

## Media Bureau Finds Independent Programmers Make Prima Facie Case of Program Carriage Discrimination Against Cable Operators

In a highly unusual move, the Federal Communications Commission's Media Bureau has designated the program access complaints of three programmers for trial before an Administrative Law Judge.

WealthTV, a vendor focusing on "inspirational and aspirational programming about prosperous and fulfilling lifestyles," the NFL Network and Mid-Atlantic Sports Network ("MASN"), which produces and exhibits Baltimore Orioles and Washington Nationals games, all brought complaints before the FCC alleging programming discrimination in violation of 76.1301(c) of the Commission's rules by Comcast. WealthTV raised similar allegations against Time Warner Cable and its subsidiary Bright House Networks; Cox Communications; and Comcast Communications. The claims allege that the cable operators discriminated against the complaining vendors in favor of similarly-situated program vendors with whom they were affiliated, thereby harming the ability of the complaining vendors to compete.

WealthTV further claimed that Time Warner Cable officials delayed negotiations with WealthTV and then used the concept of WealthTV in creating MOJO, in which Cox, Comcast and Bright House also own an interest, and which has a similar target demographic of affluent young and middle-aged men, seeks the similar advertisers, and offers similar programming. WealthTV claimed that the cable operators then gave MOJO preferential carriage positions and penalized WealthTV on the basis of its unaffiliated status. Time Warner has already decided to discontinue MOJO as of November 1.

In its complaint, MASN alleged that Comcast discriminated against it by refusing to carry MASN while carrying Comcast's wholly-owned, affiliated networks: Comcast SportsNet Philadelphia and Comcast SportsNet Mid-Atlantic NFL Network brought a similar claim, alleging that Comcast placed it on a higher programming tier that is more expensive for consumers to access than its own sports channels, including Versus and The Golf Channel.

The FCC's *Order* requires a decision by the Judge within 60 days as to whether the cable operators discriminated against the programming vendors. The full Commission will then vote on the ALJ's recommended decision. The *Order* also allows the parties to elect Alternative Dispute Resolution procedures instead of proceeding with the hearing.

This decision is raising eyebrows, because it is only the third time since the enactment of 76.1301 that a case made it through the FCC complaint process without a dismissal.

If we can provide specific guidance in this area, please contact Mark Palchick ([MPalchick@wcsr.com](mailto:MPalchick@wcsr.com), (202) 857-4411), Sarah Miller ([SarMiller@wcsr.com](mailto:SarMiller@wcsr.com), (202) 857-4448), or one of our other Womble Carlyle [Telecommunications](#) professionals.

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