

**IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re

HOUSTON REGIONAL SPORTS
NETWORK, L.P.

Debtor.

Chapter 11

Case No. 13-35998

**COMCAST’S SUPPLEMENTAL OBJECTION TO THE
APPROVAL OF THE DISCLOSURE STATEMENT**¹

Comcast hereby supplements its objection, pursuant to Section 1125 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 3017, to the Amended Disclosure Statement for Chapter 11 Plan Dated August 28, 2014 Proposed by the Debtor and the Teams [Dkt. # 505] (the “Amended Disclosure Statement”).

I. The Information In The Amended Disclosure Statement About The Valuation Of Comcast Lender’s Collateral Is Inadequate

At the hearing on August 7, 2014, during which this Court set the August 28 deadline for the Plan Proponents to disclose valuation information concerning Comcast Lender’s secured claim, the Court made abundantly clear that the Amended Disclosure Statement needed to set forth, in reasonable detail, the value being ascribed to Comcast Lender’s collateral, *and the basis for that valuation*. (Aug. 7, 2014 Tr. at 31-32) (“[I]f you don’t give them fair disclosure of how you came to [the proposed valuation], I think that will be a legitimate disclosure statement

¹ The four Comcast affiliates that initiated this proceeding are collectively referred to herein as “Comcast.” “Astros” refers collectively to Houston Astros, LLC; Astros HRSN GP Holdings LLC; and Astros HRSN LP Holdings LLC. “Rockets” refers to Rocket Ball, Ltd. “Teams” refers collectively to the Astros and Rockets. The Astros and Rockets are referred to collectively as the “Teams.” The Teams and the Debtor are referred to collectively as the “Plan Proponents.” The “Proposed Buyers” are AT&T Teleholdings, Inc. and its affiliates and DirecTV SportsNetworks, LLC and its affiliates.

issue.”); *see also id.* at 7 (Court intends to provide Plan Proponents “21 days to supplement the disclosure statement with a proposed valuation *and the reasons for that valuation*”) (emphasis added); *id.* at 15 (describing the amended disclosure statement as providing the “*basis* of their valuation”) (emphasis added). Even though the Astros claimed to be unable to fathom how the amended valuation disclosure could be objectionable (*id.* at 31), it is just that.

The Amended Disclosure Statement fails in precisely the way that the Court directed it should not. Although the Amended Disclosure Statement purports to recognize that Comcast Lender’s lien on the Network’s intangibles, which includes, among other things, the Comcast Affiliation Agreement² and goodwill, has value that must be ascertained based on the contribution of those assets to the going concern value of the reorganized debtor, the Amended Disclosure Statement provides no information about what value the Plan Proponents ascribe to the reorganized debtor as a going concern, and virtually no information about how the Plan Proponents propose to calculate the relative contribution of Comcast Lender’s collateral to that value.

Specifically, the Amended Disclosure Statement states that the “Existing Affiliation Agreements and other intangible assets” of the Network, all of which indisputably fall within the scope of Comcast Lender’s blanket lien, “have no or little net value, with an upper range of not more than \$6 million.” Am. Disclosure Statement at 37-38. But the disclosure of the *basis* for that conclusion is conspicuously absent. The Amended Disclosure Statement states only that “[t]he Proponents believe, after considering traditional valuation methodologies, including a comparable companies analysis, a comparable transactions analysis, and a discounted cash flow

² Capitalized terms used but not defined herein have the meanings ascribed to such terms in the Amended Disclosure Statement.

analysis, that when [the value of the Teams' "concessions"³] are proportionally allocated" to Comcast's collateral, that the collateral has little value. *Id.*

First of all, as a matter of federal bankruptcy law, the proposition that these purported "concessions" should be charged to the value of Comcast Lender's collateral makes no sense and is contradicted by Section 506(c) of the Bankruptcy Code. It is yet another reason why the proposed Plan fails as a matter of law. But even as a simple matter of disclosure, this statement regarding the value of Comcast Lender's collateral is inadequate. And beyond that statement, the Amended Disclosure Statement says literally nothing at all.

- The Amended Disclosure Statement does not contain, describe, or provide any information regarding a comparable companies analysis, including any description of which companies were viewed as comparable, or the reasons therefor;
- The Amended Disclosure Statement does not contain, describe, or provide any information regarding a comparable transactions analysis, including any description of which transactions were viewed as comparable, or the reasons therefor;
- The Amended Disclosure Statement does not contain, describe, or provide any information about a discounted cash flow analysis, or provide any meaningful information regarding any of the necessary inputs into such an analysis, such as the pro forma financial modeling necessary for a discounted cash flow analysis.

³ As described in the Amended Disclosure Statement, these "concessions" "include" the Teams' voluntary subordination of their administrative and priority claims for unpaid media rights fees and the Teams' payment of other administrative and priority claims. Am. Disclosure Statement at 37.

None of the affiliation agreements with either AT&T or DirecTV, the terms of which are critical to any understanding of the reorganized debtor's going concern value, are described or included.

- The Amended Disclosure Statement contains not a word of disclosure regarding different assets across which the “costs” of the proposed “concessions” by the Teams are to be allocated, or the value of any of those assets.

At bottom, the Amended Disclosure Statement contains a *conclusion*—the Network's intangible assets that the Teams concede are within Comcast's collateral base have a value “with an upper range of not more than \$6 million”—but the *basis* or *reasons* for that conclusion are utterly lacking. Moreover, despite the fact that the Teams and the Network were required, by the terms of the agreed scheduling order [Dkt. # 495] (the “Stipulated Scheduling Order”), to have completed their production of documents by August 30, 2014, the valuation analysis which obviously exists (because the Amended Disclosure Statement reports on its conclusions) has not been produced in discovery.

II. Because The Amended Valuation Disclosure Is Inadequate, The Discovery Schedule Must Be Revised To Give Comcast A Fair Opportunity To Respond To The Proposed Valuation

The failure to provide Comcast with the necessary valuation information, either as part of the Disclosure Statement or in discovery, is inconsistent with both the letter and spirit of this Court's prior rulings, and is deeply prejudicial to Comcast.

This Court's direction at the August 7 hearing was perfectly clear. It gave the Plan Proponents 21 days to amend the Disclosure Statement, while recognizing that Comcast was entitled to a reasonable period of time after receipt of the Plan Proponents' valuation information to prepare a responsive expert report. Based on Mr. Gover's representation that the Plan

Proponents would be prepared to proceed to a confirmation hearing seven days after receiving Comcast's responsive expert report on valuation, this Court set a confirmation hearing to begin on October 2. (Aug. 7, 2014 Tr. at 26.)

In discussions over an agreed scheduling order, however, the Plan Proponents made clear that notwithstanding Mr. Gover's representations, they were unwilling to agree to any schedule in which Comcast's expert report was due as late as September 25 (one week before the October 2 confirmation hearing). They further stated that they also intended to present their own expert report in support of confirmation, which Comcast agrees they are entitled to do.

On the understanding that the Plan Proponents would comply with the requirement that the *basis* for their valuation would be provided by August 28—such that the Comcast expert could begin work in earnest *responding* to the Plan Proponents' proposed comparable companies, comparable transactions, and discounted cash flow analysis—Comcast agreed to submit its own expert report four days *earlier* than Mr. Gover had said was sufficient, on September 21. In addition, the Stipulated Scheduling Order provides that the Plan Proponents will submit their formal expert report on September 19, two days prior to the due date of Comcast's report.

The point of providing Comcast's expert disclosures earlier than the September 25 date, obviously enough, was to give the parties a more reasonable period of time (particularly in view of the Jewish holidays that fall in the middle of this period) after the submission of the expert reports to take expert depositions, prepare pre-trial briefs, and prepare for the confirmation hearing. And the point of having the Plan Proponents' report due two days prior to Comcast's expert report was to give Comcast a brief period to respond to the Plan Proponents' expert's

approach to the valuation analysis—on the understanding that Comcast would obtain the basic underlying valuation information by no later than August 28. But that has not happened.

Perhaps the Plan Proponents take the view that the Stipulated Scheduling Order, which provides for their serving an expert report on September 19, relieved them of their obligation to provide the *basis* and *reasons* for their valuation on August 28, as the Court otherwise directed. That position would be, in a word, ridiculous. The Amended Disclosure Statement makes clear that the inputs and reasons that support the Plan Proponents' proposed valuation already exist. That information should have been provided to Comcast already. It has not been. The Plan Proponents therefore should be directed to produce it immediately.

In refusing to provide Comcast with the most rudimentary information supporting their proposed valuation, the Plan Proponents effectively have arrogated to themselves the authority to re-write this Court's Order. Comcast has been clear that it does not seek delay for its own sake, and that it was willing to begin work immediately and to work hard to permit this Court to consider plan confirmation issues on an expedited but orderly basis. And Comcast has done exactly that. At the same time, the Court has been clear that Comcast is entitled to "an adequate opportunity to mount [its] defense" on valuation (Aug. 7, 2014 Tr. at 13), and has stated that Comcast would have "plenty of opportunity" to prepare itself reasonably for "either a two to one fight or a four to one fight" (*id.* at 14) with respect to the many issues being raised at confirmation, including the valuation of Comcast's collateral.

The Plan Proponents' failure to provide Comcast with reasonable disclosure of the basis for their valuation has thus rendered it impossible to meet the confirmation schedule this Court ordered, and still afford Comcast the reasonable opportunity to mount a defense to which it is entitled. It is not reasonable for Comcast to be afforded a mere two days to react to what will

presumably be an expert report that contains the valuation information that should have been provided last week. To the extent the Court believes it appropriate to proceed towards confirmation, notwithstanding the substantial issues Comcast raised in its initial objection to the Disclosure Statement regarding the facial invalidity of the proposed Plan [Dkt. # 502], the Plan Proponents' blatant disregard of their obligation to provide meaningful information relating to valuation requires an amendment of the existing Stipulated Scheduling Order. In an effort to minimize any disruption or delay, while respecting Comcast's basic procedural rights, Comcast suggests the revisions to the Stipulated Scheduling Order shown in Exhibit A hereto.

III. The Proposed Cram Down Of Comcast Lender's Loan is "Good Cause" To Obtain Information Otherwise Protected By The Third Party Negotiations Orders

In addition, given the centrality of the valuation dispute to these proceedings, Comcast respectfully submits that the Teams and Proposed Buyers should be required to produce valuation-related information in their possession that may have been created during the period when either of the Teams served as "lead negotiator" on behalf of the Network. While the "Third Party Negotiations" orders entered by this Court otherwise exempt the Teams, Comcast, and any third parties who engaged in negotiations regarding a restructuring of the Network from discovery regarding those negotiations, both orders provide an express exception for "good cause shown." [Dkt. # 137, ¶ 5; Dkt. # 171, ¶ 5.] Comcast respectfully submits that the Plan Proponents' effort to "cram down" Comcast Lender's secured loan constitutes "good cause" for Comcast to obtain information that bears on the valuation of the reorganized debtor, and therefore bears on the value of Comcast Lender's collateral. To permit the Proposed Buyers or the Teams affirmatively to put at issue the value of Comcast's collateral by virtue of the valuation they propose under the Plan, while at the same time denying Comcast a reasonable opportunity to test that valuation by hiding behind the Third Party Negotiations Orders,

improperly converts this Court's order from a shield into a sword. The Court should not allow that.

CONCLUSION

For the foregoing reasons, and those set forth in its original objection [Dkt. # 502], the Court should enter an order denying approval of the Amended Disclosure Statement. To the extent the Court believes it appropriate to move forward toward confirmation despite the inadequacy of the disclosures provided to date, the Court should enter an order amending the existing Stipulated Scheduling Order, as set forth in Exhibit A.

Dated: September 3, 2014

Respectfully submitted,

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EXHIBIT A

September 8, 2014	Identification of fact witnesses for deposition. ¹ <u>Plan Proponents complete the production to Comcast of all evidence in their possession relevant to valuation, including any financial models, discounted cash flow analyses, comparable company analyses and comparable transaction analyses. Proposed affiliation agreements with AT&T and DirecTV must also be finalized and produced to Comcast by this date.</u>
September 5-18, 2014	Fact depositions.
September 19, 2014	Plan Proponents' and Proposed Buyers' expert disclosures. ²
September 21, 2014	Comcast's expert disclosures. ³ Exchange of witness lists; any witnesses not previously deposed during the confirmation discovery process will be made available for deposition by Sept 29.
<u>September 29, 2014</u>	<u>Comcast's expert disclosures.</u> ⁴
September 29 – <u>October 322-</u> 28 , 2014	Expert depositions. ⁵
<u>October 7</u> September 29 , 2014	Filing of trial/confirmation briefs.
<u>October 10</u> September 30 , 2014	Exchange of exhibit lists and demonstratives.
<u>First available date after</u> <u>October 132</u> , 2014 (at 9:00 am Central)	Confirmation hearing begins.

¹ While September 8 is the deadline for identifying witnesses for deposition, the parties will in good faith seek to identify witnesses for deposition, and to confirm availability for deposition dates, as soon as practicable.

² The establishment of this deadline for expert disclosures is not intended to relieve any party of its obligation, if any, to identify witnesses in response to an interrogatory request.

~~³ The absence of a deadline for the Plan Proponents' and Proposed Buyers' rebuttal expert disclosures shall not preclude the Plan Proponents and Proposed Buyers from offering testimony to rebut the Comcast expert disclosures so long as Comcast has had reasonable opportunity to depose any proposed expert regarding the substance of the opinion testimony to be offered and the basis therefor.~~

⁴ The absence of a deadline for the Plan Proponents' and Proposed Buyers' rebuttal expert disclosures shall not preclude the Plan Proponents and Proposed Buyers from offering testimony to rebut the Comcast expert disclosures so long as Comcast has had reasonable opportunity to depose any proposed expert regarding the substance of the opinion testimony to be offered and the basis therefor.

~~⁵ To be scheduled by agreement of the parties, recognizing that weekend depositions may be necessitated by the Jewish High Holidays falling in this period.~~