that?

Mr. COHEN. I don't close the door on talking about anything. I think I've said that before, and I think I'll just stop there.

Chairman TOM DAVIS. But an amalgamation of the two, I think that is as good as you are going to do under any circumstance at this point.

Mr. COHEN. Look, I don't know whether that's true or not, but again, as Mr. Angelos said and as I've said, we have never said that we are not willing to talk about anything. We have always said that we are flexible and the door is open to talk.

Chairman TOM DAVIS. Well, let me ask you this, if you don't have Orioles games—I don't know how these lawsuits turn out—but worse case, if you don't have the Orioles next summer and you don't have the Nats next summer on your SportsNet, what are you going to show?

Mr. COHEN. Well, I think, I mean again—

Chairman TOM DAVIS. Australian football?

Mr. COHEN. Well, it's a question of what we show in the summer. We'll obviously show the Capitals and the Wizards—

Chairman TOM DAVIS. Until they come up for bid again as well. I mean—

Mr. COHEN. Right. But, of course, it's interesting. They will come up and have to be bid upon in the market.

Chairman TOM DAVIS. Right, exactly.

Mr. COHEN. The way this is always done except for this one channel. And we're OK living under that world. I mean that's the way in which we live.

Chairman TOM DAVIS. Sure.

Mr. COHEN. But we will fill in our programming with other regional sports programming the same way in which we do in our other regional SportsNets around the country.

Chairman TOM DAVIS. I mean, let me just say this. I think there are other market opportunities. I mean, George Mason basketball is hot right now. I mean Mr. Moran and I just came out, thousands of the people lined the streets there. Somebody can put that on while you have the Capitals and the Wizards. I am not sure that two regional sports networks couldn't make a bigger market that could be shared on this.

I guess what I want to ask, and I want to be respectful of your time, Mr. Cohen—you have stayed, generously, far more than anticipated.

Mr. COHEN. And I appreciate the courtesy.

Chairman TOM DAVIS. Mr. Dupuy, would you try to oversee this in the next couple weeks as these parties get together? We will be happy to help any way we can. I don't want to—this is not a threat—but underscoring everything here is the fact that from a congressional perception, we are dealing with big giants here that enjoy a lot of benefits. We have a telecommunications bill going through. It is not a good reflection on the industry to have everybody fighting over dollars when nobody is losing money and the fans are suffering. And I wonder if everybody can give a little bit, and with Major League Baseball supervision in this, if we might be able, over the next couple weeks, to come back and give us a progress report.

Mr. Angelos has indicated his willingness to do that. Mr. Dupuy has said they will be willing to oversee it. Will you be willing to participate and see—I am talking about in good faith, sit down. And if you cut a better deal than Mr. McCollum, he benefits and my rates in Fairfax will benefit, so that could be a win-win. But be willing to give that a try?

Mr. COHEN. As I said, we have been a party that has always said we are willing to talk. I don't want to walk away from any of the principles that I set forth before this committee because we firmly believe—

Chairman TOM DAVIS. We understand. Look, we understand everybody's position.

Mr. COHEN [continuing]. That they are important principles.

Chairman TOM DAVIS. Mrs. Norton's been through it. We understand the principles.

Any more questions for Mr. Cohen, because he has to leave? Yes, Mr.——

Mr. VAN HOLLEN. Thank you, Mr. Chairman.

Let me just underscore the suggestion of the chairman with respect to getting together, and a progress report. That would be helpful.

Look, we all want to make sure the fans can see the games, and as someone who represents a lot of viewers who watch Comcast and other providers in the region, I also want to make sure, as Mr. Cohen said, we want to make sure that we protect the wallets of able customers and our constituents.

So my view is, we want to see the maximum number of games, and we want to make sure that our viewers pay the least cost necessary. There are lots of people who also watch Comcast who don't watch these games, and I want to make sure they don't see a price hike.

Mr. Cohen, I have to understand. You say you are going to pay more, put it up for bid, and Comcast, I assume by what you are saying, Comcast is going to pay more for these rights. Can you tell me today, can you guarantee me today that my constituents, your consumers, are going to be paying less if you are successful in outbidding MASN or whoever it was if those—they are going to be paying less to watch these games than they are if they took the deal that MASN has on the table? Can you guarantee me that? And if so, why?

Mr. COHEN. I will give you the same answer that I gave—I think that was the first question you asked me, which is, that the history

and the practice around the country is that customers pay less for regional SportsNet programming I market where there are less than—where there is one regional SportsNet. That is what I can tell you.

Mr. VAN HOLLEN. If I could, Mr. Chairman, if you could provide the committee and everybody else who is represented here with any other—that is information that would be very helpful for me just in understanding the impact of this. So if you would be willing, and anybody else at the table, to present that information, I would appreciate it.

Mr. COHEN. I'm not sure what information I can provide other than the—I mean, again, all these agreements are subject to strict confidentiality provisions. I think there may actually have been articles written about this, and so by economists, and so I will—we will look and we will see what we can provide to amplify that for the committee.

Mr. VAN HOLLEN. If I could, because this price is an issue. We have talked about when we met, and you mentioned, actually in your testimony, the recent deal you got with the New York Mets. And I assume that there are other providers like the ones we have mentioned at the table that also want to air those shows. Can you give me some sense of how the price you are charging those other providers for the rights to air the Mets games compared to the price that Mr. Angelos has on the table?

Mr. COHEN. The answer is I don't even know the answer to that question. I don't know what it is that I can say. I've given—even though Mr. Angelos didn't agree with my testimony, I will tell you that—and this does not breach any of our confidentiality agreements—that the price that MASN is seeking to charge as a two-team regional sports network is a higher price than the price we are paying for the 10 other two-sport regional sport networks in the country. That is a fact.

Chairman TOM DAVIS. Mr. Ruppensberger.

Mr. RUPPERSBERGER. Let me try to really conclude here what I think is happening. First, do we have a commitment here that parties will meet on this issue today?

Mr. COHEN. A meeting was scheduled—first of all, the parties have met.

Mr. RUPPERSBERGER. All right. I am talking about—

Mr. COHEN. And I have told you that a meeting was already scheduled.

Mr. RUPPERSBERGER. Will you commit to a meeting with Mr. Angelos and with Major League Baseball?

Mr. COHEN. There's already a meeting scheduled.

Mr. RUPPERSBERGER. OK, that is fine.

Mr. Angelos, you will commit to a meeting with Comcast and Major League Baseball?

Mr. ANGELOS. I just offered to do that, and I've been offering it for a year, Congressman.

Mr. RUPPERSBERGER. And also, Mr. Dupuy.

This is the way I see it. Second, I would ask, Mr. Chairman, that maybe Major League Baseball come back to us in maybe 2 or 3 weeks, and they have offered to do that, to report to us.

I come back and hear everyone has a point of view, and I understand that. I understand what business is about and what margins are. I understand that you make short-term decisions and long-term decisions, especially, Mr. Cohen, your industry is becoming a lot more competitive, so you have to look at where you are 10 years from now, and what decisions that you do make. That is why I think it is very important—and I am asking Mr. Dupuy to be more of the arbiter if you can—I think it is important that you come up with a short-term solution to take care of the Nats right now, and I think that is extremely important, whatever can be done in that regard.

Now, I am asking Comcast to give up their long-term legal issues, leverages they might have. That is why I think it is important for short term. But I would also ask that when you are sitting there—and if you start the negotiation—because I believe Major League Baseball has a responsibility. I believe Mr. Angelos has his rights to negotiate the best deal he did, and he did, and he has a contract in that regard. Now, I think it is extremely important though, that you, representing all of Major League Baseball, need to do what is right for baseball, and I would hope that if you can start and do something in the short term, that you look down the road with long term, including the Baltimore Orioles contact of 2007.

Than you.

Chairman TOM DAVIS. Mr. Moran, quickly.

Mr. MORAN. Thanks, Mr. Chairman. I want to tell you, Mr. Chairman, in addition to appreciating the hearing, I appreciate you having Mr. Angelos here, because that means I can afford to engage in an adversarial line of questioning without having to worry that I am going to hurt your feelings or anything. It is nice to have tough guys on the panel. And not to put you off to—well, whatever. I do think it should be said that it is clear there is nothing approaching illegality, nor could I see anything unethical in what has transpired here, and I say that quite honestly. I think Mr. Angelos has engaged in a business transaction, and if he didn't own the Orioles, I would love to see he or some Angelos clone buy the Nationals, because you have built a beautiful stadium, the Orioles are a terrific team, and we need an owner that is going to go to bat and going to generate as much revenue and field as good a team as possible, and you have done that. So there is no problem with that.

I do have a concern over the development of MASN, and if it becomes, for example, a 24/7 station, you will have the ability to substantially increase rates, as I understand it, and I think that is a concern that we would have on behalf of our constituents. For example, if you do go 24/7 can't you substantially increase the rate, and don't you have substantially more leverage over both Cox and Comcast and any of these other providers given your exclusive broadcasting rights for both Orioles and Nationals games? Is that true, or is it a supposition that is unwarranted, Mr. Angelos?

Mr. ANGELOS. I think the whole operation will continue to be under the jurisdiction of Major League Baseball. That is the way that Mr. Dupuy and MLB have fashioned it. We present the games. The ultimate control of our approach, the rights fees that we pay,

the quality of the presentation, and the concern that you just expressed, Congressman, will be carefully taken care of and guarded by Major League Baseball. We know that. That has been explained to us, and we intend to abide by those requirements.

Mr. MORAN. I am going to conclude now because we have another panel, but I have to say we feel vulnerable because we don't have an owner. We don't have a tough guy representing the Nationals, our team, our woman, or whatever, so we are in a vulnerable position. Major League Baseball owns our club, but, you know, that is 31 other owners, and they have their own vested interests in the benefits of their club. So I think you can understand where we are coming from, and it is not meant to be adversarial or accusatory. It is just we want to get the best deal for—

Mr. ANGELOS. Sure.

Mr. MORAN [continuing]. Our fan base, our constituents.

I appreciate Mr. McCollum doing that with Cox. I hope it works out, and I really hope, Mr. Cohen, that you can look at the fans first when you make these subsequent decisions over the next couple of months.

Dutch.

Mr. RUPPERSBERGER. This is not relevant, but chairman made a comment about how George Mason is a very hot team. I just want to acknowledge that the University of Maryland Lady Terps are a very hot team now also. Thank you. [Laughter.]

Chairman TOM DAVIS. I would have said that, Dutch, but I wanted you to be able to make that comment.

Mr. Cohen, you are free to go. I think Ms. Norton has just one more question for the panel.

Mr. COHEN. I'm happy—I mean I'm fine.

Chairman TOM DAVIS. You missed the train now, so you can take the next one.

Ms. Norton will sum up, and then we will go to our next panel, which is also I think going to be a good panel.

Ms. Norton.

Ms. NORTON. One last question. It really goes to resolution, trying to take into account the positions, both of which I regard as legal positions, as positions you might expect in hard bargaining, so I am not affronted by the positions as a legal or negotiation matter. I must tell you, I have to step back from my role as a third-generation Washingtonian to be objective about this, but I am trying my best because I would like a resolution.

I note though that this kind of dispute may be somewhat chronic in Major League Baseball, because, to quote one of baseball's most famous philosopher, kind of *deja vu* all over again here, or if I understand the dispute, the New York dispute when the Yankees created their own network.

I would like to ask Mr. Dupuy, because it sounds literally as though it was the same thing, and you would think that baseball would never want that to happen again. How was that dispute resolved?

Mr. DUPUY. It was resolved through ultimately a commercial resolution between the YES Network and Cablevision, just as here we have MASN and Comcast. Ultimately, the fans were unhappy enough that they sought alternative methods of distribution. The



YES Network didn't get the carriage that it wanted, and ultimately, after a full year of no games, the parties——

Ms. NORTON. Just like this.

Mr. DUPUY. Although last year there were about 70 games over the year that got carried by Comcast, and this year there's 32, but there were no games on Cablevision. Ultimately, the two sides decided it was in their interest to reach a——

Ms. NORTON. Well, they decided with the help of a third party; is that not true? They just sat down themselves and figured it all out?

Mr. DUPUY. Lots of third parties attempted to intervene, and those third parties were told it was a commercial dispute, and ultimately, they resolved it one-on-one as a commercial matter.

Chairman TOM DAVIS. Will the gentlelady yield on that?

I just want to—was compulsory arbitration something everybody would submit to on this in the fans' interest?

Mr. DUPUY. I mean——

Mr. COHEN. Compulsory arbitration is not something that we would be interested in. I mean we have to run our business and we can't hand that over to third parties, no more than I would ask——

Chairman TOM DAVIS. I am just thinking of the fans.

Mr. COHEN. No more than I would ask you, for example, to engage in compulsory arbitration in working out an immigration bill. I mean this is something——

Chairman TOM DAVIS. That probably would be better than what we are doing, but that is a different issue. [Laughter.]

Mr. COHEN. I think we have to run our business, and we really can't turn it over to a third party.

Chairman TOM DAVIS. Well, if we can just count on everybody to bargain in good faith.

Ms. NORTON. The chairman is borrowing—yes?

Mr. DUPUY. Representative Norton, I have been corrected. I'm told—again, it was a few years ago—that the New York Attorney General did get involved and banged a few heads around, and that's ultimately what resulted in the——

Ms. NORTON. Thank you for correcting that.

The chairman was only borrowing a word from baseball. I wouldn't use such a word because I'm not as familiar with baseball as the chairman is, and because I don't think it's appropriate here. The reasons I asked about third party intervention, and was so interested in the fact that the YES dispute was solved that way, is that one of the subjects I taught when I was a full-time law professor at Georgetown was negotiations, though it was not my——

Chairman TOM DAVIS. There was an arbitration.

Ms. NORTON. Yes. He is saying there was an arbitration panel.

Mr. COHEN. The YES thing, it was a three-judge arbitration panel.

Ms. NORTON. The chairman has just handed me New York Daily News report. The decision by a three-man arbitration panel, making YES available to cable subscribers on expanded basis, cost of \$1.93 per subscriber per month.

Mr. COHEN. I think—and Mr. Dupuy can correct me if I'm wrong—but I believe what happened was that Cablevision and YES

reached an agreement for carriage. There was one outstanding issue which was whether or not Cablevision would be permitted to carry this on a tier or on expanded basic, and if so, at what rate? And that issue was submitted to arbitration. So that is the—I mean that may be the combination of those two, and you may be looking at the article that reported on the results of the arbitration which came out many months, maybe even more than a year, after the carriage agreement was reached between Cablevision and—

Ms. NORTON. Thank you, Mr. Cohen, but I really don't think it—since I wasn't calling for any kind of compulsory—it doesn't detract from what I'm trying to find out. As I indicate though, though negotiations wasn't my black letter law subject, I can't say that I enjoyed anything more than teaching law students that adversarial relationship costs money to your client, and that he ought to pay you a whole lot more for helping to resolve suits without going to court, if you put a complaint in, you ought to sit down right then—and that's one of the reasons, by the way, that major businesses now very often hire the same lawyers that would have gone into big law firms as their own counsel in Fortune 500 companies, because they have learned that having a very good lawyer on the inside, rather than farming it out, may be the way to get around litigation costs.

Let me just say what I think has been accomplished here, because for me, this wasn't an interesting exercise. Without a team, with a stalemate, and an issue that means hugely much to the District of Columbia in the way that counts the most for the people sitting at the table, dollars and cents, just let me say what I think has been accomplished.

At least according to the newspapers and the way the parties described themselves before they came here, Mr. Angelos said that there had been multiple offers on the table for a year—even repeated that here—with no response. Mr. Cohen says, well, he has always been willing to talk.

Well, at least we have I think gotten on the record an agreement that both parties are willing to engage in talks. You don't have to call them negotiations. You can call them anything you want to, but it means representatives face to face. It doesn't mean these two head guys in charge. It means whatever you mean, but it certainly means that is on the record.

Second, in answer to my question to Mr. Angelos about whether he really would prefer a startup network—after all, he has a right to say, look, let me get in this business now, let me compete, I am willing to do the venture capital myself. An answer to that question is that your preferred course, my understanding—and remember, there has been somebody taking notes here—is that Mr. Angelos is willing to go forward on either of two bases, on the present basis at his own risk, or talking some kind of merger or—and that is perhaps the wrong word—but some kind of deal in which both of them, both of the parties, MASN and Comcast themselves, have decided jointly on how to proceed.

Given the polarization of the parties as your articulated positions have been here, you know, both negotiating positions, obviously, that, on the part of Mr. Cohen, turn up the contract and we can start all over again. Mr. Angelos, willing to take his chances with

MASN, no matter where it goes. Could I ask this question. If all else fails, would you be willing to let somebody else talk with either of you and ultimately both of you, to see if a decision could be raised? That would have to be on agreement. Often such efforts fail. But if all else fails, rather than continue as we have, would that at least be a possible course? You might do it and say, well, you all don't do it any better than we do, or goodbye, but would that be something you would at least be willing to entertain? Yes, sir?

Mr. ANGELOS. Congresswoman, as I expressed before, I am willing, we are willing to go anywhere, meet with the Comcast people at any time and place that is convenient to them. And so the answer to your question is an affirmative and strong yes. But I would say once again, let's get the situation calmed down, and as all of you have said, let's get the games out there for the Nationals fans in the interim. If they are willing, truthfully, to try to come to a resolution, they should be willing to join in that process on the same basis that I just indicated, and in the meantime, put the games on. And then all of us can do this in a calm, sensible, and ultimately fair and equitable basis.

Ms. NORTON. Mr. Angelos, I heard you say yes if all—

Mr. ANGELOS. Right.

Ms. NORTON. That maybe somebody could at least talk to you both, and I also heard your negotiating positions.

Finally, Mr. Cohen?

Mr. COHEN. I must say I'm not sure I understand the question.

Ms. NORTON. I don't think it is a very obscure question, sir. I said—

Mr. COHEN. I don't think a third party is going to be at all helpful in this process, if that's the—

Chairman TOM DAVIS. What about Major League Baseball sitting in?

Mr. COHEN. I think Major League Baseball has to be involved in this process.

Chairman TOM DAVIS. Could we just ask, Mr. Dupuy, you all sit down and report, let's say, by the end of the month give us a status report if we don't have something worked out?

Mr. DUPUY. Yes, sir.

Chairman TOM DAVIS. And let's try to do the best we can. I think that is what we are all after. I think all of the members here feel not just strongly for their constituents, but after hearing everything that has gone on, can't understand—nobody is losing money here—why we can't put the fans first. We have some major issues pending before us that affect some of the industries here. This shouldn't be a part of it. We should be able to work something out there. And if there is anything we can do to help along those lines, call on us, but we will look forward to a report by the end of the month.

Mr. ANGELOS. Mr. Chairman, just one more thing.

Chairman TOM DAVIS. Sure.

Mr. ANGELOS. I would appreciate it very much if the Chair would ask Mr. Cohen whether or not he will agree to put the games on so that the fans can be satisfied while this process is ongoing?

Chairman TOM DAVIS. I think he has already answered that. But I will ask you. Will you put the games on—

Mr. COHEN. Our offer is to put the games on immediately, as soon as Major League Baseball and the Orioles do what is right for the Nationals and for the fans, and return the rights to the fans.

Chairman TOM DAVIS. I just think, look, let's just sit down in a room and see if we can get these games on quickly while we are putting other issues aside. It looks like, unfortunately, this is going to take some time. We will do anything we can, and if you would report back to us in 3 weeks, Mr. Dupuy, on how these discussions are going, we will do anything we can to bring—

Mr. COHEN. Mr. Chairman, one other thought. The Congresswoman raises an interesting issue. There is another party that we happen to believe would be very helpful to be at the table, and that is the owner of the Nationals.

Chairman TOM DAVIS. Well, have to wait a couple weeks for that, but we will start the conversations. Let me just also say, Mr. Cohen—you have to go—but I hope that folks can monitor this next panel coming up because we have the local officials where you have cable franchises, are going to talk about what they need to do. They also have some things that they can do along this thing if we can't get this resolved.

Mr. McCollum, I just want to thank you for putting the Nats games on in Fairfax, and staying here through this today. You set a good example.

Mr. MCCOLLUM. Quite welcome, Mr. Chairman.

Chairman TOM DAVIS. Thank you.

We are going to take a 3-minute recess while we bring the next panel.

[Recess.]

Chairman TOM DAVIS. Thank you all for your patience through the first panel.

We have a very important and distinguished second panel as well. We have the Hon. Anthony Williams, the Mayor of the District of Columbia; the Hon. Sean Connaughton, the chairman of the Prince William County Board of Supervisors. We have the Hon. Doug Duncan, the Montgomery County executive. We have the Hon. Peter Franchot, who is a Delegate in the Maryland House of Delegates, and Mr. Ian Koski, NationalsPride.com, head of the fan club there.

Would you just rise and raise your right hands and let me swear you in before you testify?

[Witnesses sworn.]

Chairman TOM DAVIS. Thank you. We are going to start with the Mayor and move down. I know everybody has time constraints. Mr. Franchot, you need to get back to Annapolis. We will get your time to 5, your speech, and get a question maybe. Mr. Franchot, the Mayor had allowed you to go first. Thank you very much for also being here.

**STATEMENTS OF PETER V.R. FRANCHOT, DELEGATE, MARYLAND HOUSE OF DELEGATES; ANTHONY WILLIAMS, MAYOR, DISTRICT OF COLUMBIA; SEAN T. CONNAUGHTON, CHAIRMAN, PRINCE WILLIAM COUNTY BOARD OF SUPERVISORS; DOUG DUNCAN, MONTGOMERY COUNTY EXECUTIVE; AND IAN KOSKI, EDITOR, NATIONALSPRIDE.COM STATEMENT OF PETER V.R. FRANCHOT**

Mr. FRANCHOT. In deference to the Mayor and others who want to speak, I will not read my testimony. It's beautifully written, however, if anyone wants to take a quick look at it.

Chairman TOM DAVIS. It is in the record.

Mr. FRANCHOT. Thank you very much. I will just thank you, Mr. Chairman. As you know, 12 days ago we tried to have a small press conference on this subject to bring some attention to the matter. Congressman Moran was kind enough to join me, and we passed the lath test with him. But then when I saw you coming to join us at the press conference, I was tremendously emboldened because we had been told at the local level that we had neither the political clout, nor, frankly, the regulatory clout over Comcast, and certainly not over Major League Baseball or Mr. Angelos, to get a result for this. So I'm delighted to see Congressman Cummings and Congressman Van Hollen, and Congressman Ruppertsberger, who was here earlier, Congresswoman Norton.

I will just say briefly, my two points are that having listened to the testimony, it is completely unacceptable for our constituents to be told that we are going to have to wait 2, 3, 4 or more weeks to get the Nationals games on TV. Last night there was a very exciting game played up in New York. Anybody able to see it? Well, yes, maybe with the DirecTV or something, Cox. We couldn't see it. None of us could see it. None of our kids could see it.

Congresswoman Norton, in your absence I was praising your advocacy on this, and Congressman Moran, I really wanted to thank you personally for joining with us very early on this issue.

Mr. MORAN. Well, it was your idea, Peter, thanks. [Laughter.]

Good issue.

Mr. FRANCHOT. You know, we've come a long way in 12 days, and I detected a little note of pessimism or frustration in talking to the major parties, because we're dealing with large—I don't want to say elephants—but three very large entities are locked in combat before us. And as everyone has so aptly noted from the podium and from the dais, the fans are getting stepped on underneath as these large corporate entities are maneuvering for different advantages. And I would urge this committee not to be pessimistic at all from the responses that were received today, because we have come so much farther than we were 12 days ago.

I believe that is you keep the pressure on, and hold Comcast, particularly, feet to the fire, I think we will get an interim solution of having these games up on TV, while, as everyone was saying, the larger legal issues can be negotiated. And I would hope that the committee would exercise whatever prerogatives it has not to put this off 2, 3, 4 weeks down the road because we need this resolved now.

Obviously, Comcast has to swallow a bitter pill. They are a good corporate citizen in Maryland. They make a lot of time contribu-

tions. Their reputation in Maryland is excellent. It is going to be damaged by this controversy. It's only going to get worse as the season progresses, and I would urge this committee to really hold their feet to the fire and say, "For the sake of the public interest, you're going to have to, frankly, sign a deal that's going to, if not make you as much money, but you're going to have to deal that to make a sacrifice."

The second issue which was noted by you, Mr. Chairman, and I missed it because I was a little bit late, is that this issue of ownership has to be resolved. I mean there is no way this team cannot have a strong advocate in these negotiations, Congresswoman, and basically in promoting the success of the Nationals. As everyone said before, I happen to be an Orioles fan. I love baseball. I love the idea of a regional rivalry between the Orioles and Nationals. We're never going to get it if we keep this dilatory practice of a couple of weeks here, couple of weeks there, and not having a new owner, and particularly, not being able to get this team up on TV.

What I heard today was just more the same. This idea that we're going to come back in 3 weeks and tell you how the negotiations are going, I don't give a hoot how the negotiations are going. Our people don't care how they are. They want to see the games on TV. Have Major League Baseball come and say, "We're going to get back to you in a couple of weeks about a new owner," hello? 52 weeks ago, 52 weeks ago that was the message.

So I hope this committee, because we don't have the power at the local level that I thought we had over Comcast, and frankly, we have no power, as I said, over Major League baseball. You do. And if we can shortcut some of this, I promise you, Comcast is going to yield if you keep their feet to the fire, and it may only be an interim solution, but it will be a solution in the public interest, i.e., the games will be up.

Thank you very much. I apologize for having to get back to Annapolis. We're going to be in a voting session starting shortly.

And I just want to give my compliments to Mayor Williams. Nobody was more excited than baseball fans and even Orioles fans, when he announced in 2004 that the team was coming to Washington, and we salute him for his leadership.

And whatever we can, Congresswoman Norton, collectively as a region, to help this team grow and help this team be a success, we want to do that. Thank you for your advocacy and leadership on this. It is a tremendous asset to our region.

Mr. Chairman, once again, personally my thanks to you.

[The prepared statement of Mr. Franchot follows:]

## TESTIMONY OF THE HONORABLE PETER V.R. FRANCHOT

Hearing of the House Committee on Government Reform:  
*"Out at Home: Why Most Nats Fans Can't See Their Team on TV."*  
April 7, 2006

Good afternoon, Chairman Davis and members of the Committee. My name is Peter Franchot, and I currently serve in the Maryland House of Delegates from the 20<sup>th</sup> Legislative District, which includes vibrant and diverse communities such as Silver Spring, Takoma Park and Wheaton. It is a privilege to come before you today and speak to an issue that has become a source of anger, resentment and mistrust for households throughout my district and across this entire region.

Like so many of you in this room today, I will never forget the day in September of 2004 when Mayor Anthony Williams announced that, after 33 long years, Major League Baseball was coming back to Washington, DC. As a longtime fan of the Baltimore Orioles, I can still recall my excitement at the prospect of a vigorous but friendly rivalry between the two teams - a rivalry that would reinforce feelings of civic pride in both areas while increasing fan interest in our National Pastime. I anticipated summer evenings with my wife and kids at both Camden Yards and RFK Stadium. Perhaps most of all, I looked forward to ending a long day by relaxing in my favorite easy chair, with my beverage of choice, and catching parts of both games on television.

I think that most of us would agree that our new home team, the Washington Nationals, has exceeded the wildest dreams of baseball fans throughout this region. Those of us who were there will never forget the Summer of 2005 when, night after night, Livan Hernandez, John Patterson, Nick Johnson and Chad Cordero turned RFK Stadium into a rollicking block party. More than 2.7 million fans turned out to see a team they really didn't know, one which played in an aging and outdated stadium with very few of the amenities that are taken for granted at other ballparks. The excitement generated by this new team and their adoptive fans eliminated any doubt that this region will be a strong and stable baseball market.

Unfortunately, though, my dream of relaxing in that easy chair and watching the Nationals on television never came to pass. Because of an arcane dispute between Comcast and Peter Angelos' new Mid-Atlantic Sports Network (MASN), the 1.3 million Comcast subscribers in the Washington metropolitan region were unable to watch their new favorite team in action.

Think about that for a minute. Fans that had been waiting for the return of baseball since Richard Nixon's first term were unable to watch their new Major League Baseball team on cable television.\* On any given night, they could watch the Orioles, Braves,

Cubs or White Sox, but they had to pull out the trusty old radios or put a satellite dish on their rooftops to watch a team that played just a few Metro stops away.

I must wonder what would happen if Yankees games were taken off the air in New York. Speculate, for a moment, what the response would be from fans across New England who suddenly had to listen to the Red Sox on an FM station, or Cardinals fans across the Midwest who were forced to follow Scott Rolen on an Internet "game cast." I think we all know that such scenarios would never occur in proud baseball cities such as those. The fans, after all, would never settle for it.

If an injustice of this magnitude would be unacceptable for fans in New York or St. Louis, why is it acceptable for the fans of the Washington region? When did it become permissible to treat baseball fans in, and around, the Nation's Capital like second-class citizens? What message does this send to the 2.7 million fans who rallied around this team during that unforgettable Summer of 2005 and want to pass that unconditional love of the game down to their children and grandchildren?

It is in that spirit of exasperation that I ask Comcast and Mr. Angelos to put down their swords, dismiss the conversation about who is right and who is wrong in this matter, and negotiate a compromise on behalf of the public interest. The goodwill of our fans, the hard-earned civic reputations of both parties involved and even the basic integrity of the game rests in the balance.

It is my belief that Major League Baseball's treatment of the Washington Nationals franchise has been an insult to its fans, and has placed yet another unnecessary stain on the integrity of the National Pastime. I cannot think of another instance in American sports where one team's television rights - its largest and most dependable source of equity - have been granted to a rival owner. Regardless of whatever honest intentions might exist, a situation like this will naturally and inevitably lead to a conflict of interest, with the fans ultimately getting shortchanged.

Mr. Chairman, it is truly a shame that we must come here today as the voice of an aggrieved franchise and its frustrated fans. However, this responsibility falls upon us as a result of another injustice that has been perpetrated by Major League Baseball. Nearly a week into the Nationals' second season, this team still is not owned by an independent investor or partnership, but by the other 29 teams in Major League Baseball. This, despite the fact that Mayor Williams and the D.C. Council have approved a \$611 million stadium financing plan, and that several groups of private investors have been willing for months to spend \$450 million to purchase the team and invest in its long-term competitiveness.

As a result of its colonization, the Nationals do not have the resources to attract the best talent on the free market, or even hold onto its best players. They do not have a group



of vested stakeholders that are committed to creative and aggressive marketing of the team, and the Nationals do not even have a leader that can come before Congress and fight to get their games put on television. I would ask those officials of Major League Baseball who are present today to inform the members of this Committee when we can expect a new owner to be announced for the Washington Nationals. Considering the time that has already lapsed - and the numerous delays we have already experienced -- I believe that anything less than a firm date on this matter is inexcusable.

It is my hope that this timely hearing is the first step toward the end of this inexcusable television blackout. After more than a year of turning the antenna on my deck radio to catch a few innings of Charlie Slowes, I still look forward to that day when I can to enjoy a Nats game in the comfort of my easy chair. It is one of the simplest and most timeless joys of an American summer, and there are thousands of families throughout this region who share that same dream. I thank you for this opportunity to testify, and for your consideration.

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Chairman TOM DAVIS. Mr. Van Hollen, did you want to say something?

Mr. VAN HOLLEN. Yes, Mr. Chairman. I was out of the room when Mr. Franchot was introduced, and I understand he has to run, but I want to thank Delegate Franchot for his leadership on this issue and getting it out in front.

Mr. FRANCHOT. Thank you.

Mr. VAN HOLLEN. Do your best in Annapolis in these last busy days.

Mr. FRANCHOT. Thank you.

Chairman TOM DAVIS. Now, we are going to hear from the man who caused all this by bringing the team to Washington. Tony?

Mr. RUPPERSBERGER. Can I say something to Mr. Franchot?

Chairman TOM DAVIS. Yes.

Mr. RUPPERSBERGER. Thank you for being here today. I know this is a very difficult issue, but that energy issue that you are dealing with is very difficult also, so do your job in Annapolis. Thank you.

Chairman TOM DAVIS. Thank you.

Mr. FRANCHOT. Well, we'll solve that issue. You solve this one up here, and we'll come together.

Mr. RUPPERSBERGER. That is a deal.

Chairman TOM DAVIS. Mayor Williams, thank you very much for your patience today, and thank you for bringing the team here, and it has been a tough road. I don't know that anybody could have done it, and you made a huge difference, and I just thank you for it.

#### **STATEMENT OF MAYOR ANTHONY WILLIAMS**

Mayor WILLIAMS. Thank you, Mr. Chairman, members of the committee. It has been tough, but it's been great for our city and it's been great for our region. This really is a regional partnership. I just mention that 77 percent of the fan base is a regional fan base, coming from outside the city, so it really is a shared enterprise in that respect, and I'm proud of it.

It is my pleasure to testify before you today regarding, I think, a need all of us feel to widely broadcast Nationals baseball games. I want to thank you and the committee for convening this hearing as a way to leverage and try to resolve this matter quickly of broadcast rights for the Nationals. You know how hard I worked, the Council worked, the leaders of our city worked, people all over the area worked to bring baseball back to our city and to our region. And now that the team is here, what I want to do, and I want to speak to here, Mr. Chairman, is maximizing the number of people who catch the fever and the spirit of the Nats.

In your letter inviting me to speak at this hearing, you asked about the potential impact of the team on the District of Columbia. The Washington Nationals and the team's new ballpark, I believe, will produce new jobs for our city's residents. The ballpark will be a catalyst for, I believe \$2 to \$3 billion in development, and \$50 to \$75 million in annual sales and property taxes.

On top of this, based on the anticipated economic development around the stadium, we anticipate generating another \$450 million for a community benefit fund, which will support our schools and

after-school programs. All these estimates are, of course—and I emphasize this—predicated on the Nationals being widely publicized and the fan base continually growing.

I want to also talk about the impact on our residents, both in the District and in the region. Having baseball back means we can now satisfy our young baseball fans who have just been waiting for their chance to root for a home team.

Furthermore, the new ballpark is truly about something very special to us in this city, and that is the rebirth of the Anacostia waterfront. And what does this mean? It means creating thousands of jobs and new economic development, particularly for local, small disadvantaged businesses. It is about visitors from Maryland, from Virginia, from around the country and around the world, all coming to the District and enjoying America's pastime.

The ballpark on the Anacostia River will be the anchor for developing hundreds of acres of vacant and under-utilized land, creating new opportunities for local small businesses and local ventures. The location of the ballpark where we enforce the connection of neighborhoods on both sides of the river, and in so doing, reinforce the connection of people on both sides of the river and our city.

And in so doing, finally, it will link an under-utilized segment of the river back to the capital. It is hard to believe that only four blocks from here is one of the most under used, under utilized and neglected spots in our entire city, four blocks from the literal center of the city of Washington, DC.

So the bottom line is that the ballpark and the team will not be islands until themselves. The bottom line is that intertwined and in partnership will be part of, I think, a very, very powerful economic engine, churning out new development, new jobs and new opportunities for our Nation's Capital. And as an advocate, as Mayor of our city, for Washington Nationals fans everywhere, I urge all of the folks here to come together. We've got a number of legal issues, but we have to come together.

You know, a lot of the legal issues I heard here were similar to the legal issues we had in bringing the team to Washington to begin with. We got the original issues with the baseball stadium agreement. We got the original—we got the issues with the lease and the issues with the construction contract, and the issues with this and the issues with that. And what we heard consistently from the fans is, you know, "That's your problem, that's not my problem. Get it done. Get the team here." What I'm hearing from citizens is, "We understand the issues of compensating the Orioles. We understand the issues with the regional sports network. We understand the issues with Comcast. But that's not our problem. That's your problem. Get it done."

So I can't do anything but wholeheartedly agree with the committee on the need for baseball to step in while we are, as quickly as possible, getting an owner, bringing the parties together. And while they're resolving these disputes, get the game on the air.

Thank you.

Chairman TOM DAVIS. Thank you very much.

Sean, welcome.

**STATEMENT OF SEAN T. CONNAUGHTON**

Mr. CONNAUGHTON. Congressman Davis, Mr. Chairman, thank you very much, members of the committee. I am Sean Connaughton. I'm the chairman of the Board of Supervisors in Prince William County, and I would first of all like to thank you for having me here, and also commend you for raising this issue.

It's been surprising to me the number of constituent contacts I've gotten on this issue, particularly, given it is a team that's only existed for about a year, and the number of people that really in my community have already adopted the Nationals, and are very, very big supporters.

For those of you who don't maybe know about Prince William, we are approximately 30 miles south of Washington, DC, to the south and to the west, growing very rapidly. We have around 370,000 people today. Our estimates put us in about a little over a decade, we'll be actually larger in population than the District of Columbia.

Because of that growth, obviously, we have people that are very much tied to the Washington region when you look at where they are going for work. Many people are like myself, who come up to Washington pretty much every day to work. This is our city. We very much are here working, paying taxes, and being involved in some of the things that are happening up here.

But it is very difficult for many of my constituents, due to all the transportation problems we're having, to get up here for ball games, to enjoy all of the things that are in this great city. That is why being able to become a fan and being able to watch the Nationals, being able to make sure that they can enjoy, when they can, the Nationals on TV, but also when they can, to get up here to build that fan base by using and looking to the cable franchises such as Comcast.

Comcast is our cable provider, although we do have a couple smaller ones, and we will be actually voting next month or so on having a franchise for Verizon as well. But about 75,000 homes are served by Comcast in Prince William County. They've been a very good provider. We've had a very good relationship with them. They've been very much involved in our community, and also have a fairly large call center in our county, and so we've enjoyed that relationship.

And we really are just trying to urge whatever can happen to make sure that this negotiation goes in such a way that our citizens can enjoy the Nationals.

I will mention that one of the things that we're looking to is not only to help this regional economy, to help support this team, we also are the location of a minor league affiliate of the Nationals, the Potomac Nationals. And we recognize that as we're moving forward on building a new stadium for that franchise, which will not be reaching some of the proportions of some of the issues that Mayor Williams' faces in building his stadium. But I will tell you, we have faced some of the same cost issues, we are facing some of the same land acquisition issues, but obviously, on a much smaller scale, but we recognize that if we are going to put that type of expenditure out, we need to make sure we have a fan base locally for the Nationals and our local Nationals affiliate, and that will help the big league Nationals.

So anything that can be done to move this issue forward is something that we will be there, whether to discuss this with Comcast, to work with you all, work with the Mayor, we just want to see this issue resolved.

Thank you very much.

[The prepared statement of Mr. Connaughton follows:]

**TESTIMONY OF SEAN T. CONNAUGHTON  
CHAIRMAN, PRINCE WILLIAM COUNTY BOARD OF SUPERVISORS  
TO  
U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON GOVERNMENT REFORM HEARING ON  
“OUT AT HOME: WHY MOST NATS FANS CAN’T SEE THEIR TEAM ON TV”**

**APRIL 7, 2006**

Mr. Chairman and members of the Committee, my name is Sean T. Connaughton and I am the Chairman of the Prince William County, Virginia Board of Supervisors. I have served in this Countywide elected position since January 2000.

Prince William County is located in Northern Virginia approximately 30 miles south of Capitol Hill on I-95 or 30 miles west on I-66. We are a diverse community of nearly 370,000 people. Approximately 64% of our employed residents commute to jobs outside the County in the District of Columbia, Maryland, or Northern Virginia. The County has many leisure opportunities available for its residents including Manassas National Battlefield, Prince William National Forest Park, and the Potomac Nationals, the “A” farm team of the Washington Nationals.

Like many other communities throughout the region, we were very excited about the return of major league baseball (MLB) to Washington, D.C. as our region had been without a team since 1971. Baseball fans in our region responded by sending 2.7 million customers through the turnstiles of Robert F. Kennedy Memorial Stadium to see the Washington Nationals play in 2005. Fans became even more excited earlier this year when the deal for a new stadium between MLB and the District of Columbia City Council was approved, setting the stage for a transfer of ownership of the team. To many in the community, the transfer of ownership means that a committed owner will make the effort to put championship quality teams on the field year in and year out. It appeared that the Nationals were in an excellent position to grow the team into being an asset for the entire region.

However, the television rights agreement signed by major league baseball and the owner of the Baltimore Orioles in order to compensate for potential revenue losses with the return of MLB to Washington D.C. appears to stand in the way of making the Nationals more competitive. The deal sends the majority of revenues earned from the broadcast rights of Baltimore Orioles and Washington Nationals games to the ownership of the Orioles. Both Orioles and Nationals games will be carried on the Mid-Atlantic Sports Network (MASN), which is owned by the Orioles, starting in 2007. Due to a dispute between MASN and Comcast, which has 1.3 million subscribers in the region, Comcast will not carry MASN. Apparently, this dispute is over money.

As a result, only 40 Washington Nationals games will be broadcast on the Comcast network in the 2006 season. In order to ultimately be successful as a team, the

Washington Nationals need television exposure much greater than 40 times per year. By having the games appear on television, the team builds up a fan base that purchases tickets to games, memorabilia and other goods that benefit the team financially. Over time these fans will build up a base that could rival the devotion of the fans of the Washington Redskins and other professional sports teams. The likelihood of this occurring is negatively impacted by the dispute between MASN and Comcast.

On behalf of the 75,000 households in Prince William County that subscribe to Comcast, I urge that this dispute be resolved quickly. Comcast is not earning any capital from its customers for its refusal to carry the games. The Baltimore Orioles have apparently not been impacted by the arrival of the Nationals as evidenced by its healthy attendance figures in 2005. Those two parties must come to the table and reach a decision that is in the best interests of the people of this region and the national pastime. The national pastime is served best with the widest possible fan base. This dispute contracts that fan base leading to losses for all parties concerned.

Mr. Chairman, this concludes my testimony. I would be glad to stand for questions.

Chairman TOM DAVIS. Thank you.  
Mr. Duncan, thanks for being with us.

**STATEMENT OF DOUG DUNCAN**

Mr. DUNCAN. Mr. Chairman and members of the panel, Thank you very much.

I sat here since 12:30 listening to the testimony, listening to the comments, and all I could do was think about how wrong Tom Hanks was. In the movie "League of Their Own," he kept saying, "There's no crying in baseball. There's no crying in baseball." Well, you know what? There are thousands of fans who are crying because they can't see their team on TV. A great game last night. If you're fortunate enough to live in Fairfax County with Cox, you could have seen it. If you're in Montgomery County with Comcast, it wasn't available, thanks to Major League Baseball, thanks to Peter Angelos.

We do have a unique situation here. The plan devised by their agreement led to the formation and the development of the Mid-Atlantic Sports Network, which is a media outlet designed to enable fans throughout our State to view sports entertainment from both teams. I think that agreement is going to lead stronger franchises, dual sports loyalties, more exciting rivalries, which is great for all Marylanders.

There's one impediment to that though, and that, unfortunately is the power of our cable companies to restrict the content. Comcast is an effective monopoly in a number of local jurisdictions in Maryland. It's a legal right granted by you all, granted by the counties, granted by the States, in order to achieve universal cable coverage. But it wasn't a monopoly granted to allow them to make unilateral decisions about the programming available to the customers.

We're all frustrated that we can only see 40 games this year that are going to be on UPN 20. If you're not in a part of the State that can't get UPN 20, you don't see any of those, and it leaves everyone out of the other 120 games, 122 games in which sports fans get shut out by Comcast.

I grew up as a Senators fan. When they left, I became an Orioles fan. I'm a long-time Orioles fan. I could not have been more pleased when Mayor Williams brokered the deal to bring the Expos to D.C. to give us the Nationals. Competition in sports is good. Competition in the marketplace is good, but right now that competition is being hampered because fans are being denied the right to watch the team of their choice on television. That's an unfortunate case of self-interest and shortsightedness.

The time to resolve this matter was not now when the season started, it was during the off season. But we saw Comcast make a choice that they were going to litigate instead of negotiate, and that's a shame for all of us.

One way to solve this is to get competition in the marketplace. You've got it in certain areas. You're talking about Verizon coming. We're in negotiations with Verizon as well. I think once you get that competition in there, that's going to free up and lead to demand for this. However, we can't wait years for that to happen. I sort of agree that Comcast can show the games now, while the court case is going on, while negotiations, discussions are going on,



they can show the games now. They owe it to their customer base. They owe it to this region, and that's what we're asking them to do, and I'm just very thankful that you all are involved with this and trying to push them and urge them to do the right thing here. Thank you very much.

[The prepared statement of Mr. Duncan follows:]

**Testimony of Montgomery County Executive Doug Duncan  
Regarding Comcast's Refusal to Air Washington Nationals Games  
Friday April 7, 2006**

- **Mr. Chairman, members of the Committee. Thank you for the opportunity to testify today.**
- **I want to commend you, Chairman Davis, Congressman Van Hollen and the entire Committee for holding this important hearing on the effective blackout of most Washington Nationals' games.**
- **In the movie "A League of Their Own," Tom Hanks offered this observation: There is no crying in baseball.**
- **With all due respect, Mr. Hanks was wrong.**
- **Thousands of Nationals fans are near tears because of the fact most games -- 120 of 162 -- will be virtually unavailable for viewing here in the Washington, D.C. area north through Baltimore.**
- **Because of the strong media market that reaches from Baltimore south through Montgomery and Prince George's counties, Maryland sports fans are blessed with two baseball, two football, and two professional soccer teams.**
- **We know that it's just sports. But the fabric of team loyalty becomes interwoven with family bonds and memories.**
- **Thanks to Major League Baseball and Orioles owner Peter Angelos, we have a unique situation. The plan devised by their agreement led to the development of the Mid Atlantic Sports Network, a media outlet designed to enable fans throughout the state to view sports entertainment from both teams.**
- **This will lead to stronger sports franchises, dual sports loyalties and more exciting rivalries -- all positives for Marylanders.**
- **There's one impediment to this.**
- **That, unfortunately, is the power of media companies that have a chokehold on the television sets in many homes in Maryland, to block**

access to content.

- Comcast Cable currently has an effective television monopoly in a number of local jurisdictions in Maryland.
- This is a legal right granted by the counties/state in order to achieve universal cable coverage. It wasn't a monopoly granted to Comcast to make unilateral decisions about the programming available to its customers.
- I am extremely frustrated that as we enter the Nationals second season only 40 of their games will be available to Comcast viewers in area where WDCA-TV Channel 20 is available.
- This leaves out many baseball fans in the state where this channel is not covered; it leaves out everyone else during the other 120 Nationals games where sports fans get shutout by Comcast.
- I am a lifelong Baltimore Orioles fan, but I couldn't have been more pleased when Mayor Williams brokered a deal to bring the Montreal Expos to Washington, D.C. and give us the Nationals.
- I believe that competition in sports is good, just as I believe that competition in the marketplace is good.
- Unfortunately, that competition is being hampered because fans are being denied the right to watch the team of their choice on television.
- I believe that this is an unfortunate case of self-interest and shortsightedness.
- The time to have resolved this matter and negotiated a deal - one that would have achieved the business interests of all parties involved - was in the off-season.
- Regrettably, Comcast chose to litigate, not negotiate.
- We are entering an era where viewers will have choices beyond coaxial cable. Video over the internet is about to be rolled out in many jurisdictions. In fact, Montgomery County is in negotiations right now over these services.
- I think the market will end up providing the competition we need to avoid

**media conglomerates asserting a chokehold on content.**

- **However, Nationals fans shouldn't have to wait years for this to happen.**
- **I urge Comcast to immediately begin carrying Nationals games on the same basis they carry Comcast Sports Net for a 90 day cooling off period, during which time the company and MASN can enter into good-faith negotiations to resolve this matter.**
- **If there is no action by the company by the time the Nationals finish their first home season this week, then I believe Congress needs to step in a take appropriate action to ensure that baseball fans can watch the team of their choice.**
- **I understand that there is much at stake for all parties involved. However, what is at stake for baseball fans is being denied the right to watch America's favorite pastime on television and root for the team of their choice.**
- **Mr. Chairman, as a lifelong baseball fan, I can tell you *those* are pretty high stakes.**
- **Thank you again for the opportunity to testify today.**

Chairman TOM DAVIS. Thank you very much.  
Mr. Koski, thanks for being here and thanks for your patience.

**STATEMENT OF IAN KOSKI**

Mr. KOSKI. You bet. Thank you very much.

Chairman TOM DAVIS. Thanks for spearheading this.

Mr. KOSKI. Thank you all very much for the honor of actually being invited to speak here today on behalf of all Washington Nationals fans, at least the ones who don't hold a seat in Congress.

My name is Ian Koski. I'm the editor of a Web site, NationalsPride.com. We're essentially a daily newsstand for all things Nationals, features, news, whatever. And I have absolutely no connection to MASN, to the Orioles, to the Nationals, Comcast, I mean except for the money I pay out for my tickets and my Comcast bill, I'm independent.

Before I start, I did want to thank Mayor Williams. I thanked him privately. But getting the Nationals was a big deal for us, and we really appreciate the work you've done to bring us this team.

I know what it means to be at the last seat of the last panel, so I will try to be brief.

First of all, I want to thank you for actually holding the hearing. In the broader scheme of things, this isn't, you know, a terribly important issue in the Congress, but you're doing the right thing here. There obviously are national concerns when a company as large as Comcast flagrantly disregards the interests of its customers, your constituents, but ultimately, this issue should never have reached this body. It should have been resolved by the parties who sat at this table before us, long, long ago.

If the Nationals had an ownership group, this wouldn't have been an issue, they would have been able to deal with this, and they would have been able to fight for it.

In lieu of that, I'm glad that our elected leaders have stepped up. Congressman Davis, Congressman Moran, I really, really appreciate, as a Virginia resident, your participation in the press conference last weekend, your leadership since then in making this a real issue.

The fact is, the deal that Major League Baseball made with Mr. Angelos was terrible for Washington. It may have made sense that Mr. Angelos would feel he needed to be compensated for the hit he was going to take when the Nationals came here, but baseball went way too far, giving away our broadcast rights, which is what they did. It is absurd that our closest competitor, led by a man who has fought tooth and nail for 15 years to keep baseball out of D.C., it's absurd that he has our broadcast rights. The rights should have been held for the new owners, frankly, they just should have been held. A deal could have been reached for 1 year to get the Nationals on last season. Of course, we were supposed to have an owner a long time ago, but that's another issue.

It's just awful that Comcast is refusing to carry MASN, and I note how the reason keeps changing. One day it's about how Comcast SportsNet was supposed to have this right of first refusal, the next day it's about the per-subscriber fee, that it's too high, the following week it's because they think that D.C. and Baltimore, two top-25 markets, can't handle two regional sports networks. Then of

course, there's the argument they made yesterday, that the whole situation should have been avoided in the first place by putting Nationals rights out to competitive bid.

The story keeps changing until now they haven't found a message that insulates them from our outrage. And I say until now because, well, the proposal they put out yesterday, it's probably right. You know, it's what should have been done day one, you know. At this point though it's almost naive to think that's going to happen. It was clearly proposed for the sake of this hearing. When I actually read the document, the letter written to Bud Selig, I actually laughed out loud, because it's clearly not going to happen.

Major League Baseball's deal with Mr. Angelos is definitely a bad one, and it frustrates Nats fans like me to no end, that our interests have been forcibly tied to his. I don't see that deal going away though. I would be floored if Mr. Angelos voluntarily surrendered the sweetheart deal he's got going now.

It's up to Comcast, it really is. The lawsuits aren't going to pan out for them. That's pretty clear at this point. All the other cable companies are paying the board subscriber fee. I mean, the YES Network, which charges about the same thing, is not MASN, as we've identified here. And, of course, the region can handle two sports networks. We need Comcast to take the high road, and, frankly, I'm disappointed they've all left, because I was hoping to directly ask them to take the high road.

It's time for Comcast to move on and start showing Nationals games. It's the fans here in Washington, us, who are paying the price here, and it's a legal feud—you know, they may try to deny it, but this is a legal feud between a corporation in Philadelphia, a business owner in Baltimore and Major League Baseball in New York. It's got nothing to do with us, and we're the ones paying the price.

Major League Baseball should be more involved in this. They're kind of burying their heads in the sand here by saying, well, you know, we're meeting with them, we're gently encouraging them. The fact of the matter is they created this situation and it's very much their responsibility to end this situation.

Now, NationalsPride.com has offered fans an online petition to sign since mid last summer, when it became clear that this issue was going nowhere for a variety of reasons, including lack of a budget—I mean funding it out of my savings account—and declining fan interest in the team as they're on their on-the-field play declined last season. The petition really didn't gain traction. And at the end of the season we only had about 200 signatures.

About 3 weeks ago, that changed. People realized that we're going to have another season without games on Comcast, and the signatures picked up, and in just 3 weeks we've had another 350 signatures, which isn't bad considering the budget we're working with, and 100 have come just from the last 2 days.

So today, our petition is 565 names strong, and that's going to grow, and that will continue to grow every day this situation drags on.

Chairman Davis, Congressman Moran, I appreciate your signatures on this petition, and I hope it to be joined soon by other Members of Congress from this area. On behalf of the signatories

of this petition, we urge Comcast to move on and start carrying MASN. And we thank Congress for getting involved.

Not all of us can get out to RFK Stadium. A gentleman named Neil Owens, his father can't. He sent me an e-mail. He's from Kensington, MD. He sent me an e-mail this week about how happy he and his father were when the Nats started playing here, because the two went to games, father and son do, just like they did when the Senators were in town when this gentleman was a youngster. Unfortunately, since then his father's health has declined. His hip prevents him from actually going up and down, and they just can't go to games at RFK. And he's a municipal employee, and, frankly, doesn't think he can afford DirecTV, and frankly, not all of us can even get DirecTV. I live in a condo and the landlord simply won't allow a dish on his balcony. I used to live in a high-rise where dishes were absolutely prohibited, and that's the case in many, many buildings throughout the D.C. region. It's not as simple as switching.

So for people like Neil and people like me, there is not that clear option, and something needs to be done. Baseball's been so good for Washington since it came here last year. I mean it's really renewed the sense of community and created a shared sense of excitement. I mean it's just—it's great to walk around and see people different colors, ages, incomes, walking around in all the same red Nats hats, and it's just such a disappointment that enthusiasm has to end when you enter your house, when you enter your apartment, and you can't watch your team on TV. No other city has such a terrible situation with their baseball team, so let me conclude with just a clear statement.

It's time for Washington fans to stop being punished by Comcast because it's got a problem with the Orioles. It's just not right. Both of them are the problem here. Both of them are to blame, and unfortunately, at this point, I genuinely think only Comcast will provide the solution.

So with that, thank you very, very much for your time.

[The prepared statement of Mr. Koski follows.]



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**TESTIMONY OF IAN E. KOSKI  
TO THE HOUSE COMMITTEE ON GOVERNMENT REFORM  
APRIL 7, 2006**

Mr. Chairman, Congressman Waxman, Congressman Moran, distinguished members of the committee:

My name is Ian Koski, and I am the editor of NationalsPride.com, a web site completely devoted to all things Washington Nationals, gathering the latest news about the team and offering fans a variety of original opinions, special features, and fun.

A friend, Michael Kanick, and I launched NationalsPride.com just before Opening Day last season because we were lifelong baseball fans, Nationals season ticket holders, and web-oriented individuals. After a few months, during which the Nationals surpassed all expectations and played well enough to sit atop the National League's East division, it became clear that the cable companies of the Washington area were not going to begin carrying the Mid-Atlantic Sports Network in time for us to see the great baseball being played.

After receiving several e-mails from fans, including one from a Capitol Hill staff member who had looked around but couldn't find an online petition, we decided to get involved. We both held master's degrees in political management and both had ample experience in political communication, so we put them to use and formulate a grassroots strategy comprised of an online petition, e-mail messages to the Washington-area Congressional delegation, and e-mail messages to the top executives at Comcast, Cox, and Adelphia.

The NationalsPride.com petition went live on July 12, 2005 and by the time the season ended, it had garnered an unimpressive total of 200 signatures. Truth be told, we had expected a significantly higher response, albeit little time and money was expended in trying to get the word out. Starting with a very small e-mail list of personal contacts, we hoped message-forwarding would result in a successful viral campaign.

Unfortunately the launch of our grassroots campaign coincided with a precipitous decline in the Nationals' on-the-field performance, a predictable evaporation of fan interest in the season, and a clear decline in actual attendance. (Regarding the latter, comparing



"announced attendance" figures is unreliable as professional teams generally use the number of tickets sold rather than actual bodies in the stadium.) The number of daily visitors to NationalsPride.com steadily declined, and momentum on the MASN issue disappeared.

In talking with other fans, it also became clear to us that with every week of the 2005 season that passed, the less likely it became that a solution to the MASN question would not be found before the season's end. We also heard sentiment that fans expected a deal to be reached during the off-season.

In just the last four weeks, over 300 more Nationals fans have signed the petition, bringing our current total to over 500 - a number that will surely grow as word of the petition's existence spreads and as this debacle drags on. The actual language of the petition, which takes no side in the dispute between Comcast and Orioles owners Peter Angelos, accompanies this testimony.

Nationals fans have been caught in the middle of a feud not of their making, and we're angry about it. In fact, Washington has had no role in the matter from day one — but decisions made in New York and Philadelphia have had a monstrous impact on our area.

The deal Major League Baseball made with Mr. Angelos was terrible for Washington, though if I were Mr. Angelos, I would probably have fought a D.C. franchise, too. For years Baltimore had a great deal — one urban market (23<sup>rd</sup> largest in the country) for whom being a fan was natural and convenient, and a second urban market (8<sup>th</sup> largest in the country) that had no other choice in the matter and had to support its team.

So it made sense that Mr. Angelos would feel he deserved to be compensated for the financial loss he would likely experience when the Nationals set up in Washington, but Major League Baseball went too far and gave away something that, in the big picture, wasn't really theirs to give. Legally, of course, as owners of the Montreal Expos/Washington Nationals franchise, MLB and the 29 other team owners had the right to do anything they wanted with the team — even sell something that didn't yet exist, broadcast rights. But in reality, MLB gave away something critically important to the Washington region and made it nearly impossible for us to get back.

What that deal effectively did was to turn over one of the most important revenue-generating pieces of a vulnerable new team to its biggest commercial enemy — its geographic rival, which had spent the last 20 years fighting the new team's existence. Even to someone outside the sports world, that just sounds like a terrible idea.

MLB did require, though, that Mr. Angelos sell 10 percent of the rights back to MLB to be passed on to the Nationals' new owners. So not only was Mr. Angelos given 90% of the Nationals' rights, it paid him \$75 million for the other 10 percent! The as-yet-unnamed Nationals owners will be able to increase their ownership of MASN to 33 percent over the next 30 years. In other words, the owner of the Washington Nationals will never control the team's broadcast rights. No other team in baseball has such an outrageous television arrangement.

This deal was very bad for Washington.

Unfortunately, there's no reason to even consider the notion that Major League Baseball might restructure its deal with Mr. Angelos, and there is even less cause to think Mr. Angelos would agree to it!

Major League Baseball has to recognize the terrible position it has put us in. Our hands are tied behind our back, we're getting hit over and over again, and Baseball won't step in and stop the fight. Why won't Baseball intervene on Washington's behalf to get Comcast to carry the games? Why won't Baseball try to alleviate the situation it created?

It is my sincere hope that one of the first things done by the new ownership group is to attempt to negotiate with Mr. Angelos for a larger, more immediate ownership share of the Mid-Atlantic Sports Network. The leadership at Major League Baseball has clearly demonstrated it will not represent our interests in the league and cannot be trusted to do the right thing for Washington.

This is clearly evident in Baseball's refusal to name a new ownership group, despite promises to do so as far back as last July. When interviewed at the All-Star Game last July, Commissioner Bud Selig acknowledged that target was not going to be met, but told the *Washington Post*, "Sometime in August, I am hopeful. (7/13/05)" Later in the summer and through the fall and winter, the understanding became that MLB would not name an owner until the lease on the new fully taxpayer-funded stadium was signed. A month since even that milestone was achieved, we still have no owner.

If the Nationals had an ownership group, Congressional involvement on this matter would probably not be necessary. With an owner, Nationals fans would have a strong voice arguing for the best interests of our team. We'd have someone who could negotiate with Mr. Angelos, intervene with Comcast, and hold press conferences to turn the pressure up.

So it's been up to us, as fans and as Comcast subscribers to do it on our own. My current Comcast bills total \$167 a month, give or take a few cents. For it I get the cable internet, a

digital video recorder cable box and the Digital Silver television package, which includes about 200 channels of content. It's absurd that my money doesn't earn me the right to watch every Nationals game on my cable provider.

On a one-to-ten scale of sports fan enthusiasm (one being rarely or never watches sports, ten being a statistic-obsessive, ESPN always-on fan), I'd rate myself at about a seven. I enjoy going to games, I enjoy reading sports features, and obviously I enjoy writing about baseball. But as my professional career has grown, the attention I've paid to sports beyond my favorite teams has diminished since college. Pretty much the only times I turn on ESPN or ComcastSportsNet are when they're showing a game I want to watch, though I'll occasionally turn on ESPN's SportsCenter for background — a far cry from the days when I'd watch SportsCenter repeats three or four times a day during summer breaks in high school.

I have no way to know whether my viewing patterns are the norm for sports fans my age, but I know I'm not alone. I believe the true value of networks like ComcastSportsNet, which are dubbed "regional sports networks" for their local target area, are the games they show — not the news and features that fill out the day. Comcast agrees with me, which is why they are fighting tooth-and-nail against losing the Orioles.

As the rights-holder to both the Washington Capitals of the National Hockey League, and the Washington Wizards of the National Basketball Association, ComcastSportsNet will survive without the Baltimore Orioles. There is more than enough room for two regional sports networks in the Washington/Baltimore market. There are more than enough sports fans in the area to support both.

Growing up in New York and going to school in Philadelphia, I've never been around the birth of a new sports franchise before. But it isn't hard to understand how important being able to see the team's games would be to ensuring the franchise fully develops and builds a strong fan base (which is actually code for "deep revenue stream"). Not everyone can afford to go to every game at RFK Stadium. Most people don't have the time to go to a bar every night because it has DirecTV.

Neal Owens, a NationalsPride.com reader and Comcast subscriber from Kensington, Maryland, e-mailed this comment to me earlier this week:

"The Senators moved from DC the year I was born, and it was always an ongoing joke in our house that it was because of me they moved. Well, last year, I had the opportunity to take MY DAD to several Nationals games and it was one of the best summers of my life.

This summer, my Dad can barely make it up his own steps at home, let alone go to a ballgame. With a new baby and another one coming, I cannot afford to keep spending the kind of money to go to the games and get the kind of seats that my Dad could walk to. We also cannot afford the price of Direct TV, why can't I just turn on the TV and watch a game. Please fix this."

The Nationals have fostered a renewed sense of community here in Washington, one of the most transient towns in the country. Most days I can't leave my apartment without seeing someone in a Nationals shirt or a red "W" cap walking around a store or waiting for a Metro. Washington has rallied around the national pastime in spectacular fashion, and yet we're still being nickel-and-dimed by the powers that be.

Fans naturally expect to be able to watch their home team's games. So many of us want to relax on our couches after a long day's work, open up a frosty beverage and enjoy a baseball game, and yet 1.3 million Comcast subscribers have a 75 percent chance of being unable to find the game on television.

Of course, if you're a fan of the Orioles, the Cubs, or the Braves, you'll probably find your game on ComcastSportsNet, WGN, or TBS, which are all shown by Comcast here in Washington. If you're a Yankees fan, you'll be able to see 31 of their games here thanks to their 17 national broadcasts on ESPN and FOX, as well as the 14 times they play the Orioles this season on ComcastSportsNet.

The fact is we deserve better, and it should not take a hearing in the United States Congress to get it. We've literally had to make a federal case of it because Comcast is angry that Mr. Angelos has chosen to retain the broadcast rights to his own team. It should never have come to this.

On behalf of all Nationals fans, I urge Comcast to end its hopeless legal challenges and begin offering the Mid-Atlantic Sports Network to its cable subscribers. Congress should stay involved and keep the pressure on Comcast until a solution is reached. This feud has gone on long enough and has hurt the wrong people.

Chairman TOM DAVIS. Thank you. Let me ask each of the local leaders where you have Comcast Cable, is there anything you can do because you have given them an exclusive franchise for your areas, any pressure you can put on them to carry out? I know years ago in Fairfax we had an issue with WGN and carrying the Cubs games, and we were able to prevail on them. Of course, since that time, Congress has eroded some of the power of localities to oversee. Is there anything you can do from your perspective? Have you sat down with Comcast, Doug?

Mr. DUNCAN. We have no control over what they show on the airwaves. You all preempted that, so there's no local control over any of that.

Chairman TOM DAVIS. You can't control the airwaves. What controls do you have over Comcast? You can allow other franchises to come into the county, can't you?

Mr. DUNCAN. Yes, and we've got Star Power and we are in negotiations with Verizon. We need competition in the marketplace, the best thing that could happen, but I don't want to wait 2 or 3 years for that to happen. We need to see the games now.

Chairman TOM DAVIS. Right.

Mr. CONNAUGHTON. I believe, Mr. Chairman, that I'll go along with Mr. Duncan. I mean, we've contacted them on this issue. We only recently renegotiated the franchise agreement with Comcast, which obviously if this came up before that, we could have had a little bit more leverage on them, but, obviously, due to the law, we can't either deal with the channels or the rates that they end up charging, but we do have Verizon coming down the pike, and that will take some time for them to get the infrastructure in place to actually offer service throughout the county.

Mayor WILLIAMS. I would agree with that, Mr. Chairman. I think that the risk that Comcast runs is the longer this goes, the more people are going to be pushed into other alternatives. The problem is, in that interim time, we're losing critical exposure to our fan base.

Chairman TOM DAVIS. Mayor Williams, let me just ask you. Are you concerned too that an owner hasn't been named? You heard Mr. Dupuy. Don't be shy. [Laughter.]

Mayor WILLIAMS. Well, you know, I take some exception that I haven't spoken up on this. I mean I've been speaking on this for a year, but what I'm trying to do is I'm trying to bring—no, I'm trying to bring a team here under very difficult circumstances where I'm dealing with a monopoly. When you're dealing with a monopoly, it's very difficult. You don't get a perfect deal. But what I've said from the very beginning is I don't want perfect to be an enemy of the good.

You know, we've been told again and again that, you know, we're in the process of bringing an owner here, and there was this deadline and this deadline, most recently the deadline was that all the agreements had to be in place. Now after a long, arduous process, all the agreements are in place, and it's time to have an owner. I am in conversation with baseball probably every other day, one way or the other, through intermediaries or directly.

Chairman TOM DAVIS. Do you think if baseball had named an owner at this point we might have had a different outcome, that

they could have sat down with the different parties and pressured it in a way that Major League Baseball as the owner hasn't done. Any thought on that from anybody?

Mayor WILLIAMS. I don't think that the actual deal—I think the actual deal itself would have been probably within the parameters that you see right now, because in terms of the way I look at it is—and I wrote an op-ed about this—I know some people would take exception to it—but Mr. Angelos had to be compensated in some way, and so most people felt, most sports columnists felt that the Chicago model was the way to go, and actually, in terms of rights, in terms of regional market, in terms of the number of games shown, it wasn't a bad deal, but any deal is a bad deal if it isn't on the air. I think the two things that Major League Baseball can do with the most impact right now, are, one to forcefully engage with the two parties to get the games on the air, and, two, as everybody here is saying, and as everybody in the city has been saying, to get an owner named as soon as possible.

Mr. KOSKI. Mr. Chairman, if I could add to that?

Chairman TOM DAVIS. Please.

Mr. KOSKI. I think—yes, I absolutely believe the situation would be different if an owner had been named months ago. They would be able to negotiate. They could have bought into MASN, bought an additional share, a larger share that could have prevented this. They could have intervened. They've got money. There's so many different ways that this could have happened. And I think it's—although I think you're right, Major League Baseball is the ones that have to intervene strongly and get involved, I don't think we can trust them to do that. We can't trust them to be looking out for our interests, especially the way they handled the stadium situation, and to rely on that exclusively, it will be a problem.

Chairman TOM DAVIS. Thank you.

Mr. Cummings.

Mr. CUMMINGS. Mr. Mayor, the things that you just said, those two items about Major League Baseball getting involved and choosing an owner and trying to resolve this dispute, I take it that you've had discussions with them over and over again about that?

Mayor WILLIAMS. My big thing with an owner—the two big things that are important to me in the ownership group above and beyond time are that the owner have a local connection because of the enormous contribution that the city's making, the fans are making to this enterprise; and No. 2, I think because of the history of baseball and the history of our city, and everything involved, it's very, very important that there be a strong minority ownership equity interest in the team. I think that would speak volumes to help redress some of baseball's troubled history in the past.

Mr. CUMMINGS. And what is the hold up right now? What are they saying is the hold up with regard to ownership?

Mayor WILLIAMS. You're never really told there's any real hold up except at this point they're interviewing all the different candidates who are all coming in there. One of the things I am told, that they are looking to maximize the local interest and to the extent possible maximize a minority equity in the team, and I applaud that, certainly applaud the first, but I also applaud the second as well.

You know why I'm not a spokesman for baseball.

Mr. CUMMINGS. I understand, and I hear you say that on WTOP the other day. And it just—and I also heard you say that there was a group that you favored. I mean, you made no doubt about it, and I just wondered do you think—sometimes when somebody with—you do remember that though? I don't want to put words in your mouth now, because I heard you say it about three times in the interview.

Mayor WILLIAMS. Yes.

Mr. CUMMINGS. And you gave the reasons. And I'm not all familiar with all the teams, but you said basically what you just said about the criteria that you wanted. But I was just wondering, do you think that maybe your being in favor of a particular group—how many groups are there?

Mayor WILLIAMS. Well, there are—I don't know how many there are total. There are three major groups in contention.

Mr. CUMMINGS. Do you think that is—do they see that as an interference at all?

Mayor WILLIAMS. No, I don't, because I think I've said over and over and over again, that my No. 1 preference is the Washington Baseball Club, because of the local connection, because of the minority participation, because of their unparalleled access at every level of Government on both sides of the political aisle, because if you take people like—I mention Jim Kensey, Joe Robert are two examples. You know, substantial contribution to education and schools in the District, not just a scholarship program, but we're talking about the College Access Program. We're talking about the D.C. Public Schools. That ought to be recognized.

Having said that, what I've also said, over and over and over again, this is my No. 1 group, but I'm happy with any group, and I'll work with any group, having said that, that has a local connection and minority equity of a significant amount.

Mr. CUMMINGS. Mr. Koski, I think that you are to be applauded for your efforts to take on an issue like this, and you said something very interesting just a moment ago, when you said that—well, you at least implied—that you don't have a lot of faith in Major League Baseball.

Mr. KOSKI. I'll say it outright for you, I don't have a lot of faith in Major League Baseball.

Mr. CUMMINGS. This committee has had its experiences with the whole steroid issue, by the way, and Major League Baseball. I am just wondering, so you don't see Major League Baseball resolving this issue?

Mr. KOSKI. I think they should be trying, but in my old age, I've learned that the right thing isn't necessarily what gets done, and, no, I don't think they'll do it.

Mr. CUMMINGS. And so as far as the integrity of the game is concerned, I guess you would—is it a rational conclusion, therefore, that the fans—you are fearful the fans may begin to lose interest even more, particularly when you got a team that's not No. 1 or 2?

Mr. KOSKI. Yes, to an extent. I mean, I don't think you're going to lose them outright, but if your team is playing badly and you can't watch them, you stop thinking about them, and you stop

thinking about them, you stop buying tickets, you stop showing up for your games, which is exactly what happened last season. You stop buying merchandise, and you don't want to string two seasons like that together before you try to fill a brand new stadium.

Mr. CUMMINGS. Thank you. Thank you all.

Chairman TOM DAVIS. Mr. Van Hollen.

Mr. VAN HOLLEN. Thank you, Mr. Chairman. Thank you all for your testimony, and thank you, Mayor Williams, for your leadership in bringing baseball back to Washington. I want to congratulate you on that. I want to thank all of you. I want to thank County Executive Doug Duncan for his efforts with respect to getting the games on television just as soon as possible so the fans can be well served, and all of you for your efforts there.

Let me start with you, Mayor Williams. Mr. Dupuy testified that if you took all the equities into account, that the deal that was struck by Major League Baseball is "a fair deal." Would you agree with that?

Mayor WILLIAMS. The deal with Mr. Angelos or the deal with the city?

Mr. VAN HOLLEN. Well, I understood him—what do you think about the deal with Mr. Angelos?

Mayor WILLIAMS. I think overall, when Jack Evans and I wrote an article to this effect, when you look at the market that we had access to, when you look at the number of games that would be shown, when you look at the guaranteed revenue to our team of, I think it was \$21 million, and you compare that to other places, I thought under the circumstances, where the Orioles had to be compensated, I thought it was a fair deal. Was it the best deal? No. But was my deal with baseball the best deal? No. But under the circumstances, we got a team and we're up and running. It doesn't sound glamorous or—

Mr. VAN HOLLEN. No, I hear you, and I think all of us want, obviously, to make sure the fans can see the games, and we also have an interest in making sure that the cost to our cable subscribers is a minimum. I mean, for example, we heard Comcast say they don't accept a la carte, which means that—in terms of the programming, which means that all of our constituents, all of the consumers are going to be paying whatever additional costs, and Comcast has been saying publicly as part of their argument, that if you take the Angelos deal, it's going to end up costing our subscribers a lot more.

Now, I understood Mr. Cohen's testimony—he wouldn't guarantee that—all he would say was that when you have two regional sports networks, the experience is that it ends up costing more. I would be interested in you guys' assessment, beginning with you, Mr. Koski. I mean, is there any evidence to suggest that this region can't handle two regional sports networks and that the effect of having two regional sports networks would be to increase the cost to subscribers of Comcast?

Mr. KOSKI. I would think, well, there are two answers to that. Yes, we can absolutely sustain two regional sports networks. Three's enough teams here and there's enough fans, and we've got two cities worth, albeit, Baltimore doesn't have a hockey team or



a basketball team, but Ravens coverage along in the fall will sustain SportsNight.

And to the second question, yeah, it probably will increase subscriber fees. If Comcast SportsNet costs \$2 a month per subscriber, and MASN costs \$2 a month per subscriber, yeah, I expect my \$167 bill to go up to \$169, well, probably \$170, you know, profit.

Mr. VAN HOLLEN. Any other?

Mr. DUNCAN. Well, I was very interested in Mr. Angelos' comments of—at the end he sort of threw out, we should be talking about putting these two networks together. He basically offered Comcast a share in the deal, so I thought that was a real interesting statement, and hopefully they'll pursue that. I mean that's one way to deal with the situation.

Mr. VAN HOLLEN. Right, thank you.

Any other comments on? Well, you guys all heard the testimony. What would you recommend that we do, I think, working with you, to—

Mayor WILLIAMS. Well, Congressman, I would say that what Executive Duncan said is the right to go. If you get the two parties talking about not only getting the games on the air, but talking about some kind of partnership, and over the coming days, you also have a new owner of the Nationals stepping in at the table. That's the best of all worlds there I think.

Mr. CONNAUGHTON. Congressman, if I could just throw in just one caveat to all of this, and that is, other than traffic, the No. 1 complaint—the No. 2 complaint on a continual basis I get, is about cable fees and about the rise in cable fees, and about the issue on where they change the networks and the channels that are being offered. And so I mean we recognize that this is about commercial negotiations between MASN and Comcast, but we urge, obviously, it's about accessibility as well as making sure that it is something that doesn't continue to drive up the cost of cable, which again, today, I had several e-mails about this issue, and at the middle of all of them they were complaining generally about the cost of cable today.

Mr. VAN HOLLEN. Well, no, that's exactly right, and that's the point I've been trying to hit throughout the day, which is, with all due respect to any cable provider, Comcast or whoever it may be, I think that they are more interested in making sure their stockholders and investors have a return on their money than making sure that their consumers are paying the lowest rate possible, and I think all of you have experience in local government understand that, and I think the listeners understand that.

We need to make sure—we as the elected officials need to make sure, No. 1, we allow our constituents the opportunity to view these games; but No. 2, we make sure that neither side is able to gouge them, and that we make sure that we are in a position to drive the best possible bargain that we can, given our limited ability to intervene in a contractual agreement between two private entities.

Thank you. Thank you, Mr. Chairman.

Chairman TOM DAVIS. Mr. Ruppertsberger.

Mr. RUPPERSBERGER. Mayor Williams, I want to acknowledge your leadership in bringing the team here. I was involved in bringing the Ravens back to Baltimore, and it was a tough fight with

the Maryland Legislature, and even within your own house, and I think really a professional team that brings pride to the community, it brings people together, it is something that you can go to a game with your children. I think it is very positive in the end including for economic development. But there are other arguments to the other side.

In fact, I do want to say this, and Peter Angelos can take care of himself and he is a tough guy, but he cared about his team. He bought something he felt that by bringing a franchise to the Washington area would hurt his franchise, and it probably will from a cash-flow point of view.

But as a fan, I can understand how people here would be mad at him and how he would be the villain. I don't think though that you would have a team here right now if Peter did not agree and negotiate with Major League Baseball. Now, whether Major League Baseball did the right thing, I mean, history will only tell. But I think—Mr. Koski, I really applaud you for being a fan. You and I are both fans and we will probably be against each other and cross swords when the Orioles play the Nats, but I think it is important we get the facts out on the table.

I just learned this, but it is my understanding that the Nats will eventually have 33 percent of MASN. Now, that is something that no other Major League Baseball team will inherit or has, that they will with time get that 33 percent, which means of the profits. Where it is or how it goes, I am not sure. Let me get back to you if you can clarify, because I think it is important that we get those facts out on the table.

Mayor Williams, I also applaud you for stating, look, it was the best deal we could do and I have to stand behind it because I was negotiating and we have a team, and that is the No. 1 issue, but now it is up to Major League Baseball to go to work with the new owner, and hopefully that owner will be as tough as Peter Angelos, and make this team extremely competitive. Because even though it is the Washington region and the Baltimore region and we have had our battles, I think if we come together as a region from an economic development point of view, the Baltimore-Washington Region will even be stronger. We have all been able to talk about that.

Doug Duncan, I hardly recognize you, you have lost so much weight. I guess that is because you are running? [Laughter.]

Mr. RUPPERSBERGER. Doug and I go way back as county executives, and we have really talked about regional issues, and it is good to see that we are on the same side, because when it came to the Ravens and Redskins, that was where we crossed paths. But I believe everyone here at this table really believes that it is so important that we have baseball, and we have baseball right away.

It is tough for me to see Comcast—and I agree, Sean, is it? I agree. When I was a county executive and a county councilman, Comcast and cable, people were really getting upset and they weren't popular. One of the things that they did, they went back to the community, put their employees out in the community, and they really turned around from a public relations point of view.

What Comcast management has to do now is decide how much is it worth for public relations versus what the long-term issues are

as it relates to their stockholders and the competition that is coming down the road? And that is a corporate decision. We can't make that decision. I would hope that we go with the public relations side, because I think in the end, that would help them, and I want them to be strong, because as I said before, they put back into my community, but only time will tell that.

But let me get to you, Mr. Koski, about the issue of the 33 percent and how you interpret what those facts are.

Mr. KOSKI. Well, that 33 percent happens in 30 years. It's not like—

Mr. RUPPERSBERGER. Oh, that is rather relevant.

Mr. KOSKI. It's not like 5 years from now the Nats will be 30 percent owners. It's 30 years from now. It's a long time. And, yes, that deal may be good for the Nationals down the line, even when they're a 15 or 20 percent owner. Doesn't do us any good this week when we still can't watch the games. So although long-term it may have some financial fruit for the Nationals, it's doing us no good now, and in fact, quite the opposite, it's actually hurting us, and if that hadn't been created, if the Nationals rights had been kept separate, they could have been sold to Comcast for that same \$20, \$25 million fee, which is all we're getting this year really anyway.

Mr. RUPPERSBERGER. Thank you. I think we are all in agreement, and again, I thank the chairman for putting this issue on the table.

I was against the chairman—I felt that it might have been grand-standing—about the steroid issue, and I think that was one of the best hearings that I have participated in, and it really put the issue on the table, and I think, Mr. Chairman, putting this issue on the table, hopefully will get us to where we need to be.

Chairman TOM DAVIS. Certainly can't hurt.

Mr. Moran.

Mr. MORAN. Thank you, Mr. Chairman. I thank Mr. Koski for trying to expand the fan base and keep them informed, taking the initiative.

I would like to ask the three local government executives if MASN is able to develop a network, a real network, more than just the games, and they find that to do so would maintain their profit margin, they have to substantially increase the rates, and if Comcast loses, gives up. If they don't have the Orioles and the Nationals games they may not be able to sustain the sports network that they've invested capital in building up, so that Mid Atlantic Sports Network may control the whole shebang. If they do, can they increase the rates for Cox and the rates that Comcast customers have to pay at the drop of the hat? Do they have any kinds of limitations on what level by which they're able to raise rates and how often? Do you have any control over that?

Mr. DUNCAN. I think there's something over the basic rates, over the minimal service we've got some control, but then when you get into the tiered levels, which is pretty much what everybody gets, we have no control of that at all. I don't know if they're restricted to—

Mr. MORAN. The reason I ask, this is going to be part of the basic package. It is not a supplement. So that basic cable subscriber fee is going to go up as much as it has to in order cover Mid Atlantic

Sports Network's charges, which could become substantial if they develop a network and they get basically monopolistic control over the whole Washington-Baltimore area for the two major sports teams. If that were to happen, do they have the prerogative, the ability, the right to pass on the increases whenever and however they want?

Mr. CONNAUGHTON. Congressman Moran, we get, obviously, a lot of complaints about the rates, and our understanding is that under Federal, under the cable law, under Federal law, that we cannot regulate or do anything about the actual rates that they charge. But I would like to just maybe point out that we are seeing, you know, the cable—we have primarily Comcast, but we also have a couple smaller ones, and then we have Verizon coming down in a few months, but the thing that's happening is that they are obviously facing competition from DirecTV and even from over the Internet.

So the issue is for them—I mean we're talking about why we want to see some agreement reached is that we can get more marketing to people about the Washington Nationals, and they'd be getting interest in building that fan base, particularly in places like, again, my community. I mean, we we're going to increase the population in 10 years by 50 percent. And so you look at where the potential biggest market growth is, it's in places like northern Virginia. And how do you reach out to these people, many of them new to the Washington region completely. But the issue is, is making the Nationals accessible to this new and growing population, but at a reasonable price. I think what they've got to recognize is that for the cable providers, they have to be even more competitive, given the fact that there's more and more competition, not only from the fact that they're going to be facing Verizon potentially coming to my community as well as other communities throughout the region, but also the fact that there's other providers of telecommunications services, but it is about money as well.

Mr. MORAN. I appreciate that, Sean, but other than the law of supply and demand, you have no regulatory control. None of the three of you. Same thing in D.C., Mayor? Yes.

Incidentally, did I hear you say, Mr. Connaughton that the Canons are a minor league of the Nationals?

Mr. CONNAUGHTON. Yes. In fact, Congressman, the chairman has actually been at—in fact, was there the night that they renamed what was at one time the Alexandria Dukes, I think when you were on the City Council or Mayor. They have now become the Potomac Nationals. We call them the p-Nats, and in fact, we're building them a new stadium, but they are a minor league affiliate now of the Nationals. And I was just mentioning to the Mayor, again, it's amazing to me, again, the cost that will incur, but the excitement that we saw last year when various major league players were injured, because of the proximity to Washington, we had those players coming down and actually playing for the single A affiliate.

Mr. MORAN. That is terrific. I missed that, and I am glad that is happening, although they may want to work on that name, the p-Nats, but—[laughter]—I just have one other question. Doug, in your testimony you said that “if there's no action by the company

by the time the Nationals finish their first home”—I think you meant their first home series.

Mr. DUNCAN. Series, yes.

Mr. MORAN. This week. “Then I believe Congress needs to step in and take appropriate action to ensure that baseball fans can watch the team of their choice.” What action were you referring—

Mr. DUNCAN. I was just asking you all to get involved, as you are now, to put pressure on baseball.

Mr. MORAN. Just public pressure.

Mr. DUNCAN. Public pressure on baseball, on Comcast.

Mr. MORAN. Thank you, Mr. Duncan.

Chairman TOM DAVIS. Thank you very much.

Ms. Norton.

Ms. NORTON. Well, I do think this needs public pressure. I think these guys have been sitting off on the sidelines, and, boy, I think that is a real fly by here. If Mr. Koski has come in with a petition, I thank you, sir.

I want to thank Mayor Williams. First of all, he sat through much of this hearing, and see, I know firsthand what a Mayor of the District of Columbia has to do and what a sacrifice it is to sit through and wait for this. I want to show him how much I appreciate that, and that I know, of course, that it’s not been easy. But you know, the Mayor is used to coming on, being first on and getting out of Dodge here, in light of his considerable responsibilities. This, of course, is near and dear to his heart, but as I have said publicly, since the Mayor has wound down on his time in the District and has decided to go on to bigger and better things when he has concluded—though we don’t know what he is going on to, that almost anything would be bigger and better.

But I have told him that I am going to make it my business to make sure that he is remembered for more than his signature issue here, baseball, because he has done just that much for the District, and he deserves to be remembered for baseball to be sure, but certainly for all he has done, to in fact, lift this city up in countless ways.

I want to thank the region. I want to thank you for being here. I want to thank the way in which you supported this team. When we have used the words “fan base,” we are really talking about you. Whenever we talk about base, and when you are talking about a city, albeit the core city, in a region, I don’t care if we had the 800,000 people that we had when I was a kid. The growth of the region would mean we would pale in sheer numbers beside what your—what is it 3 million in this region amounts to, and we know good and well we could not have gotten baseball without you, without the fact that your demographics in every way argue for it.

I want to say while I realize that you made a poke at competing for this—and I don’t blame you—I also want to say that—

Mr. DUNCAN. You’re talking to Virginia.

Ms. NORTON. Yes, I am talking to Virginia, and I am talking to my good friend here who, while he wanted baseball all along, he and I have had a pact from the beginning—you know, when he was competing for it—that may the best man or woman win—so that he’s not entirely fair, and the region has been nothing but stand-

up folks for the District of Columbia. And, frankly, in many ways, we understand about the commuter tax. We don't forgive you, but you don't expect you to rush forward with that, and we will take this as some recompense for what you are not giving us in commuter tax.

The Mayor, of course, was put in a very awkward position because he was competing with you, and a few other no-nothing jurisdictions outside of this region. We know what baseball understood, that it was hard to beat this region if you were looking for another home. But here was the Mayor, who was put in a position of engaging in both an auction and a legitimate negotiation. That is to say he had to somehow say, "Me, me, me, me, me," you know, somehow make them understand that they should come here, and since he is the city's chief executive, that was his role, and at the same time he had to sit down and negotiate the best deal for the District, a very, very anomalous and bad position for a negotiator to be in. Of course, you know, I think that the Mayor should have played good cop-bad cop, because the bad cops are always the Council, and they might have helped him earlier in those other negotiations.

Mr. Mayor you have taken a lot of brick-backs because somehow in playing this dual role of vying for and yet getting the best price, you somehow have—baseball has managed to get what they and most other people considered to be a generous deal. So more than anyone else at the table, your view of the deal, it seems to me, would have some effect here, because you paid at the office, as they say.

I looked at your testimony, and you have indicated that you weren't at all involved to come to a resolution, and I appreciate that. But, look, you won now, here. And some of the answers to your questions seem to indicate that you thought perhaps the question was about the deal that you in fact made or those who were your proxies made. I am the first one to understand the awkwardness of that position. But now that the deal is made and you now have an additional task, your job isn't over, the city's job isn't over. Now that the deal is here, they have to build this fan base, yes, some in the District of Columbia, but mostly where these gentlemen are from.

Would you have preferred that Comcast come to a resolution with baseball, that we could have been this season on regular cable, that most of our region watches? If you had your druthers, would you have preferred this resolution or are you indifferent to the fact that we have the MASN created out of what you have done, and now most of the residents here won't see it, and most of the residents in the region won't see it. I just want to know what your druthers are here.

Mayor WILLIAMS. My druthers is if I had to do it over again, I think in negotiating—and I think your characterization of a collapsed auction and negotiation is exactly right, you know, and I'm just between a rock and a hard place. But having said that, we should have involved, rather than through official representation of the Council, really involved the nitty-gritty of the Council at the very beginning so that was all out on the table at the very beginning. If I had to do it over again, definitely would have done that. Would have been difficult, but definitely should have done that.

And we started out, not only were we dealing with the representatives of Council, but we also were on this kind of good faith notion that—it's like when we, you know, you're a constitutional professor, you know, and we did the Constitution, we were going to get around the federalism, and then we'd get around the slavery, and we would get around the District voting rights, and we would get around a lot of things. We were getting around to the whole notion of naming an owner. We just trusted that an owner would be named. Obviously, if we had to do it over again, we would have made that a condition precedent to what we were doing, and that was a tactical issue. So that's No. 1.

No. 2, when it comes to the issue with Mr. Angelos, seems like one party that really should have been at the table at the very beginning—my understanding is maybe they weren't—was Comcast. Just as I should have foreseen that there would have been issues with not having an owner in place sooner rather than later, not having all the Council as opposed to just a few members of Council in place sooner rather than later, I think they should have foreseen that there would be issues down the road that Comcast would see this as a threat to its line of business and put up a fuss, and here we are.

Ms. NORTON. That is why, in trying to unravel the legal questions that they have thrown on the table, I wanted to disengage that from the notion of what people consider a "fair deal." That is not what people who are negotiating think about. Their job is to think about the best deal for themselves, and, of course, that is what has happened, and it may be unfair to this party or that party, but they would not have reached a deal if their view was it was unfair. And so you have to go on from there and move forward.

Mr. Mayor, you indicated—and I know you have said over and over again to your constituents, you have said it publicly, that you have been talking with Major League Baseball about the necessity to get an owner. Could I ask you if you have had any conversations with Comcast or anybody in your administration has had any conversations with Comcast?

Mayor WILLIAMS. The initial conversation when Comcast came—but I'm sure they did with the other jurisdictions—let us know that they were entering into this suit. Then there have been periodic conversations as to the progress of the suit. We've had some conversations with them about what preparations there were to try to get the games back on the air, and then thanks to the offices of the Congress here and our friends with the fan support, this issue is on a higher plane now, and I commend that. But there had been some discussions on the local level.

Ms. NORTON. Comcast owes us a lot in a lot of ways. The way they do the region, if I may ask you, Mr. Mayor, I would ask that one of your good lawyers on the sports authority or in the city, simply back up what the chairman is doing here and the committee is doing here today, by simply having a sit down with Comcast, a very serious sit down with Comcast. Could I ask you to do that soon?

Mayor WILLIAMS. Sure.

Ms. NORTON. I appreciate it. I mean I am not saying that people have not done it, but I think that a good way to—we are trying to

get people to understand, it is pressure. It is not legal pressure. It is pressure that perhaps works best, and we are not asking you to publicly criticize Comcast, but I would like, in light of what Comcast owes the city, to have somebody sit down and talk some turkey with them the way that I know your people have been doing with Major League Baseball.

Mayor WILLIAMS. You know, Comcast is a good corporate citizen. I will say that about them, and I do believe that when Mr. Dupuy made a commitment to you and to the chairman and to others that they would sit down and try to knock some heads together, I believe that they will do that. I think hearing—

Ms. NORTON. You are willing to have somebody sit down and—

Mayor WILLIAMS. And I would certainly echo your tough cop approach. I think good cop-bad cop's a good thing.

Ms. NORTON. I know, Mr. Mayor, and the difference between you and me is it comes naturally to me. [Laughter.]

Chairman TOM DAVIS. You don't have to comment on that, Tony. [Laughter.]

Ms. NORTON. Mr. Mayor, the whole notion of the price and that's all people think about, and of course, baseball is known for twisting arms, and we know that they have extracted a terrible bargain from everybody, so I mean, if they didn't do it here, it would have been probably the first of the century. But I would like to know what you think the real financial impact, not in, you know, here is a bunch of dollars, not having an owner is on the city? If, for example, we had an owner today, ergo, what would now be occurring?

Mayor WILLIAMS. A lot of different things. I mean if we had an owner today, an owner would be probably sitting in Comcast's offices and sitting in Mr. Angelos' office, you know, trying to get this thing done, knowing how important it is to get those games to the widest possible audience. Now, why is that?

Because the owner would also know that when we financed the stadium, what were the three major revenue streams financing the stadium? There was the ballpark fee, as everybody has come to loathe it. Then there is the rent that the team is paying. And then there is revenue from every—revenue taxes on everything that moves at the stadium, purchase of tickets, hot dogs, tee shirts, you name it. 70 percent of those folks, as you referenced and I have referenced, come from our regional friends. They are all coming into the city coming to the game. This owner would be livid because this owner would know that fewer and fewer people are going to come to the games if they can't see the games at home. As Sean was saying, if I can't go home and watch a game every other night on TV, I'm going to lose interest going into Washington to see the game in person. So that's an impact on the city.

Another impact on the city, not having an owner, is here we are designing the stadium, right? I mean wouldn't you want to be at the table while this stadium is being designed if you're paying \$450 million for the team? I would want to be at the table.

And the last thing, and this is the most important thing—and also the minority participation is important—is because an owner can speak to the city in a way that I can't, the Council can't, you can't, the business leadership can't. The owner can involve those



players, get those players up on Capitol Hill, get those players up in Northeast, talking to children, talking to people around the region, and really building regional spirit and positive feeling about the team, which is really needed right now.

Ms. NORTON. These are very important elements. Mr. Mayor, in light of that, do you agree—and indeed, I would ask others at the table as well—do you agree that it was necessary to get a lease before an owner was chosen? Necessary, now.

Mayor WILLIAMS. Well, it was required formally. I don't know—

Ms. NORTON. Was it required in writing?

Mayor WILLIAMS. The way the negotiations became conditioned, essentially we would approve the lease, the owner would be done, basically—

Ms. NORTON. Was that part of the contract, Mr. Mayor?

Mayor WILLIAMS. It's part of our agreement now that they've got to have an owner I think by All-Star break, and we've got to have certain things done which we've done.

Ms. NORTON. Yes, but I have asked you if there was a written contract that said we have to sign a lease before you choose an owner?

Mayor WILLIAMS. I don't know if it's in the contract. I don't think it's in the contract.

Chairman TOM DAVIS. They made that pretty clear.

Mayor WILLIAMS. Is it? Pardon me?

Chairman TOM DAVIS. They made it very clear.

Ms. NORTON. Was that in the contract?

Mr. KOSKI. I don't know if it was in the contract, but it was definitely clear.

Ms. NORTON. You know, if it was not in the contract—you see the advantage that they have there. Now we are sitting here negotiating without anybody to speak for us. So if I could get away with that, that is what I would have done too.

Go ahead, Mr. Mayor.

Mayor WILLIAMS. I think that—again, I am not their spokesman, but I think that when they saw a couple weeks, this time I think it will be a couple weeks, and we want to get it done this week, obviously, if we can.

Ms. NORTON. Do you all think, given what you know about sports and about teams waiting in the wings, about what is at stake, particularly given that there is nothing in writing in the contract that it was necessary for everything to be done in the city, including the lease signed before anybody would step up to become an owner?

Mr. KOSKI. I don't think so at all. I think there was either seriously interested groups long before these things were in place, and I think they would have relished the opportunity to make these decisions and have influence on these major components of the team they're about to own, absolutely.

Mr. CONNAUGHTON. I just maybe want to point out that, I mean the Mayor, obviously, and the city were dealing with a very complicated situation in which the ownership was, obviously, from all the league and all the owners, including Mr. Angelos, he was trying to work within that framework, which made it, I think, even more complicated than a normal, let's startup a team, let's buy a

team from an owner, and one owner moving to another. I think that many of the issues that you all are dealing with here are a result of the fact that you have this very complicated ownership interest, and the fact that you do have a market that this team is being located in, and I would like to say it was the Potomac Nationals market, but it is the Baltimore Orioles market, which, believe it or not, I know our owner actually is going to get compensated because he owns the marketing rights even for the minor league franchise here in northern Virginia.

But I have to compliment the Mayor on this, and understand that in some ways it is trying to satisfy all these groups and still come out with a deal, and get it through the City Council, and making sure that Major League Baseball feels that they got the most for their investment in this process is something that he really should be commended for.

Mr. KOSKI. The Mayor's point that the owner should be home-grown is so unbelievably important when you figure how many bad owners there are in baseball, where their own fans absolutely hate the owners of their teams because they won't stick up for them, they won't make the right choices, they won't invest money. So it could end up hurting us, but.

Ms. NORTON. Could I also ask one more question? Mr. Mayor, will you say a final word about the effect of limited TV exposure on the city and its revenues, and for the region beyond the cable prices, are there any revenue implications for the region with limited TV rights? Go ahead, Mr. Mayor.

Mayor WILLIAMS. There is an effect on the team, and hence, if there's an effect on the team, there ultimately could be—

Ms. NORTON. Later for the team. I want to know what the effect is on the city.

Mayor WILLIAMS. I know, I am saying.

Ms. NORTON. Oh, OK.

Mayor WILLIAMS. And because of that, then you're going to have depressed multiplier effect around the activity of the team, right in sales and retail and everything else. You also have—you could depress viewer interest in sports cable, and since you have less interest in cable, there's an effect on the city there in terms of taxes.

Mr. CONNAUGHTON. I just maybe—I don't want to say maybe. I'm a typical Nats fan, and that is in Virginia local government is part time. I still work here in the city. I come into the city pretty much every day. I'm a season ticket holder for the Nationals. But I'm in with several other friends of mine. It means I'm not here—I may get every third game. Obviously, I want to follow the games in between. And it's the fact of trying to get that interest built up.

Particularly what I think is fascinating about this market and that one of the reasons the Nationals may have been as successful as they are last year and I think in the future, is that almost all of us, at least in Virginia, let's say, outer suburbs or from someplace else, and have the opportunity to come see teams that they grew up with play the Nationals. So you're not only getting the opportunity to serve—where people are becoming Nationals fans, they also get the opportunity to see the teams that they grew up with. I was a Mets fan. I used to work at Shea Stadium when I was a kid. I'm going to be there next week for the games against the

Mets. I'm taking my kids. But it is, when I come in here, I usually go out to eat. I usually—obviously, we're paying for parking. We're paying the taxes on the tickets. My kids all got their red hats. They all got their shirts. Of course, they're getting bigger, we're going to buy more.

I think at the end of the day it's reaching that market, particularly I'm just going to talk from the Virginia experience. We're growing so rapidly, that is a natural market and a growing market, an affluent market that you all have to reach into, and one of the best ways is through broadcast.

Mr. DUNCAN. We think it strengthens the district, strengthens the region, and sports teams, particularly, that you all have mentioned have a really unifying effect on this entire region, whether it's George Mason's team, the University of Maryland Terrapins winning, the women's national championship, the Redskins, the Nationals. The stronger the team, the stronger the region.

Chairman TOM DAVIS. Let me just thank this panel. Thank you very much. I want to thank you all for your patience sitting through—I see how frustrated you are sitting out there in your respective roles as head of your country governments, and the fan club, with these groups. Hopefully, this hearing will help bring them closer together, and let's just keep the heat on. Thank you.

The hearing is adjourned.

[Whereupon, at 4:32 p.m., the committee was adjourned.]

