

EXHIBIT 1

Revenue Sharing Definitions Committee

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 :
Hearing on Rights Fees Under March 28, :
2005 Agreement amongst 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 :
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FINAL DECISION OF THE REVENUE SHARING DEFINITIONS COMMITTEE

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On July 25-26, 2023, the members of the Revenue Sharing Definitions Committee (the “RSDC” or “Committee”) met in Washington, DC, to hear the dispute between the Baltimore Orioles (the “Orioles”) and Mid-Atlantic Sports Network (“MASN”) (collectively, “Orioles/MASN”) and the Washington Nationals (the “Nationals”) concerning the value of the license fee to be paid by MASN for the right to telecast games of the Nationals for the years 2017 through 2021.¹ In accordance with the agreement between the Baltimore Orioles Partnership Limited and Major League Baseball (“MLB”) dated March 28, 2005 (the “2005 Agreement” or “Agreement”) (Ex. 2),² the Committee has determined those license fees “using the RSDC’s established methodology for evaluating all other related party telecast agreements in the industry.” *Id.* § 2.J.3.

In reaching its conclusions, the Committee has benefited from the excellent oral and written advocacy of counsel for the parties throughout these proceedings. Based on all of the files, records and proceedings herein, including the testimony presented at the hearing, the parties’ expert reports and witness statements, the voluminous exhibits offered into the record, and the parties’ pre- and post-hearing briefs and other submissions, and drawing on the experience of the Committee’s members, the RSDC has determined, and hereby finds, that the license fees to be paid by MASN to the Nationals for each of the years 2017-2021 (the “2017-2021 Period”) are:

¹ At the July 25-26, 2023 hearing, the members of the RSDC were Mark Attanasio, Dick Monfort, and Tom Werner. Mr. Werner replaced Mark Shapiro, who left the Committee in April 2023.

² “Ex.” refers to the Nationals’ and Orioles/MASN’s exhibits. Nationals’ exhibits begin Ex. 1 and continue to Ex. 142; Orioles/MASN exhibits begin at Ex. 2001 and continue to Ex. 2192. “2019 Award” means the award issued by the RSDC on April 15, 2019, in connection with the dispute over the rights fees for the 2012-2016 period.

| | 2017 | 2018 | 2019 | 2020 | 2021 | Average Annual Value |
|------------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|----------------------|
| Unadjusted | \$64,979,408.93 | \$68,722,998.49 | \$70,794,713.31 | \$72,256,103.69 | \$72,839,427.53 | \$69,918,530.39 |
| Post-Covid Adjustment | \$64,979,408.93 | \$68,722,998.49 | \$70,794,713.31 | \$26,761,519.86 | \$72,839,427.53 | \$60,819,613.62 |

The Committee’s determinations as to fact and law are set forth below. To the extent that the Committee’s recitation of facts differs from any party’s position, it is the result of determinations as to credibility, relevance, burden of proof, and weight of evidence. Any summary of any party’s position is meant to be illustrative rather than exhaustive. The Committee has carefully considered all of the arguments proffered by both sides. The failure to address an argument specifically in this decision does not mean that the Committee ignored the argument. The Committee has made choices concerning the level of detail appropriate for this already lengthy decision.

I. Background and Procedural History of Current Dispute

A. Structure of 2005 Agreement

In 2004, MLB decided to move the Montreal Expos (the “**Expos**”) to Washington, D.C. *See TCR Sports Broad. Holding, LLP v. WN Partner, LLC*, 153 A.D.3d 140, 144 (1st Dep’t 2017) (plurality opinion), *aff’d as modified*, 40 N.Y.3d 71 (2023). The Orioles objected to the move, which led to the Orioles and MLB entering into an agreement “to resolve several issues associated with the Expos’ relocation.” *See id.*; *see also* 2005 Agreement (Ex. 2). Because the Nationals were not purchased by the Lerner family until 2006, MLB owned the Nationals at the time the 2005 Agreement was negotiated and signed. *See* 2019 Award (Ex. 5) at 5. The 2005 Agreement was signed by Peter Angelos on behalf of the Orioles/MASN and Commissioner Selig for MLB. 2005 Agreement (Ex. 2) at 18–19. The 2005 Agreement is governed by Maryland law. *Id.* § 11.A (“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.”).

Under the 2005 Agreement, MASN—a regional sports network (“RSN”)—has the sole and exclusive right to broadcast all Nationals’ and Orioles’ games not retained or reserved by MLB’s national rights agreements. *Id.* §§ 2.A, 2.D. License fees (or “Rights Fees”) that MASN was required to pay to each of the Orioles and the Nationals for the years 2005–2011 were set forth in the 2005 Agreement. *Id.* § 2.G. The 2005 Agreement provides that, for the years after 2011, the parties must negotiate the license fees in five-year blocks, with the first starting in 2012. *Id.* § 2.I.

The 2005 Agreement describes a multi-step negotiation and then dispute-resolution mechanism to determine license fees if the parties cannot agree. *Id.* § 2.J.

First, the Nationals, the Orioles, and MASN are to negotiate the Rights Fees MASN will pay the two teams for each five-year block “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.” *Id.* § 2.I.

Second, if the parties cannot agree upon the Rights Fees MASN should pay, § 2.J requires that the parties first enter into non-binding mediation (§ 2.J.2) and, if that fails, the RSDC shall determine the fair market value of the rights fees “using the RSDC’s established methodology for evaluating all other related party telecast agreements in the industry.” *Id.* § 2.J.3.³ The

³ The RSDC typically reviews related-party transactions to see if the revenues that teams declare in the form of license fees are at fair market value or too low. *See, e.g.*, Sixteenth Report (Ex. 142) at 5 (“Under the Revenue Sharing Plan, the Administrator is required to review all [RPTs] to determine whether the Clubs are reporting revenues from such transactions ‘as if [the transactions] were entered into on an arm's length basis’” (quoting August 29, 1997 Revenue Sharing Definitions Subcommittee Report at 7) (alterations in original)); Thirty-Ninth Report (Ex.

decision to treat the Rights Fees like a related-party transaction (“RPT”) makes sense here because the Orioles control the majority of MASN’s profit interest (Ex. 2 § 2.N), are “managing partner” of MASN, and “have the full authority to manage and operate all of the business affairs of the RSN.” *Id.* § 2.O. The ownership structure incentivizes the Orioles—like any team that owns and controls an RSN—to take the Orioles’ portion of the revenues of MASN as profit from the enterprise rather than as license fees because the former are not subject to revenue sharing. *See, e.g.*, 2019 Award (Ex. 5) at 3-4; *see also* April 17, 2023 Pre-Hearing Submission of the Washington Nationals Baseball Club (“**Nationals Opening Br.**”) ¶11; Eighteenth Report (Ex. 113) at 2 (“In contrast, the RSDC’s concern is that NESN might underpay the Red Sox and thus increase the value of NESN to the benefit of both the majority and minority owners of the broadcasting entity and the detriment of the 29 other Major League Clubs.”). Conversely, the Nationals are incentivized to prefer a higher license fee because while rights fees to the two teams are to be equal (*see* 2005 Agreement (Ex. 2) § 2.J.3), a super-majority of MASN’s profits goes to the Orioles. *See id.* § 2.N; *see also* 2019 Award (Ex. 5) at 4.⁴ Thus, the RSDC is tasked with determining that MASN pay market-level license fees, rather than sub-market-level fees with correspondingly higher profits for MASN.

Finally, the 2005 Agreement provides that the RSDC’s decision as to the fair market value of the rights fees “shall be final and binding on the Nationals and” MASN, and they “may seek to vacate or modify such fair market valuation as established by the RSDC only on the

8) at 2 (“[T]he Committee reviewed whether the rights fee received by the Indians . . . was consistent with fair market value.”)

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See Amended Agreement of Limited Liability Partnership of TCR Broadcasting Holding, LLP, dated September 6, 2005 (Ex. 2002) at Exhibit B.

grounds of *corruption, fraud, or miscalculation of figures*” (emphasis added). 2005 Agreement (Ex. 2) § 2.J.3.

B. History of Prior Disputes between the Nationals and the Orioles/MASN⁵

On April 3, 2012, following unsuccessful negotiations between the parties, the RSDC (composed of different members) held a hearing to determine the fair market value of the rights for the 2012-2016 period (the “**2012 RSDC Hearing**”). See *TCR Sports Broad.*, 153 A.D.3d at 147–48 (plurality). On June 30, 2014, in its final decision (“**2014 Final Decision**”), the RSDC determined that the fair market value of each team’s telecast rights was:

| | 2012 | 2013 | 2014 | 2015 | 2016 | Average |
|-------------------------------|--------|--------|--------|--------|--------|---------|
| License Fee (millions) | \$53.2 | \$56.3 | \$59.3 | \$62.6 | \$66.7 | \$59.6 |

See 2019 Award (Ex. 5) at 6. MASN appealed the 2014 Final Decision, and in a plurality decision, the New York Supreme Court Appellate Division, First Department, upheld the trial court’s vacatur of the 2014 Final Decision on the ground that, in connection with the 2012 RSDC Hearing, the Nationals were represented by the same law firm (Proskauer Rose LLP) that was counsel to MLB and to some of the teams with representatives serving on the RSDC. *TCR Sports Broad.*, 153 A.D.3d at 149–50; see also 2019 Award (Ex. 5) at 6-7. The plurality further held that a second arbitration before a new Committee was the correct resolution because the 2005 Agreement showed a conscious intent of the parties “for arbitration before the RSDC, an industry-insider committee,” whose “members are selected by MLB in its sole discretion” and that it was appropriate that “MLB staff would provide administrative, organizational and legal

⁵ A more fulsome discussion of the history of the dispute, including discussion of the RSDC’s prior decisions, is contained in the 2019 Award (Ex. 5) at 4-8. To the extent any party to the present proceeding has attempted to relitigate matters pertaining to the history of this dispute, the RSDC has fully considered the positions advanced and adheres to the discussion in the 2019 Award.

support, including analyzing financial information and preparing draft decisions in accordance with the instructions of the RSDC members who would make the final determinations.” See *TCR Sports Broad.*, 153 A.D.3d at 156. The concurring opinion pointed out that the parties’ choice of the RSDC as the forum for arbitration overrode concerns that there could be interference in the RSDC’s decision by MLB, so the arbitration could not be ordered moved to another forum. *Id.* at 161. On January 18, 2018, the Appellate Division denied leave to appeal to the New York Court of Appeals. See Notice of Entry, *TCR Sports Broad. Holding, LLP v. Wash. Nationals Baseball Club, LLC*, No. 652044/2014 (N.Y. Sup. Ct. Jan. 19, 2018), NYSCEF No. 780.

In November 2018, a new RSDC panel held a hearing on fair market value of the license fees for the 2012-2016 period.⁶ In April 2019, the RSDC issued its final decision (the 2019 Award), holding that the fair market value of MASN’s rights to the telecasts of each of the Nationals and the Orioles for the 2012-2016 period were:

| | 2012 | 2013 | 2014 | 2015 | 2016 | Average |
|-------------------------------|--------|--------|--------|--------|--------|---------|
| License Fee (millions) | \$54.9 | \$57.8 | \$60.4 | \$61.4 | \$62.4 | \$59.4 |

See 2019 Award (Ex. 5) at 1. MASN sought in the New York Supreme Court to vacate the 2019 Award, arguing, *inter alia*, that (i) the RSDC failed to disclose MLB’s role in the arbitration or “MLB’s communications with the RSDC about the arbitration’s subject matter, which [MASN] claims would show that MLB ‘has clearly and publicly prejudged the merits of this dispute,’” (ii) the Orioles were denied the right to present their case, and (iii) the “RSDC exceeded its powers by failing to correctly apply Maryland law in assessing the parties’ respective positions under”

⁶ The members of the panel that issued the 2019 Award were Mark Attanasio (Milwaukee Brewers), Kevin Mather (Seattle Mariners), and Mark Shapiro (Toronto Blue Jays).

the 2005 Agreement. *See TCR Sports Broad. Holding, LLP v. WN Partner, LLC*, No. 652044/2014, 2019 WL 9362629, at *7-11 (N.Y. Sup. Ct. Aug. 22, 2019).

The New York Supreme Court rejected each of MASN's arguments, holding, *inter alia*, that the 2005 Agreement "expressly mandates that disputes regarding telecast rights would be resolved by the RSDC, which all parties understood is composed of *MLB-chosen* executives from other teams—that is, 'industry insiders, with specialized expertise,'" and noting that the RSDC's reliance on outside counsel meant that it "had significantly more non-MLB support in connection with the second arbitration than it had with the first." *Id.* at *9 (emphasis in original). The Court held that the parties had ample opportunity to present their positions (*id.* at *10). The Court also rejected the Orioles' argument that the RSDC exceeded its authority, concluding that the Orioles were actually challenging whether the RSDC correctly *interpreted* the 2005 Agreement, which is not grounds for vacatur. *Id.* at *11. The Supreme Court further held that, pursuant to New York CPLR §§ 5001-5004, the Nationals were entitled to prejudgment interest on the award, and later entered judgment in favor of the Nationals for more than \$105 million, including nearly \$6 million in prejudgment interest. *Id.* at *11-12; *see TCR Sports Broad.*, 40 N.Y.3d at 83.

In 2020, the Supreme Court of New York Appellate Division, First Department, affirmed the Supreme Court's judgment, and rejected MASN's argument that the Supreme Court "unlawfully modified the award in its confirmation order by performing a calculation of the Nationals' damages." *See TCR Sports Broad. Holding, LLP v. WN Partner, LLC*, 187 A.D.3d 623, 624 (1st Dep't 2020).

In 2023, the New York Court of Appeals affirmed the 2019 Award, holding that "MASN and the Orioles cannot now complain that they received something different than what they

bargained for through the insider process they selected,” but reversed the Supreme Court’s award of prejudgment interest and money judgment, holding:

The [2005 Agreement] grants the RSDC the power only to determine “the fair market value” of the telecast rights fees. The parties did not agree that the RSDC could resolve disputes over nonpayment of such fees. Instead, remedies for MASN’s nonpayment of those fees are governed by a different provision of the [2005 Agreement], which sets forth certain requirements, including a cure period. Only after that cure period expires do the Nationals “have a right to seek money damages.” Further, disputes over nonpayment of the fees appear to be governed by the [2005 Agreement’s] more general dispute resolution provisions. Now that our courts have confirmed the RSDC’s determination of the fair market value of the telecast rights, the parties must resolve any disputes over nonpayment of those fees in accordance with their agreement.

TCR Sports Broad., 40 N.Y.3d at 86-87.

C. Binding Determinations in 2019 Award

The 2019 Award made several determinations as to the definition of provisions in the 2005 Agreement that are relevant to the current dispute and are binding on the parties here. “[O]nce an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation.” *Montana v. United States*, 440 U.S. 147, 153-54, 159 (1979) (but noting that “changes in facts essential to a judgment will render collateral estoppel inapplicable in a subsequent action raising the same issues”); *see also Klein v. Whitehead*, 389 A.2d 374, 382-85 (Md. Ct. Spec. App. 1978) (where two causes of action are the same, *res judicata* bars party from “raising any matters which could have been decided in that case,” and where dealing with different causes of action, collateral estoppel bars “those determinations of fact or issues actually litigated in the first case”).⁷

⁷ Even if the prior determinations discussed in this section were not binding on the RSDC, the RSDC, in the exercise of its judgment and discretion, would come to the same conclusions.

Meaning of “Established Methodology.” In the 2019 Award, the RSDC concluded that the term “established methodology,” as used in § 2.J.3 of the 2005 Agreement, means “a methodology that the RSDC uses for all other telecast agreements at the time that license fees are determined under § 2.J.3” (emphasis added). *See* 2019 Award (Ex. 5) at 27. In the 2019 Award, the RSDC held that the then-applicable “established methodology” was that set forth in a letter from then-deputy commissioner Robert D. Manfred to Joseph M. Leccese, dated December 14, 2011 (the “**2011 Letter**”), because that methodology had been supplied to the parties in advance of the 2012 hearing on rights fees for the 2012-2016 period. 2019 Award (Ex. 5) at 27.⁸ The 2011 Letter required the Committee to “consider a bottom-up, Bortz-style analysis and look at comparable teams’ transactions” in assessing fair market value of the rights fees. *See id.* at 29; *see also* 2011 Letter (Ex. 65).

Definition of “Rights.” In the 2005 Agreement, the term “Rights” is defined as follows:

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 for the in this Subsection to establish the fair market value of the rights licensed to the RSN (the “Rights”).

2005 Agreement (Ex. 2) § 2.J.1. In the 2019 Award, the RSDC concluded that the terms “Rights” was unambiguous, rejected the Nationals’ argument that the “Rights” means “the respective rights’ of either the Nationals or of the Orioles,” and concluded that “Rights” refers to “the rights licensed to the RSN [*i.e.*, MASN].” 2019 Award (Ex. 5) at 12-13. Accordingly, the

⁸ As discussed in the 2019 Award, the RSDC’s Thirty-Fourth Report—which was released in late 2012 and modified in 2013—applies “to all transactions including those beginning with the 2012 revenue-sharing year,” and included substantially the same methodology as that set out in the 2011 Letter. 2019 Award (Ex. 5) at 27-28.

“Rights” the RSDC is to value “are the combined rights to the telecast of both teams’ games.”

Id. at 14.

Definition of “Territory.” Section 2.K of the 2005 Agreement provides:

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 be treated as a single television territory.

2005 Agreement (Ex. 2) § 2.K. In the 2019 Award, the RSDC concluded that “as a matter of law,” Section 2.K of the 2005 Agreement “requires that each team is to be assumed to have the same DMAs.” 2019 Award (Ex. 5) at 14-15.

D. Procedural History of the Current Dispute Concerning 2017-2021 Rights Fees

While MASN’s appeal of the 2019 Award was pending, the Nationals asked the RSDC to hear the dispute concerning the fair market value of the Rights Fees for the 2017-2021 Period. *See, e.g.*, Procedural Order No. 1 (2021). The RSDC initially denied, without prejudice, the Nationals’ request pending a decision of the New York Court of Appeals on MASN’s appeal of the 2019 Award (*id.*). In October 2022, the RSDC determined that it was appropriate for the parties to begin the process of arbitration with respect to the 2017-2021 Period. *See* Procedural Order No. 3 (2022). Accordingly, the RSDC ordered the parties to serve requests for production of documents on December 1, 2022, and set January 31, 2023, as the deadline for all document productions. *Id.* at 2.

In early 2023, the Orioles/MASN asked the RSDC to order the Nationals to produce certain categories of documents in response to the Orioles/MASN’s requests for production. *See*

Procedural Order Nos. 5-7.⁹ After reviewing letter briefs filed by the parties, the RSDC denied the Orioles/MASN's request that the RSDC order production of certain documents on the ground that, *inter alia*, the requests sought documents and communications not relevant to the parties' dispute and were not an appropriate area of discovery. *See* Procedural Order No. 7 (2023).

The RSDC originally ordered the parties to submit their opening memoranda and supporting materials by March 1, 2023, and reply memoranda and supporting materials by March 31, 2023. *See* Procedural Order No. 3 (2022). At the request of the Orioles/MASN, and in part to permit the parties to resolve certain discovery disputes, the deadline for opening memoranda and supporting materials was later extended to April 17, 2023, with reply memoranda and supporting materials due by May 24, 2023. *See* Procedural Order Nos. 4, 8, 9 (2023).

On April 17, 2023, the parties submitted their opening briefs ("**Nationals Opening Br.**" and "**Orioles/MASN Opening Br.**"). In support of their opening submission, the Nationals submitted Expert Analyses and Opinions of Robert Thompson ("**Thompson Report**"), which assessed the appropriate operating margin MASN could have expected for the 2017-2021 Period; and Expert Analyses and Opinions of Doug Perlman ("**Perlman Report**"), which addressed the fair market value of the Rights Fees for the 2017-2021 Period. In support of their opening submission, the Orioles/MASN submitted a TV rights analysis, prepared by Bortz Media & Sports Group, Inc. ("**2023 Bortz Report**"), which assessed the fair market value of the Rights Fees for the 2017-2021 Period; an Expert Report of Hal J. Singer ("**Singer Report**"), which

⁹ The Orioles/MASN sought, in sum, production of documents and communications discussing or commenting on the fair market value of the 2017-2021 Rights Fees, documents and communications discussing or commenting on the 2019 Award, and communications and agreements between the Nationals and MLB. *See, e.g.*, Procedural Order No. 7 (2023) (describing disputed requests for production).

addressed methods for valuing the Rights Fees from the perspective of economic principles; and a witness statement for Jim Cuddihy (“**Cuddihy Statement**”), a consultant to MASN, concerning various matters including MASN’s negotiations with Comcast and ancillary programming.

On May 24, 2023, the parties submitted their reply briefs (“**Nationals Reply Br.**” and “**Orioles/MASN Reply Br.**”). As part of their reply submission, the Nationals also filed the Reply Expert Analyses and Opinions of Robert Thompson (“**Thompson Reply**”) and the Reply Expert Report of Doug Perlman (“**Perlman Reply**”). In support of their reply submission, the Orioles/MASN submitted the Reply Expert Report of Brian Broderick of Bortz Media & Sports Group, Inc. (“**Broderick Reply**”) and the Expert Reply Report of Hal J. Singer (“**Singer Reply**”).

The hearing was held on July 25-26, 2023, at the Washington, D.C., offices of Williams & Connolly LLP. *See* Procedural Order No. 10 (2023). At the hearing, the RSDC heard opening and closing arguments from each of the parties, as well as testimony from Messrs. Thompson and Perlman (on behalf of the Nationals) and Dr. Singer and Messrs. Cuddihy and Broderick (for the Orioles/MASN) (all of whom were also subject to cross-examination).

On August 31, 2023, the parties submitted post-hearing briefing (the “**Nationals Post-Hearing Br.**” and the “**Orioles/MASN Post-Hearing Br.**”).

II. Discussion

A. The RSDC’s “Established Methodology”

As discussed above in § I(C), in the 2019 Award the Committee determined that the “established methodology” for use in connection with the 2012-2016 period was that set forth in the 2011 Letter because that was the methodology available to the parties at the time of the initial

hearing on that dispute and observed that this methodology was substantially identical to that set forth in the Thirty-Fourth Report, which the RSDC did not apply in the 2019 Award because that Report was issued after the commencement of the 2012-2016 period then under review.

Here, the Committee concludes that the “established methodology” to be used in connection with the determination of the Rights Fees for the 2017-2021 Period is the methodology set forth in the Thirty-Fourth Report because, (i) as discussed in the 2019 Award, “established methodology” means the “methodology for evaluating all other related party telecast agreements in the industry” at the time the dispute is decided (*see* 2019 Award (Ex. 5) at 29); (ii) the methodology set out in the Thirty-Fourth Report applies to all transactions beginning with the 2012 revenue-sharing year (*see* Ruling of the Administrator on the 34th Report (Ex. 6) at 1); and (iii) the methodology set forth in the Thirty-Fourth Report has continued to guide the RSDC in its recent assessments of fair market value. *See, e.g.*, Thirty-Ninth Report (Ex. 8) at 9 (the Thirty-Fourth Report “clarified the factors that should be evaluated when reviewing a related-party transaction”). The methodology set out in the Thirty-Fourth Report is, therefore, the RSDC’s current “established methodology” and is used here to determine the fair market value of the Rights Fees for the 2017-2021 Period.

As the RSDC explained in the Thirty-Fourth Report:

Because the “market” for local media is constantly evolving, and all MLB markets have their unique characteristics that may affect rights fee values (including, for example, the competition among networks for a Club’s local media rights), the RSDC has determined, based on its significant experience in this area, that the use of a single, quantitative methodology or model to review all RPTs is not appropriate. Indeed, the RSDC has recognized over the years that the level of scrutiny, and the types of scrutiny, to apply to a transaction is a “fact-intensive inquiry, requiring the RSDC to consider, among other things, the nature and history of the transaction, the degree of control of the Club over the RSN (or other related party), the incentives (or lack thereof) to divert revenue, and the legalities of the transaction and the structure of the entities involved.” ... In order to provide the best evaluation of whether an RPT provides a rights fee to a Club

that is of fair market value, **the RSDC has decided that a holistic approach, in which the Committee analyzes and weights a variety of relevant factors**, will best satisfy the objectives of the [Revenue Sharing Plan]. Based on its own experience with RPTs, information obtained from experts, and input obtained from Clubs, the RSDC has developed a list of criteria that it believes should be considered in determining the fair market value of local media rights. **The RSDC will apply the criteria to each RPT, assigning the appropriate weight to the factors based on the facts and circumstances of the RPT, to determine whether the rights fee is of fair market value**, and, if not, what adjustment is appropriate.

See Thirty-Fourth Report (Ex. 6) at 2 (emphasis added and internal quotations omitted); see also *id.* at 8 (“Not all of the considerations in these categories, or the categories themselves, will be afforded the same weight in each RPT analysis. ... A Club may submit to the RSDC its view on the reasons that some factors should be afforded greater weight than others....”).

The “categories of factors that the RSDC will consider as part of its fair market analysis” include, *inter alia*, (i) a pro-forma analysis of the RSN’s operations (an “**Income-Statement Analysis**”); (ii) a comparable arm’s length rights fee agreements entered into by other MLB clubs (a “**Comparables Analysis**”); (iii) an unspecified “Econometric Model” (in disuse for many years)¹⁰; (iv) market demographics and media data; and (v) relevant facts relating to the negotiation of the rights fee agreement. *Id.* at 5-8.

Income-Statement Analysis. The RSDC stated in the Thirty-Fourth Report that it will “continue to review the income statement of the RSN” in determining fair market value of the rights fee agreement. *Id.* at 6. In connection with that analysis, the RSDC will consider information including “detailed profit and loss statements for the Club’s programming; advertising and sponsorship information; ratings information; subscriber information; affiliate

¹⁰ The econometric model referenced in the 34th Report has not been used for many years—the RSDC “no longer retains outside consultants who developed and operated the Econometric Model.” See Thirty-Ninth Report (Ex. 8) at 15 n.6; see also 2019 Award (Ex. 5) at 28 & n.16. Given that the Econometric Model has fallen into disuse, it is no longer part of the established methodology.

fees; production costs; and information regarding other programming on the RSN.” *Id.* Further, the RSDC will “make assumptions regarding the expected operating margin of the RSN for the Club’s programming based on characteristics of the market, industry norms, and the number of years the RSN has been operating, among other considerations.” *Id.* Each party submitted an Income-Statement Analysis and, as discussed below in § II(C)(1), the Committee has considered those analyses in rendering its decision as to the fair market value of the Rights Fees for the 2017-2021 Period.

Comparables Analysis. In connection with the Comparables Analysis, the “RSDC will review the rights fees obtained by other similarly situated Clubs in arm’s length transactions with RSNs as a benchmark.” Thirty-Fourth Report (Ex. 6) at 5. The RSDC noted that although it is “aware of the potential issues associated with undertaking a comparability analysis with respect to local rights fees, including, for examples, the limited data pool, inherent difficulties in determining comparability, and the differences in MLB markets (and differences in market conditions that existed at the time of the negotiation of the rights fee agreement),” it nevertheless “always has believed that a comparability analysis was a relevant consideration in determining whether an agreement was of fair market value.” *Id.* The RSDC further said that each club “should be prepared to address which arm’s length broadcast rights agreements are most comparable to its agreement.” *Id.* at 5-6. Each party submitted a Comparables Analysis in connection with their claims as to the fair market value of the Rights Fees and, as discussed *infra* § II(C)(2), the Committee has considered those analyses in rendering its decision.

Market Demographics and Media Data. The Thirty-Fourth Report also directs the RSDC to consider the “size of the Club’s inner and outer markets, including the number of subscribers within each and whether the markets are shared with another MLB Club,” as well as

the “number of RSNs and Multi Systems Operators (“MSOs”) in the market, the Club’s television ratings, and the number of alternative sports programming in the market.” *Id* at 5. Though neither party submitted a “market demographics and media data” analysis separate from its Income-Statement and Comparables Analyses, the Committee will consider these factors to the extent relevant to the Committee’s analysis of the parties’ Income Statement and Comparables Analyses. *See, e.g., id.* at 2 (RSDC shall employ a “holistic approach” to fair market value assessments); 2019 Award (Ex. 5) at 45 (“Committee believes that the correct sample of teams for comparison to the Nationals and Orioles are the teams that share markets *and* DMAs”) (emphasis in original).

Relevant Facts Relating to Negotiation of Rights Fee Agreement. The Thirty-Fourth Report indicated that the RSDC will consider “facts relating to the Club’s negotiation of its rights fee agreement that the RSDC or the Club believes are relevant,” including “whether there was more than one bidder in the market for the Club’s local broadcast rights; the Club’s rights fees under prior arm’s length rights fee agreements; the Club’s owners’ equity stake (or percentage of profit) in the RSN (and the circumstances under which such interests were conveyed); the financial stability of the RSN at the time it negotiated the rights fee agreement (including its distribution/affiliate fee agreements); the escalation of the rights fee during the term of the agreement; [and] the length of the agreement.” Thirty-Fourth Report (Ex. 6) at 7.

As there is no specific rights fee agreement under review here by the Committee, this category will not be considered separately from the Committee’s review of the parties’ Income-Statement and Comparables Analyses. However, the Committee believes it appropriate to consider certain of the facts identified as relevant—including a comparison of the parties’ proposed rights fees for the 2017-2021 Period with what the Committee determined was the fair

market value of the rights fees for the 2012-2016 period—in connection with its holistic view of the fair market value of the Rights Fees for the 2017-2021 Period. *See, e.g.*, Thirty-Eighth Report (Ex. 7) at 15 ([REDACTED] [REDACTED] [REDACTED]).

Weighting of Factors. The Committee concludes that the “established methodology” set forth in the Thirty-Fourth Report requires the Committee to consider the parties’ Income-Statement Analyses and a Comparables Analysis, but permits the Committee discretion in the weight of each analysis, as well discretion in its consideration of other relevant factors. Thirty-Fourth Report (Ex. 6) at 8 (“Not all of the considerations in these categories, or the categories themselves, will be afforded the same weight in each RPT analysis.”).

B. Should the Committee’s Analysis Be Prospective?

The Nationals contend that a prospective analysis—*i.e.*, setting fair market value by assessing what the parties would have “negotiated before the deal term begins on a forward-looking basis, not retrospectively after the term has concluded”—is consistent with the “established methodology” as set out in the Thirty-Fourth Report, the terms of the 2005 Agreement, and with what parties would do in the real world.¹¹

First, the Nationals argue that the Thirty-Fourth Report requires that the analysis of fair market value be done prospectively because it says:

[I]n order to best reflect the realities of the marketplace, and to provide more certainty for Clubs, the RSDC believes that the fair market analysis of RPTs should be conducted on a prospective basis, rather than retrospectively based on the actual financial and operating results of the RSN. In order to accomplish that, the RSDC will determine in each RPT review whether the rights fees contained in the local broadcasting agreement are of fair market value for the five-year period beginning

¹¹ Nationals Post-Hearing Br. ¶29.

with the Revenue Sharing Year in which the review is commenced. For example, if the RSDC reviews an RPT in 2012, it will determine the fair market value of the Club's rights fees for years 2012-2016, at which time another review covering the next five years will occur.

See Thirty-Fourth Report (Ex. 6) at 2-3; Nationals Opening Br. ¶¶20-21.

Second, the Nationals argue that the “structure ‘as a whole’” of the 2005 Agreement requires the use of prospective numbers. Nationals Opening Br. ¶65. In support of this argument, the Nationals point to Section 2.I of the 2005 Agreement, which requires the parties to negotiate “the fair market value of the telecast rights licensed to [MASN] for the *following* five-year period” (emphasis added),¹² which the Nationals contend implicitly contemplates the use of prospective numbers because it contemplates that the negotiations will occur in advance of the relevant period.¹³ Further, the Nationals contend that Section 2.G of the 2005 Agreement—which provides for an adjustment to Rights Fees if scheduled games are not played—would be superfluous if the fair market value of the Rights Fees could be determined retrospectively.¹⁴

Third, the Nationals argue that the use of prospective data is consistent with the parties' conduct—specifically, that the parties have relied on projections in their negotiations—and what parties would do in the real world. See Nationals Opening Br. ¶69; Perlman Report ¶¶15, 30-31.

The Orioles/MASN contend that the Committee can consider post-2017 events and conditions in setting fair market value¹⁵ because the 2005 Agreement requires the “use of the most recent and verifiable information”—which means, because this analysis is being conducted in 2023, that the Committee should use MASN's *actual* results, as those are the most recent and

¹² See Nationals Post-Hearing Br. ¶29 & n.59 (quoting 2005 Agreement (Ex. 2) § 2.I).

¹³ See Nationals Opening Br. ¶¶65-66.

¹⁴ See Nationals Opening Br. ¶67; 2005 Agreement (Ex. 2) § 2.G.

¹⁵ See, e.g., Orioles/MASN Reply Br. ¶¶38-45.

verifiable information available to the parties. Orioles/MASN Reply Br. ¶¶41-42; *see also* 2005 Agreement (Ex. 2) § 2.I. The Orioles/MASN further argue that the Nationals have mischaracterized the Thirty-Fourth Report, which—according to the Orioles/MASN—requires only that the *methodology* be applied prospectively, not that the Committee is precluded from considering actual revenue and expenses in assessing fair market value.¹⁶

The Committee concludes that, while the 2005 Agreement does not identify whether the fair market value analysis must be done prospectively, the established methodology set out in the Thirty-Fourth Report does require that it be done prospectively, with the use of projections—or, as the Nationals describe, as if the Rights Fees were “negotiated before the deal term begins on a forward-looking basis, not retrospectively after the term has concluded.” As the Thirty-Fourth Report makes clear, the RSDC is to review rights fees prospectively for each five-year period, which in turn requires the RSDC to consider *projections* for that five-year period. *See* Thirty-Fourth Report (Ex. 6) at 3 (“if the RSDC reviews an RPT in 2012, it will determine fair market value of the Club’s rights fees for years 2012 through 2016”); *id.* at 6 (“the RSDC will request actual operating information for the RSN for at last the most recent three-year period and projected operating information for at least the upcoming three-year period”); *id.* at 7 (“[I]n certain circumstances, the RSDC may request that the Club provide to it projections regarding the RSN’s financial performance for the five-year period covered by the review. The RSDC will consider such projections, along with the RSN’s operating information for prior years, when making its determination.”); *id.* (the RSDC will consider the “financial stability of the RSN at the time it negotiated the rights fee agreement”). Further, that the analysis be done

¹⁶ *See* Orioles/MASN Reply Br. ¶38.

prospectively, on the basis of projections, is consistent with the RSDC's intent to provide "provide more certainty for Clubs." *Id.* at 2-3.

Accordingly, the Committee will, in assessing fair market value, limit itself where possible to information available to the parties as of 2016-2017 (*i.e.*, when the rights fees would have been negotiated). The Committee believes this is particularly relevant in assessing the fair market value of the Rights Fees pursuant to the Income-Statement Analysis, and thus will conduct its analysis by using the projections for revenue and expenses as set forth in the report prepared by Bortz Media & Sports Group, Inc. ("**Bortz**") in early 2017 (the "**2017 Bortz Report**") (Ex. 2006), and will use "actual" results—such as those included in SNL Kagan's cash flow margin data—only as a "check" to determine reliability of the parties' analyses.

C. What Is the Fair Market Value of the Rights?

As set forth above, in determining fair market value of the Rights Fees for the 2017-2021 Period, the Committee will (i) consider both an Income-Statement Analysis and a Comparables Analysis, and in its analysis of each may consider other facts (such as market characteristics and prior Rights Fees), and (ii) rely, to the extent possible, on projected revenues and expenses, so as to best ascertain the fair market value of the Rights Fees as of late 2016/early 2017—*i.e.*, at the time the parties would have been negotiating the Rights Fees for the 2017-2021 Period. The Committee has considered the calculations of both parties under each approach, and for the reasons stated below, among others, finds neither entirely persuasive. The parties' proposals, their critiques of each other's proposal, and the Committee's conclusion follow.

1. The Income-Statement Analysis

The Income-Statement Analysis is the Orioles/MASN's preferred method. *See* Orioles/MASN Post-Hearing Br. ¶10 ("The RSDC has always relied heavily on an income

statement analysis.”); Orioles/MASN Reply Br. ¶¶20 (“The income-statement analysis should be given the exclusive weight in the event of a difference.”). In the Income-Statement Analysis prepared in 2017 for MASN (the 2017 Bortz Report), Bortz obtained the following result (unadjusted for COVID):

| Year | 2017 | 2018 | 2019 | 2020 | 2021 | Average |
|---------------------------------|------------|------|------|------|------|---------|
| License Fee (millions) per team | [REDACTED] | | | | | |

See Orioles/MASN Post-Hearing Br. ¶¶11-12; see also 2017 Bortz Report (Ex. 2006) at 1. The Orioles/MASN continue to assert that the 2017 Bortz Analysis establishes the fair market value of the rights fees for the 2017-2021 Period. See, e.g., Orioles/MASN Post-Hearing Br. ¶¶10-13.

The Orioles/MASN’s analysis is premised on the following principal assumptions:

- The margin between baseball revenue and baseball expenses (including license fees)—*i.e.*, the operating margin on baseball programming—should be 20% in all five years of the 2017-2021 Period.
- 80% of affiliate revenues and 95% of MASN’s total net advertising sales should be considered baseball related.

Orioles/MASN Opening Br. ¶¶102, 104, 109; 2023 Bortz Report ¶¶61-62, 67, 72-73, 75 & Appendix A; 2017 Bortz Report (Ex. 2006) at 3-5.

In their Income-Statement Analysis, prepared using Bortz’s 2017 projections for the 2017-2021 Period, the Nationals obtain the following result (unadjusted for COVID):

| Year | 2017 | 2018 | 2019 | 2020 | 2021 | Average |
|---------------------------------|------------|------|------|------|------|---------|
| License Fee (millions) per team | [REDACTED] | | | | | |

See Nationals Opening Br. ¶92; Perlman Report ¶¶60, 65; Ex. 28 (2017 Bortz Report adjusted with Nationals’ assumptions). The Nationals’ analysis is premised on the following principal assumptions:

- The margin between baseball revenue and baseball expenses (including license fees)—*i.e.*, the operating margin on baseball programming—should begin at 0% in 2017 and increase by 2.5% per year to reach 10% in 2021.

- 100% of affiliate revenues and 95% of MASN's total net advertising sales should be considered baseball-related.

See Nationals Opening Br. ¶¶80-92; Perlman Report ¶¶62-67; Thompson Report ¶53.¹⁷

The assumptions underlying the Income-Statement Analysis are therefore key—here, the differences between the parties' assumptions results in a [REDACTED] difference in the average annual value of the rights fees due per team. See, e.g., 2017 Bortz Report (Ex. 2006) at 1 and Ex. 28 (Nationals' adjustments). Thus, as was true in the Committee's analysis of the 2012-2016 period, it is imperative for the Committee to explore the logic of the parties' proposed assumptions.

i. Operating Margin

In support of their proposed 20% operating margin for baseball programming, the Orioles/MASN contend that “the best evidence of the margin an RSN would expect to generate while paying fair market value rights fees is the average margin that other RSNs generated.” See Orioles/MASN Post-Hearing Br. ¶41; Hearing Tr. 376:14-377:9 (Singer). They further contend that SNL Kagan data are the best evidence of the average cash flow margins of other RSNs, and that SNL Kagan data—which show that the average cash flow margins for other RSNs was 37%—confirm that the Orioles/MASN's proposed 20% operating margin is consistent with industry expectations. See Orioles/MASN Post-Hearing Br. ¶¶28, 31, 35-39; see *id.* ¶41 (“As Dr. Singer explained, unless the evidence demonstrates that a particular characteristic of an RSN causes an RSN's margin to deviate from the average margin generated by RSNs in the industry,

¹⁷ Unlike the position they took in the parties' last dispute, the Nationals here accept MASN's allocation of advertising revenues and expenses. See, e.g., Perlman Report ¶65. Accordingly, the Committee here accepts MASN's allocation of projected advertising revenues that should be allocated to baseball (approximately [REDACTED]) and advertising expenses that should be allocated to baseball (approximately [REDACTED]). See 2017-2021 Bortz Analysis-Adjusted Bortz Projections (Ex. 28); 2017 Bortz Report (Ex. 2006).

the best evidence of the margin an RSN would expect to generate while paying fair market value rights fees is the average RSN margin that other RSNs generated.”); *id.* at 10 (“SNL Kagan Data Are Accurate and the Best Evidence of Baseball RSN Margins”); 2017 Bortz Report (Ex. 2006) at 6 (“MASN’s overall resulting average annual EBITDA margin ... is approximately [REDACTED] percent,” which Bortz believes “is within the range typically achieved by RSNs nationally”); Orioles/MASN Closing Demonstratives at 5; Singer Reply ¶¶14-18 & Figures 1-3; Exs. 2071-2072.

However, not only is the majority of the SNL Kagan data not *prospective* in nature,¹⁸ but the Nationals have called into serious question the reliability of SNL Kagan’s cash flow margin data, and Bortz’s analysis of that data. *First*, as the Nationals point out, in calculating the median operating margins, the 2023 Bortz Report omitted two RSNs with negative cash flow, even though one of those RSNs was, as an independent RSN, facially similar to MASN. *See* Thompson Reply ¶88 (identifying and explaining significance of omission); *see also* 2023 Bortz Report ¶79 (identifying median cash flow margin of 35 RSNs); Table D-1 (identifying RSNs included for comparison purposes); SNL Kagan RSN Data 2017-2021 (Exs. 2071-2072) (full list of RSNs, including those excluded by Bortz).

Further, the Nationals demonstrate that SNL Kagan overstated MASN’s profits by up to [REDACTED] times, which greatly undermines confidence in the accuracy of cash flow margins SNL Kagan shows for the other RSNs Bortz used in its comparisons. *See* Nationals Post-Hearing Br. ¶65; Thompson Reply ¶89 (explaining that SNL Kagan data show that MASN would have had an operating margin of between 45.6% and 49.8% in 2017-2019, while Bortz’s own data show that

¹⁸ The Committee notes that the 2017 Bortz Report (Ex. 2006) *does* include SNL Kagan data that would have been available to the parties at the time they were negotiating, but is concerned that (as discussed in this section), this is also unreliable for use in this setting.

MASN would have had at most a [REDACTED] margin in those years; and in 2020, SNL Kagan data shows that MASN obtained a 60.4% margin, while the 2023 Bortz Report shows an approximately [REDACTED] cash flow margin). The Orioles/MASN respond that their experts' (Bortz and Singer) calculations rely on *averages*, which "reduces the impact of an error in Kagan's reporting for a particular RSN" (Orioles/MASN Post-Hearing Br. ¶37), but an average of dubious data is itself dubious.¹⁹ Moreover, the errors identified by the Nationals—specifically, that SNL Kagan data omit "several categories of expenses, including production expenses, master control expenses, and transmission expenses, among others," which causes MASN's expenses to be understated by [REDACTED]—suggest that SNL Kagan's cash flow margins are consistently inflated. Nationals Post-Hearing Br. ¶65 & n.146; Hearing Tr. 142:21-143:20 (Thompson) (explaining the impact of omitted expenses on MASN's data); Slides from the Direct Examination of Robert Thompson ("**Thompson Slides**") at Slide 23 (showing that SNL Kagan's data overstated MASN's profits by [REDACTED] in the 2017-2021 Period). Accordingly, Bortz's reliance on averages does not resolve reliability concerns as to the use of SNL Kagan data in this setting.

The Orioles/MASN also contend that setting MASN's operating margin lower than 20% for the 2017-2021 Period would be "discriminat[ory]" because it would result in MASN having a lower cash flow margin than NESN (Red Sox) and the YES Network (the Yankees) for the same period, but that argument relies on the same, likely inflated, SNL Kagan data. *See*

¹⁹ Among other things, Mr. Thompson noted that the cash flow margins for some of the RSNs he had previously worked with were facially absurd. *See* Nationals Post-Hearing Br. ¶65; Hearing Tr. 148:10-18 (Thompson) ("I have been involved with a number of these RSNs for a lot of years. There's no way Kansas City ever had a 75 percent profit margin.").

was issued prior to the impact of cord cutting and other changes on the industry—the RSDC said its decision in the Thirty-Fourth Report was premised in part on factors specific to NESN—namely, that “NESN is the oldest RSN in the nation and is almost as much of an institution in New England as are the Red Sox.” Thirty-Eighth Report (Ex. 7) at 10.

Contrary to the Orioles/MASN’s position, as discussed above (p. 21), the Nationals contend that an operating margin on baseball revenues of 0% in 2017 increasing in 2.5% increments to 10% in 2021 is appropriate.

First, the Nationals argue that MASN would have expected a 0% operating margin in 2017 because it was the first year of a new deal term. *See, e.g.*, Nationals Post-Hearing Br. ¶¶63-64. Relying on the 2019 Award and Mr. Thompson’s testimony, the Nationals contend that an “RSN’s profits would often be zero, or even negative, after a right fee reset” because RSNs are “willing to pay a premium to secure” the rights to live sports programming, “even if it leads to a zero or negative margin in the early years of the new deal.” *See id.; see also* Hearing Tr. 126:2-10, 127:2-128:19 (Thompson) (“[f]or those who have done a significant number of rights deals, it’s not unusual” to see a zero percent margin in the first year of a new deal, “[e]specially coming off a deal that’s a number of years, a number of years old,” and confirming that he has negotiated deals that resulted in a zero percent margin in the first year of the new deal and did so because he “wanted to preserve the assets, stay in business”); Thompson Report ¶¶37, 40; 2019 Award (Ex. 5) at 36.

Second, the Nationals contend that a 2.5% increase per year in operating margins is appropriate because in 2016-2017—*i.e.*, when a deal would have been timely negotiated—a “paradigm shift” (including cord cutting and the rise of streaming) was changing the industry, which would have led MASN to accept lower operating margins in the 2017-2021 Period. *See*

MASN's negotiating posture actually negatively impacted MASN's revenue. *See* Hearing Tr. 185:7-187:16 (Thompson).²²

ii. Allocation of Affiliate Fees

The Orioles/MASN contend that attributing 80% of affiliate fee revenue to MLB programming is appropriate because, *inter alia*, (i) "MASN's shoulder programming is similar to that televised by other RSNs," (ii) MASN "selects and pays for its college shoulder programming to appeal to subscribers [in] MASN's territory," such as, for example, Duke basketball; (iii) "MASN subscribers watch MASN's shoulder programming;" and (iv) even if all MLB programming was cancelled, MASN's affiliates would remain obligated to pay MASN 15% of their affiliate fees. *See* Orioles/MASN Post-Hearing Br. ¶¶16-24; *see also* Hearing Tr. 313:3-317:22 (Cuddihy) (discussing importance of ancillary programming to MASN and affiliates); Ex. 2120 (impressions analysis of MASN programming for 2018-2022 period); 2023 Bortz Report ¶¶59-62; Affiliate Term Sheet Between MASN and Comcast (Ex. 2043). In support, the Orioles/MASN rely primarily on the testimony of Jim Cuddihy, who was employed by MASN from 2006 to 2019 and now works as a consultant for MASN. Hearing Tr. 290:21-291:9, 319:3-12 (Cuddihy).

In contrast, the Nationals contend that, consistent with the 2019 Award, 100% of affiliate fees should be attributed to baseball. *See* Nationals Post-Hearing Br. ¶79. They argue that the

²² While the Committee credits Mr. Thompson's testimony in other respects, because of this dearth of factual foundation, his opinions with respect to appropriate operating margins verge on inadmissible *ipse dixit* or speculation. *See, e.g., Rochkind v. Stevenson*, 164 A.3d 254, 261 (Md. App. Ct. 2017) ("[N]othing ... requires a district court to admit opinion evidence that is connected to existing data only by the *ipse dixit* of the expert."); *Naughton v. Bankier*, 691 A.2d 712, 718 (Md. Ct. Spec. App. 1997) ("It is within the province of the trial judge to strike expert testimony if it is founded on pure conjecture rather than factually based opinion."). The Committee declines to strike Mr. Thompson's testimony on this subject, but affords it little weight.

2023 Bortz Report attributed 80% of affiliate revenue to baseball not because *evidence* demonstrated that was appropriate, but because Bortz concluded that an 80% allocation “is typical for the major professional sports programming on an RSN and *will yield FMV rights values and a reasonable operating profit to the RSN*” (emphasis added). *See* 2023 Bortz Report ¶61; Hearing Tr. 472:5-20 (Broderick) (“The 80 percent allocation of the affiliate revenues, combined with the average annual profit margin of 20 percent leads to a cash flow margin that is consistent with the industry” from 2012-2016 and 2017-2021); *see also* Nationals Post-Hearing Br. ¶79. Similarly, they point out that Mr. Cuddihy admitted that he could not recall “any conversation with affiliates where they said: Hey, if you acquire this basketball game, we will give you more. I don’t recall ever having that conversation.” Hearing Tr. 341:10-17 (Cuddihy); *see also* Nationals Post-Hearing Br. ¶80.

In addition, the Nationals argue that MASN’s introduction of spreadsheets showing what shoulder programming was aired is an insufficient basis from which the Committee can determine the percentage of affiliate that should be attributed to that programming, pointing out that Mr. Thompson testified that much of MASN’s shoulder programming was of low to no value. *See* Nationals Post-Hearing Br. ¶80; *see also* Hearing Tr. 153:1-156:1 (Thompson) (describing MASN’s package of ACC football as “third- and fourth-tier ACC football,” stating that other programming had little “significant geographical relevance” and UEFA matches were likely also low value; further characterizing shoulder programming as “fungible”).

Last, the Nationals argue that MASN’s allocation of shoulder programming makes little sense—not only does it suggest that affiliates value shoulder programming at 70% of the value of Nationals games, but it would require concluding that affiliates are willing to pay MASN [REDACTED] times the [REDACTED] million MASN actually paid to obtain shoulder programming. *See* Nationals Post-

Hearing Br. ¶¶81-82; Hearing Tr. 161:25-162:22 (Thompson); Thompson Reply ¶67 (implication from the Bortz Report is that shoulder programming has a value of [REDACTED] million for the five-year period, which is “wholly non-credible”).

When cross-examined on the average annual value of [REDACTED] million in affiliate revenue that Bortz attributed shoulder programming, Mr. Broderick admitted that this [REDACTED] million number included more than shoulder programming, such as “a return on investment for the network” (Hearing Tr. 473:18-474:6). When asked, “[s]o out of the [REDACTED] million here ... how much of that can I allocate to shoulder programming?”, Mr. Broderick, after some hedging, ultimately testified that he “would hate to speculate,” that it was “not 5” and “could be 10 ... [or] 15” (*id.* at 474:7-22).

iii. Step-Up/Down From Prior Rights Deal

As discussed above in § II(A), the Thirty-Fourth Report specifies RSDC can consider factors not explicitly included in an Income-Statement Analysis, including a club’s rights fees under prior arm’s length rights fee agreements. *See* Thirty-Fourth Report (Ex. 6) at 7. Though not explicitly part of the Income-Analysis, the Committee nevertheless believes the reasonableness of the parties’ assumptions—and resulting fair market value calculations—should be assessed by comparing the results with what the Committee held was the fair market value of the Rights Fees in 2016 (\$62,414,285.75).

Here, accepting the assumptions used in the Orioles/MASN’s Income Statement Analysis would require the Committee to impose a significant step-down (of approximately 25%) for the first year of the current period, 2017, from the Committee’s calculation of the fair market value of the Rights Fees for 2016—from \$62,414,285.75 to \$47,571,669. *See, e.g.*, Orioles/MASN

Post-Hearing Br. ¶¶11-12, and chart on p. 5.²³ The Orioles/MASN contend that a large step-down is appropriate because “[t]he evidence demonstrated that in late 2016 and 2017, cord cutting rapidly accelerated,” and that evidence from MLB shows that other teams’ rights fees

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The Nationals, in contrast, rely on assumptions that result in the Nationals receiving in 2017 a large step-up (approximately 31%) from the Committee’s calculation of Rights Fees for 2016—from \$62,414,285.75 to approximately \$81.8 million. *See* Nationals Opening Br. ¶92.²⁵ According to the Nationals, a large step-up is appropriate and consistent with MLB data showing that the median step-up in new deals from 2013-2016 was . *See* 2013-2016 New Deal Year 1 Step-Ups (U.S.-Based Teams) (Ex. 13) (); Nationals Post-Hearing Br. ¶¶3, 69.

iv. Committee’s Calculation of Fair Market Value Under Income-Statement Analysis

As the Committee held in the 2019 Award, the Income-Statement Analysis requires neither use of a particular operating margin nor a specific allocation of revenues and expenses to

²³ Similarly, the AAV the Orioles/MASN propose here (approximately \$54 million) is less than the AAV awarded in the 2019 Award (\$59 million). *See* Orioles/MASN Post-Hearing Br. ¶¶57-59.

²⁴ *See* Orioles/MASN Post-Hearing Br. ¶¶59-60 (); MLB-Provided Rights Fee Data for Other Clubs (Ex. 2011) at Tab “FIO Rights” ().

²⁵ Similarly, accepting the Nationals’ assumptions would result increase in average annual value (“AAV”) of the Rights from \$59.4 million to \$86.1 million. *See* 2019 Award (Ex. 5) at 1; Nationals Opening Br. ¶92.

baseball. *See* 2019 Award (Ex. 5) at 31. The Thirty-Fourth Report explicitly provides that the RSDC should take into account a given RSN’s specific characteristics in setting its assumptions for operating margins—including the “characteristics of the market, industry norms, and the number of years the RSN has been operating, among other considerations”—rather than identifying a specific operating margin to be used in all fair market value analyses. *See* Thirty-Fourth Report (Ex. 6) at 6. That no specific operating margin is required in the Income-Statement Analysis is confirmed by other reports decided before and after the Thirty-Fourth Report. The Sixteenth Report mentions a [REDACTED] margin used by Bortz, while the [REDACTED] tried to persuade the RSDC that the license fees proposed by Bortz were *too high* (suggesting that the implied margin sought by the [REDACTED] was even higher than Bortz’s [REDACTED] because that would have led to *lower* license fees than Bortz proposed). *See* Sixteenth Report (Ex. 142) at 7. The Eighteenth Report uses a [REDACTED] operating margin to explain why the RSDC declined to adopt the even lower license fees proposed by the [REDACTED] and expert Houlihan Lokey (whose proposal assumed a [REDACTED] operating margin). *See* Eighteenth Report (Ex. 113) at 10-11 & n.6. The Thirty-Eighth Report applied a margin of [REDACTED] in year 1, decreasing to something above [REDACTED] in year 5, and, in setting these margins, explicitly took into account the fact that [REDACTED] [REDACTED] *See* Thirty-Eighth Report (Ex. 7) at 10-11; Administrator’s Ruling (Ex. 25) at 6 (adjusting fees). The Thirty-Ninth Report concluded that, in light of the Canadian broadcasting system’s characteristics, the rights fees imputed to the Toronto Blue Jays would be [REDACTED] [REDACTED] in rights fees—implying that the operating margin used was something close to 0%. *See* Thirty-Ninth Report (Ex. 8) at 14-15.

Further, only the Thirty-Eighth Report specifically discussed what percentage of affiliate fees should be allocated to shoulder programming, and there the RSDC concluded that, “in an effort to strike a reasonable compromise, and to give due consideration to the relative value (albeit minimal) of NESN’s live college sports programming,” it would attribute 90% of NESN’s affiliate fees to professional sports programming. *See* Thirty-Eighth Report (Ex. 7) at 11, 12.²⁶

Operating Margin. Assessing the appropriate operating margin for baseball programming is always challenging. The Orioles/MASN contend that their proposed 20% operating margin would provide MASN with an approximately 32% overall cash flow margin, which is in line with industry norms as reflected in SNL Kagan data. *See* Orioles/MASN Post-Hearing Br. ¶28; 2017 Bortz Report (Ex. 2006) at 6. But as discussed above (at pp. 23-24), the Nationals have raised serious questions concerning the reliability of using the SNL Kagan data in this setting, persuasively demonstrating that SNL Kagan data appears to significantly overstate overall cash flow margins. *See also* Nationals Post-Hearing Br. ¶65. Further, even if SNL Kagan data were reliable for use in this context, the Thirty-Fourth Report requires the RSDC to consider multiple factors in addition to industry norms when assessing the appropriate operating margin (*see* Thirty-Fourth Report (Ex. 6) at 6). Neither the 2017 Bortz Report nor the 2023 Bortz Report does so. Instead, the 2023 Bortz Report explicitly states that it relies on a 20% operating margin here because it has “consistently assumed a 20-percent operating margin from professional sports programming to be reasonable.” 2023 Bortz Report ¶¶75-76.

The Nationals contend that networks have to take on lower margins when they are in an early deal phase, and that the Committee should apply the same starting operating margin—

²⁶ The Thirty-Ninth Report discussed the proper allocation of fees where an RSN “holds the rights to televise the live games of multiple major professional sports teams or leagues,” but did not address allocation of fees to “shoulder programming.” Thirty-Ninth Report (Ex. 8) at 12-13.

0%—it did in the 2019 Award. *See* Nationals Post-Hearing Br. ¶¶63-67. But here, only Mr. Thompson—whose testimony on this subject the Committee affords little weight—testified that an RSN like MASN would have expected a 0% operating margin in the first year of its deal with the Orioles and Nationals. Mr. Singer, in contrast, testified that he could find no evidence that any RSN’s operating margin dropped to zero in the first year of a deal. *See, e.g.*, Hearing Tr. 125:14-126:10 (Thompson) (operating margins would drop to zero or negative in first year of deal); Hearing Tr. 382:8-13 (Singer) (no evidence that operating margins drop to zero).

In addition, the Nationals argue that given changing market conditions—*i.e.*, MASN’s subscriber losses—MASN would have accepted lower operating margins for the 2017-2021 Period than for the 2012-2016 period. *See* Nationals Post-Hearing Br. ¶¶67-68. Yet for that argument the Nationals rely, impermissibly and contrary to the Nationals’ own position on prospectivity, on MASN’s *actual* subscriber losses in the 2017-2021 Period, not the substantially lower *expected* subscriber losses Bortz projected in 2017. *Compare* Nationals Post-Hearing Br. ¶68 ([REDACTED]

[REDACTED] This demonstrates, by MASN’s own admission, MASN would have expected profit margins *at or slightly above zero* for 2017-2021” (emphasis in original)), *with* 2017 Bortz Report (Ex. 2006) at 2 ([REDACTED] [REDACTED]).

Weighing all of the evidence and arguments, and weighing them on the basis of the Committee members’ substantial experience in the industry, the Committee concludes that:

- (i) By 2016-2017, it was clear that the market was changing as a result of cord cutting and, in light of those industry changes, MASN would not have expected a

- 20% operating margin in all five years—and the Nationals would not have expected a large step-up in fees from the fair market value of their 2016 fees;
- (ii) But the magnitude of industry-wide changes was not yet clear in 2016-2017, and for that reason, the Nationals would not have agreed to a step-down in Rights Fees;²⁷
- (iii) Given industry conditions and a new rights fees deal, MASN would have expected a decrease in its operating margin in the first year of the 2017-2021 Period, though not as low as a 0% operating margin; and
- (iv) Unlike in the 2012-2016 period, MASN could—and did—reset its agreements with Comcast and other affiliates, and would have expected to do so (and therefore achieve higher operating margins) in the latter years of the 2017-2021 Period.

Taking into account this economic reality, the Committee finds it appropriate to apply an operating margin for the 2017-2021 Period that starts at 12.5% in 2017, stays at 12.5% in 2018, increases to 15% in 2019 (following MASN’s reset of its affiliate agreement with Comcast), increases to 17.5% in 2020, and increases to 20% in 2021.

Affiliate Fees. Weighing all of the evidence and taking into account the industry experience of the Committee members, the Committee concludes that it would be inappropriate to assign a significant portion of MASN’s affiliate fees to anything other than baseball. The Committee notes that the Nationals have accepted that approximately [REDACTED] of advertising

²⁷ See, e.g., Hearing Tr. 438:11-17 (Broderick) (Q: “And why did MASN and other RSNs not meet their revenue projections?” A: “Cord cutting was at a faster pace and more extreme than the industry and MASN had expected at the outset. So subscribers declined at a much faster rate and MASN lost about a quarter of its sub base during this time frame.”).

revenues, and █████ of MASN's expenses, should be attributed to baseball. *See, e.g.*, Perlman Report ¶65. Further, the Orioles/MASN provided substantial, though financially unquantified, evidence of MASN's actual shoulder programming in the 2017-2021 Period, in stark contrast to the state of the record in the prior arbitration concerning the 2012-2016 period. *See* Exs. 2115-2118.

The evidence in the record also demonstrates that the quality of shoulder programming varied greatly throughout the 2017-2021 Period. *See, e.g.*, Ex. 2115 (college football games shown in 2017 included Presbyterian College, Liberty University, and Charleston Southern, while games in 2021 included Georgia Tech, Duke, and Syracuse); Ex. 2118 (UEFA games shown only in 2017 and early 2018, and many were reruns); Hearing Tr. 153:4-156:9 (Thompson) (assessing low value of college football games and UEFA matches shown). Moreover, MASN did not inform affiliates in advance as to what programming would be offered, making it unlikely that affiliates placed much value on such programming. Nor did the Orioles/MASN proffer any expert evidence supporting their contention that 20% of affiliate fees should be attributed to shoulder programming. The best evidence the Orioles/MASN have in support of the specific allocation they propose is their (retrospective) impressions analysis purportedly showing that an average of 15% of impressions were of shoulder programming (Hearing Tr. (Cuddihy) 316:18-21, 317:1-22; Ex. 2120), but that fails to establish that 20% of affiliate fees should be allocated to shoulder programming.²⁸ Further, no Orioles/MASN witness

²⁸ The impressions analysis, to the extent it has any validity as a measurement of value, also suggests that views of shoulder programming varied by year (from a low of 10% in 2021 to a high of 17.6% in 2020). *See* Ex. 2120. The Committee rejects the Orioles/MASN's contention that the "Loss of Games" provisions, which require affiliates to pay █████ of affiliate fees even if MLB games are not aired (*e.g.*, Orioles/MASN Post-Hearing Br. ¶20; Ex. 2048 at 46) support their proposed allocation of affiliate fees. The Committee credits the testimony on Mr. Thompson, who

placed a reasoned value on MASN's shoulder programming. Mr. Broderick's speculative testimony is discussed above at p. 30, and Mr. Cuddihy (i) admitted that no affiliate ever said it would pay more for specific programming, and (ii) agreed that without baseball, MASN could not secure carriage at all. *See* Hearing Tr. 341:10-17, 341:18-342:3 (Cuddihy).

Based on the evidence and the industry experience of its members, the Committee concludes that it is appropriate to allocate ██████ of affiliate fees to baseball. The Committee believes that the Orioles/MASN demonstrated that there is some value attributable to shoulder programming, but not 20% of affiliate fees. The parties agree that approximately ██████ of advertising revenue can be allocated to shoulder programming, and Mr. Broderick testified that something more than 5% of affiliate fees should be attributed to shoulder programming.

Applying the increasing operating margin discussed above, and allocating 94.6% of all of MASN's affiliate revenues to baseball (while using the Orioles/MASN's assumptions for allocation of direct advertising revenue and expenses), the Committee finds that the result of the Income-Statement Analysis is:²⁹

| Year | License Fee |
|-----------------------------|-----------------|
| 2017 | \$64,979,408.93 |
| 2018 | \$68,722,998.49 |
| 2019 | \$70,794,713.31 |
| 2020 | \$72,256,103.69 |
| 2021 | \$72,839,427.53 |
| Average Annual Value | \$69,918,530.39 |

2. The Comparable Teams Approach

While the Orioles/MASN contend that the Committee should rely solely on the Income-Statement Analysis in determining the fair market value of the Rights Fees, the Nationals argue

explained that such provisions are intended to allocate risk in the case of temporary work stoppages, or similar events. Hearing Tr. 159:17-160:3.

²⁹ The Committee uses MASN's projections for revenues and expenses set forth in the 2017 Bortz Report (Ex. 2006) and the 2017-2021 Bortz Analysis – Adjusted Bortz Projections (Ex. 28).

that the far greater emphasis should be placed on the Comparables Analysis. The Nationals used two cohorts in their Comparables Analysis. The first included the Yankees, Mets, Dodgers, Angels, Cubs, White Sox, Giants, and Athletics—*i.e.*, the eight teams that the RSDC held, in the 2019 Award, were comparable to the Nationals and Orioles (the “**RSDC Eight**”). *See* Nationals Opening Br. ¶72; Perlman Report ¶¶34, 36; 2019 Award (Ex. 5) at 45. As the Nationals explained, the Committee concluded that “the Nationals and Orioles are much more akin to two teams in the same DMA than two teams that merely share a market,” and so chose as comparables teams that shared both a market and a DMA with another team. Perlman Report ¶36; 2019 Award (Ex. 5) at 45 (explaining why the Committee rejected the Phillies, Red Sox, and four other smaller market teams as comparables).

In connection with his analysis here, however, Mr. Perlman further explained that in his experience, “recency is a critical factor in determining the appropriate set of comparable deals for assessing fair market value of rights fees,”³⁰ and most of the deals in the RSDC Eight were “stale” as of 2016,³¹ leading to an inadequate sample size. Perlman Report ¶50 (“As of 2017, only two of the RSDC Eight”—the Los Angeles Dodgers and the Los Angeles Angels—“had recently negotiated new deals, which is not a sufficient sample size”). Accordingly, the Nationals proffered a second cohort consisting of four teams that (i) “announced new deals in or after 2013 with at least three seasons of those deals falling” in the 2017-2021 Period, and (ii) “were located in top-10 DMAs” (the “**Recent Big Market Deals Cohort**”). *See* Nationals Post-Hearing Br. ¶57; *see also* Perlman Report ¶¶50, 53; Hearing Tr. 225:2-17, 243:17-244:1 (Perlman) (explaining how the teams were chosen). The four teams in the Big Market Deals

³⁰ Perlman Report ¶50; Nationals Post-Hearing Br. ¶57 (“recency is important in a comparables analysis”).

³¹ Perlman Report ¶50; Nationals Post-Hearing Br. ¶57.

Cohort were the Phillies and Astros, plus the Angels and Dodgers (which were also included in the RSDC Eight cohort). *See, e.g.*, Perlman Report ¶34.

Once the cohorts were established, Mr. Perlman first used the Net Defined Local Revenue (“**NDLR**”) data provided by MLB to calculate the “total economic value of each team’s telecast rights,” adding together each team’s annual telecast rights-related consideration (including Local TV Rights Fees, Local TV Signing Bonuses, and Local TV Other Revenue).³² Mr. Perlman relied on a series of assumptions—heavily critiqued by the Orioles/MASN—in calculating the total economic value of each deal, including: (i) because MLB did not provide NDLR data for 2020, Mr. Perlman assumed each team’s revenue “followed trajectories implied by pre- and post-2020 figures;” (ii) because MLB presented over-the-air (“**OTA**”) and cable revenue as a combined figure, to determine cable-specific revenues Mr. Perlman “assumed that OTA amounts were consistent with the trajectories as of 2016 and deducted those amounts from the figures provided for 2017-2021;” and (iii) because the Cubs and White Sox had deals scheduled to expire in 2020, Mr. Perlman estimated 2020 and 2021 revenues by “assuming first year step-ups of █████ in 2020 for new deals from the final year of the prior deal based on median first-year step-up for deals starting in 2013-2016 for U.S.-based teams.”³³

Mr. Perlman then calculated the AAV of revenue for each team, and then “normalize[d]” for the size of the teams’ home markets and the number of games licensed to RSN partners by

³² *See* Perlman Report ¶38; *see also* MLB 2017-2021 Deal Information (Ex. 9); RSDC Eight Projected Local Media Economics (Ex. 10); Recent Big Market Deals Projected Local Media Economics (Ex. 11).

³³ *See* Perlman Report ¶¶39-40 & n.48; *see also* 2020 Value Calculations (Ex. 12); 2013-2016 New Deal First Year Step-Ups (U.S.-Based Teams) (Ex. 13); July 30, 2018 Letter from M. Mellis to RSDC (Ex. 14); March 29, 2018 Letter from M. Mellis to RSDC (Ex. 15); White Sox and Cubs New Deal Projections (Ex. 16); OTA Revenue Adjustments (Ex. 17).

dividing the AAV of each team's total RSN media economics by the number of games licensed to the RSN and then by the projected average number of Pay TV households in each team's DMA, to yield the median per-game, per-subscriber fee. *See* Perlman Report ¶¶42-43, 54-55; RSDC 8 Deals, Core DMA (Ex. 24); Recent Big Market Deals, Core DMA (Ex. 27).³⁴ From there, Mr. Perlman multiplied the median per-game, per-subscriber value by the Nationals' 150 games and the 3.3 million projected Core DMA households (2017-2021 projected average), to yield a fair market value of \$106.8 million (unadjusted for Covid) using the RSDC Eight, and \$110.4 million (unadjusted for Covid) using the Recent Big Market Deals Cohort. *See* Perlman Report ¶¶45, 49, 56. This step also required Mr. Perlman to rely on assumptions—specifically as to how best to measure the size of each team's home market. *See id.* ¶42. Here, Mr. Perlman concluded that, as the RSDC held in the 2019 Award, “the best metric for the size of a team's market is its ‘core DMA’”—*i.e.*, Core DMA Pay TV households. Perlman Report ¶42; *see also* 2019 Award (Ex. 5) at 45.

Mr. Perlman then averaged these two values together to yield the following fair market value of the rights fees for the 2017-2021 Period (unadjusted for Covid):³⁵

³⁴ Mr. Perlman relied on 2017-2021 actual rights fees, signing bonus, and other revenue provided by MLB, concluding that that data “would be the closest approximation of the revenues reflected in each team's rights contracts that would have been known in 2016.” Perlman Report ¶37. The Committee notes that this is not technically “prospective” data, but agrees with Mr. Perlman that, to the extent the actual payments made during the 2017-2021 Period reflect the terms of the deals that existed and would have been known in late 2016/early 2017, it is in essence prospective data. But it does not address the inception dates of the various deals which, in the foreboding industry economics facing the parties around the start of the 2017-2021 period, is of significant consequence.

³⁵ *See* Perlman Report ¶58; Nationals Opening Br. ¶79.

| Year | 2017 | 2018 | 2019 | 2020 | 2021 | Average |
|---------------------------------|---------|---------|---------|---------|---------|----------------|
| License Fee (millions) per team | \$100.3 | \$104.3 | \$108.4 | \$112.8 | \$117.3 | \$108.6 |

The Orioles/MASN heavily critique the assumptions Mr. Perlman used in preparing the Nationals' Comparables Analysis, including:

- (i) Most critically, and notwithstanding the RSDC's approach in the 2019 Award, "if the rights fee MASN paid the Nationals is to be normalized by the Nationals' Core DMA of Washington, D.C. and the Baltimore DMA (which is the largest DMA adjacent to the Nationals' Core DMA), then an economically valid comparison requires each of the comparable clubs to also be normalized by their Core DMA plus the largest DMA adjacent to their Core DMA;"³⁶
- (ii) In normalizing game counts, Mr. Perlman improperly uses contractual minimum game counts, rather than actual game counts, to reduce the number of games televised and inflate comparable clubs' fees;³⁷
- (iii) In normalizing game counts, Mr. Perlman improperly excluded OTA games, but evidence shows that some RSNs sublicense a portion of the team's games to OTA broadcasters, and "[o]nly an analysis that includes all of the games televised ... will properly account for the number of games" those RSNs paid to present;³⁸ and
- (iv) Mr. Perlman's use of 2012-2016 data to derive assumptions about what portion of 2017-2021 revenue should be attributed to OTA is improper speculation;³⁹

³⁶ See Orioles/MASN Post-Hearing Br. ¶¶69-78, 84-92; Exs. 2034-2038 (identifying Core DMAs); Broderick Reply ¶¶83-89.

³⁷ See Orioles/MASN Post-Hearing Br. ¶63; Hearing Tr. 283:4-284:19 (Perlman).

³⁸ See Orioles/MASN Post-Hearing Br. ¶¶64-65; Broderick Reply ¶¶61-64.

³⁹ See Orioles/MASN Post-Hearing Br. ¶66.

- (v) Mr. Perlman’s reliance on Recent Big Market Deals is inappropriate—not only did the RSDC reject the use of the Phillies and Astros in the comparables analysis done in connection with the 2012-2016 period, but “rights fees that are not in shared markets are not comparable because the clubs’ rights do not compete with another team;”⁴⁰ and
- (vi) Mr. Perlman relies on NDLR data when assessing the value of the Los Angeles Dodgers’ deal, even though MLB has said FIQ data should be used in calculating the value of that deal.⁴¹

The Orioles/MASN argue that, when properly performed, the Comparables Analysis confirms that the fair market value of the Rights Fees for the 2017-2021 Period is at or above what MASN actually paid. *See, e.g.*, Broderick Reply ¶¶102-105; Orioles/MASN Post-Hearing Br. ¶82.

Putting aside the more granular errors the Orioles/MASN contend Mr. Perlman made, the Committee is concerned that for the 2017-2021 Period there are no deals that can be properly included in an economically valid comparables analysis. There are no deals at all struck by any of the RSDC Eight in the twelve months preceding January 1, 2017, and the economics of the RSN industry became increasingly foreboding during that year.⁴² Both parties have persuasively argued that the market for rights fees changed in the 2016-2017 period and, as a result, earlier

⁴⁰ *See* Orioles/MASN Reply Br. ¶130; Broderick Reply ¶91 (“during the 2017-2021 period, teams in shared markets earned normalized rights fees that were [REDACTED] less than teams in single-team markets” (emphasis in original); *see also id.* ¶¶90, 92-95.

⁴¹ *See* 2023 Bortz Report ¶100; 3/24/2023 Letter from Williams & Connolly (Ex. 2026); 1/6/2014 letter agreement between Mark Walter and Robert Manfred (Ex. 2027).

⁴² As discussed below, the Committee adheres to its conclusion in the 2019 Award that the RSDC Eight are the appropriate comparators. *See* 2019 Award (Ex. 5) at 45.

deals are of limited use in a comparables analysis intended to assess the fair market value of Rights Fees for the 2017-2021 Period. *See* Perlman Report ¶¶16, 50 (2006 “was a very different market than 2016 when the parties were to negotiate” the Rights Fees for the 2017-2021 Period); Nationals Post-Hearing Br. ¶57 (“most deals in the ‘RSDC Eight’ were stale as of 2016”); Hearing Tr. 224:16-21 (Perlman) (“One, I did want to sort of suggest to the RSDC that they take into account recency a little more. ... As you’ll see, some of the deals that are in the RSDC eight are ten-plus years old, and markets change quickly.”); *id.* at 225:5-9 (Perlman) (“I focused on other teams in the top ten DMAs, as well as deals that had been out since 2013 or later, so recent deals, because, again, that has more of a bearing on the fair market value. It’s what the market will bear.”); Orioles/MASN Opening Br. ¶¶59-60 (“Notably, subscriber loss figures, as well as analyses during the period of 2015-2017, indicate that the paradigm shift began at a point in 2016 or early 2017”); Orioles/MASN Post-Hearing Br. ¶59 (“Deals entered into before the late-2016/early-2017 market shift are not indicative of teams’ rights fees negotiated in 2017-2021. The evidence demonstrated that in late 2016 and 2017, cord cutting rapidly accelerated.”); MLB January 2016 Long Term Planning Presentation (Ex. 2074) ([REDACTED] [REDACTED]).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

the 2017-2021 Period, the Committee declines to give any weight to a Comparables Analysis in its calculation of the fair market value of the Rights Fees. This decision is entirely a product of the state of the industry at the inception of the 2017-2021 period and the state of the record in this proceeding. As it has in this proceeding, in future proceedings the “RSDC will review the rights fees obtained by other similarly situated Clubs in arm’s length transactions with RSNs as a benchmark.” Thirty-Fourth Report (Ex. 6) at 5.

3. Prejudgment Interest

In their Reply Brief, the Nationals requested prejudgment interest, as well as the “costs of debt the Nationals assumed to address the shortfall in rights fee payments, and costs associated with consultant fees to prepare these submissions, legal fees, and any other expenses the RSDC determines should be awarded.” *See* Nationals Reply Br. ¶104.⁴⁵ However, in the 2019 Award the Committee concluded that it lacked authority to award prejudgment interest, costs, or expenses because “its authority runs no further than determining the fair market value of the rights at issue”—and that decision was later specifically addressed and upheld by the New York Court of Appeals. *See* 2019 Award (Ex. 5) at 16-17; *see also* 2005 Agreement (Ex. 2) § 2.J.3; *see also* *TCR Sports Broad.*, 40 N.Y.3d at 87. The Committee is bound by the Court of Appeals’ conclusion that the Committee lacks authority to award pre-judgment interest, costs, and expenses. Accordingly, the Committee denies the Nationals’ request for prejudgment interest, costs, and expenses.

⁴⁵ The Nationals did not reassert their request for costs and fees in their post-hearing brief. Nor, the Committee notes, did the Nationals provide the Committee with any calculations identifying the amount of prejudgment interest or costs the Nationals were entitled to receive.


III. Conclusion

The Committee has considered the Parties' remaining contentions and finds them to be without merit.

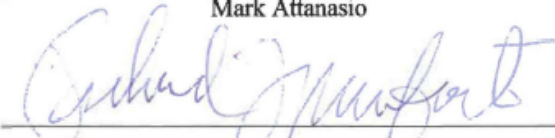
The Committee concludes that the fair market value of MASN's rights to the telecast of each of the Orioles and Nationals is as calculated in § II(C)(iv), *supra*, as adjusted for Covid:

| | 2017 | 2018 | 2019 | 2020 ⁴⁶ | 2021 | Average Annual Value |
|------------------------------|-----------------|-----------------|-----------------|--------------------|-----------------|----------------------|
| Unadjusted | \$64,979,408.93 | \$68,722,998.49 | \$70,794,713.31 | \$72,256,103.69 | \$72,839,427.53 | \$69,918,530.39 |
| Post-Covid Adjustment | \$64,979,408.93 | \$68,722,998.49 | \$70,794,713.31 | \$26,761,519.86 | \$72,839,427.53 | \$60,819,613.62 |

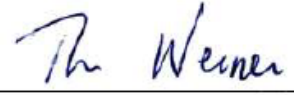
Dated: November 8, 2023



 Mark Attanasio



 Richard L. Monfort



 Thomas C. Werner

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⁴⁶ The Committee relied on the August 11, 2020 letter from J. Ziegler to T. Towne (Ex. 2008) to calculate the Covid adjustment for 2020.