



## FCC Programming Actions

The Commission has recently taken action in two program dispute cases: first, in the long simmering dispute between Comcast Corporation and Mid-Atlantic Sports Network (MASN) over carriage of that network – consisting almost entirely of Washington Nationals baseball broadcasts – and second in the more recent dispute over Time Warner’s decision to drop the NFL Network from cable systems recently acquired from Adelphia Communications.

### **The Comcast/MASN Case**

This case involves the serious allegations that Comcast demanded a financial interest in return for carriage of MASN and that Comcast discriminated against MASN in favor of its own programming in violation of the Cable Act and the Commission’s rules.

The case dates back to April, 2005, when MASN first presented Comcast with a proposal for carriage of MASN, including non-exclusive rights to distribute Nationals’ games for 2005 and 2006 and Orioles’ games beginning in 2007. MASN is controlled by the Baltimore Orioles, which owns the underlying rights to produce and exhibit Orioles games, currently carried on Comcast’s SportsNet Mid-Atlantic (SportsNet). Comcast subsequently filed suit in Maryland state court, alleging that the MASN carriage proposal indicated the Orioles decision to telecast Orioles’ games on MASN beginning in 2007, and violated Comcast’s right to match any third-party offer for the right to telecast Orioles’ games beginning in 2007.

MASN filed its complaint on June 14, 2005. The complaint alleges that Comcast attempted to extract an equity position in MASN and, failing that, retaliated by refusing to carry its programming. The principal allegation then is

that Comcast has improperly made acquisition of a financial interest in MASN as a condition of carriage. The complaint also alleges that Comcast has acted discriminatorily by refusing to carry MASN – and thereby denied Washington Nationals programming to a significant percentage of cable subscribers in the Washington, DC metropolitan area – while carrying SportsNet.

Having found, on its first appearance, that MASN has carried its burden of proof that Comcast has acted contrary to the Act and the rules, the Commission issued a Hearing Designation Order directing that an Administrative Law Judge (ALJ) conduct a hearing and return a decision on the allegations.

The Commission immediately stayed that order, however, pending a decision by MASN whether to seek a remedy under the commercial arbitration conditions adopted in the Time Warner/Adelphia/Comcast transaction. Should MASN decline to pursue arbitration, the stay will be lifted automatically. An ALJ will then hear the matter and return a recommended decision and remedy within 45 days of the date the stay is lifted.

### **The Time Warner/NFL Network Case**

Here, the NFL Network contends that Time Warner dropped the Network from its newly acquired Adelphia systems on less than thirty days’ notice in violation of the subscriber notice provisions of the Commission’s rules. The Commission ordered the temporary reinstatement of the Network on those systems pending a decision on the merits.

The NFL alleges that Time Warner’s decision to drop the Network was within Time Warner’s control and its decision to do so on less than

thirty days' notice is in violation of Section 76.1603. That rule provides that notice of a change in programming services offered by a cable operator "must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator." The rule separately requires cable operators to "give 30 days written notice to both subscribers and local franchising authorities before implementing any rate or service change."

The Commission adopted an expedited pleading schedule here, directing Time Warner to respond to the NFL's allegations by August 15. Any reply by the NFL will be due by August 20.

While the Commission declined to "make a final decision on the merits," in ordering the reinstatement of the Network, it tentatively concluded that "Time Warner discontinued carriage of the NFL Network without providing customers with the requisite 30-days notice" as required by the rules and that Time Warner's decision was "within the control of the cable operator" since the termination of the NFL Network did not result from any uncontrollable external event, such as a natural disaster." The Commission also found that, "the NFL has a reasonable prospect of showing that Time Warner's actions, which affected millions of customers across the nation residing within numerous franchising authorities' jurisdiction, constitute systemic abuses that undermine the statutory objectives."

Despite the expedited pleading schedule, the Commission did not indicate when a decision would be forthcoming.

If you would like a copy of the Commission's orders or have any questions about this client alert or any other issues, please contact Mark Palchick at [mpalchick@wcsr.com](mailto:mpalchick@wcsr.com) or (202) 857-4411 or Howard Barr at [hbarr@wcsr.com](mailto:hbarr@wcsr.com) or (202) 857-4506.