

## *Hypothetical*

### *Negotiating and Drafting Media Rights Agreements Between Media Entities and Professional Sports Franchises*

- A. Assume that the Los Angeles Clippers, who recently learned that ESPN Radio 710 will not be renewing their broadcasting contract for next year, are looking for a new radio broadcasting outlet. Further assume that the new radio broadcaster will have the ability to broadcast all 82 regular-season games, any playoff games, as well as pre-and post-game coverage and preseason games. The Clippers are looking for a radio-broadcasting outlet with a strong presence in the marketplace and for a dynamic broadcasting team. In the provision of the broadcasting agreement that addresses advertising sales, the Clippers must ensure that they do not violate nor do they permit the radio broadcaster to violate their category exclusivity deal with their Naming Rights Sponsor, Staples, and their top-tier sponsor, JetBlue. The team is interested in using the game broadcasts to create content on its own webpage. If the team does a deal with FOXSPORTS, as it is contemplating, it would like to negotiate a deal with all FOX affiliates in Southern California. This will enable the Clippers to “outflank” the Lakers, who have just stolen ESPN from the Clippers.
- B. FOXSPORTS Radio is interested in finalizing a broadcasting agreement for the games, especially because the Clippers have talented and young new players and have traded for top-notch veterans, and therefore the team is expected to turn around and draw much interest next year. FOXSPORTS is also interested in garnering advertising space in the Staples Center, selling on-air advertising during Clippers= games, and having exclusive interviews with the players and coaches. Further assume that FOXSPORTS is interested in airing the broadcasts online at its website, so as to increase traffic at its website. (For the purposes of this negotiation, assume that the NBA already owns satellite rights and does not need to go out and acquire these rights.
- C. **How you would negotiate and draft the following clauses:**
1. Term
    - a. Do the Clippers/FOXSPORTS want a long-term deal, or a one-year deal? How does the fact that the Clippers are poised for an increase in their fanbase, but that this is not guaranteed, affect the term duration?
    - b. Consider how the language you draft will account for flexibility in response to scheduling changes.
    - c. At the end of the term will the Team/Radio outlet have any options for extension/renewal? If so, what is the notice window? Will FOXSPORTS have a right of first refusal/first negotiation.
  2. Rights, Duties and Obligations of FOXSPORTS Radio
    - a. What will the scope of the radio broadcast be?
    - b. Will the game be “simulcast” on the internet? At whose website? Who has the right to “archive” these broadcasts? Will they be available to users after the game?
    - c. Who will be responsible for purchasing and maintaining equipment and providing technical support?

- d. Is there a level of quality that the Clippers will demand for the broadcast?
- e. Is FOXSPORTS obligated to promote the Clippers, JetBlue, or Staples? If so, how frequently?
- f. How long will the pre-and post-game segments be?
- g. What Staples Center advertising will FOXSPORTS have under this agreement? Consider the use of ribbon boards, signs, advertisements on tickets and in game books, scoreboard announcements, video boards, etc.
- h. Will FOXSPORTS get access to a luxury suite, VIP treatment, or complimentary tickets?
- i. Can FOXSPORTS hold its own fan giveaways and contests from time to time before, during or after Clippers= games? What about the ability to set up a booth in the parking lot or a stand to sell radios in the Staples Center?
- J. What, if any, in stadium signage will FOX receive? Can FOX also advertise its “affiliated companies,” including FOX television and its movie divisions, or will it be limited to its radio affiliates?

3. Rights, Duties, and Obligations for the Los Angeles Clippers

- a. Will the Clippers or FOXSPORTS put together the “broadcasting team”? Will the party who does not put the team together have approval rights?
- b. How much of the commercial inventory during the game will the team have the right to sell, and how much will it give to FOXSPORTS? Are there any restrictions on to whom FOXSPORTS can sell the advertising time? Consider a restriction on the Clippers from selling radio inventory to FOX competitors. Will it be a material breach if the Clippers do so?
  - 1. The following comprises the available inventory: 15 minutes pre-and post-game, and four minutes per quarter. Thus, the total amount of inventory is 66 minutes. The rate card calls for \$ 20 per minute for pre-and post-game spots, and \$40+ per minute for in-game spots.
  - 2. Who must compensate an advertiser who calls in if advertisement is cut short or botched by a negligent broadcaster, and the advertiser complains?
- c. Do the Clippers have the obligation to promote FOXSPORTS radio during the game, at the Staples Center, in its promotional materials, etc?
- d. Will the Clippers grant FOXSPORTS the recognition of “flagship station”?
- e. Are the Clippers obligated to provide access to or interviews with players and coaches? Will the players, coach or mascot make an appearance at FOXSPORTS events?
- f. Will the Clippers generate non-traditional revenue for on-site pre-and post-game radio broadcasts sponsored by FOX? Consider a special deal for “Thirsty Thursdays” and “Family Sundaes.”

- g. Will the Clippers demand a “measure of effectiveness” of the switch from ESPN to FOX to show an improvement (or not) in ratings and thereby adjust the rights fees FOX will have to pay during the contract term?

4. Ownership of and Rights to the Broadcast

- a. Who will own the audio recording of the broadcast?
- b. Will the owner grant the other party a license to use the broadcasts? What will the scope of such license be?
- c. Will the parties be able to transform the broadcast into other media, e.g. podcasts?
- d. Who will be responsible for stopping the “piracy” of any broadcasts?
- e. Who will indemnify whom if there is defamation, obscenity, or some other offense during the broadcast? What if a player or coach utters such things? What if the broadcaster is intoxicated (e.g. Tropic Thunder/Major League)?
- f. Is there an anti-disparagement clause whereby the broadcasters cannot bad mouth the Clippers, coaches, owners, etc?

5. Grant of Right to Use Name and Logo

- a. If the parties covenant to promote one another in the “Rights, Duties, and Obligations” sections, draft a supplementary grant of right to use name and logo.

6. Representations and Warranties

- a. Draft a set of representations and warranties from each side to the other.
- b. Examples of representations and warranties might be authority to enter into the transaction, possession of necessary licenses and government approvals, and, as in the *Mets* litigation, absence of conflicting agreements or other third party rights.