

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051
MINORITY (202) 225-5074
<http://oversight.house.gov>

April 11, 2019

Mr. Robert Manfred
Commissioner
Major League Baseball
245 Park Avenue
New York, N.Y. 10167

Dear Commissioner Manfred:

Baseball is America's national pastime, and we want to ensure that it remains vibrant, competitive, and accessible for future generations. We also strongly support local teams, particularly given how much they do for our cities and states, our local businesses, and the families in our communities.

We are writing today regarding recent reports that Major League Baseball (MLB) may be submitting a final bid to purchase as many as 21 regional sports networks (RSNs) that the Walt Disney Company is divesting following its purchase of assets from 21st Century Fox.¹ MLB's potential purchase of these RSNs raises significant questions about the antitrust exemption that professional baseball has enjoyed for nearly a century.

The 21 RSNs being sold hold broadcast rights for 14 MLB teams, as well as 17 National Basketball Association (NBA) teams and 12 National Hockey League (NHL) teams. Six of these RSNs do not broadcast MLB games and are instead limited to NBA games, NHL games, or both.² According to some observers, the acquisition of RSNs by MLB would "mark a significant change to the league's business model" and would be the "first time a major sports league has owned regional cable television networks."³

¹ *Fox Regional Sports Network Sale Nears Conclusion as Final Round Bids Come Due April 15*, Fox Business (Mar. 25, 2019) (online at www.foxbusiness.com/features/fox-regional-sports-network-sale-nears-conclusion-as-final-round-bids-come-due-april-15).

² *The Bids Are In for RSN Sale*, Sports Business Journal (Nov. 12, 2018) (identifying 22 RSNs for sale, one of which was ultimately not included in the auction) (online at www.sportsbusinessdaily.com/Journal/Issues/2018/11/12/Media/RSNs.aspx).

³ *Fox Regional Sports Network Sale Nears Conclusion as Final Round Bids Come Due April 15*, Fox Business (Mar. 25, 2019) (online at www.foxbusiness.com/features/fox-regional-sports-network-sale-nears-conclusion-as-final-round-bids-come-due-april-15).

Although the Supreme Court has upheld baseball's unique, judicially-created antitrust exemption for nearly a century on the basis of *stare decisis*, the Court has also described the exemption as an "aberration" and recognized Congress' ability to limit or even eliminate it.⁴ Indeed, Congress limited the scope of the exemption in 1998 to exclude players' employment agreements.⁵

You recently described the idea of MLB "having more control over local rights" as "really intriguing." You stated: "If we do the transaction, we'll do it on the theory that we will try to accumulate more."⁶

We are concerned that MLB's potential expansion of its business to RSNs could increase the risk of anticompetitive conduct that harms American consumers and, in turn, baseball itself. This potential expansion also raises the question of whether additional limits on the league's antitrust exemption are warranted.

This is not the first time questions have been raised about potentially anticompetitive conduct by MLB. In 2012, fans brought a class action suit challenging the territorial restrictions MLB placed on the broadcasting of baseball games. The case ultimately was settled after a federal district court held that MLB's antitrust exemption does not apply "to a subject that is not central to the business of baseball, and that Congress did not intend to exempt—namely baseball's contracts for television broadcasting rights."⁷

For these reasons, we request that you produce all documents for the time period from January 1, 2017, to the present referring or relating to:

1. MLB's potential acquisition of RSNs;
2. MLB's potential operation of RSNs, including but not limited to MLB's involvement in determining operating margins that RSNs should achieve;
3. Any strategies, plans, or efforts to use MLB's control over baseball content or distribution to MLB's advantage in acquiring RSNs, including by impacting the sale price or content availability for any RSN; and

⁴ See, e.g., *Flood v. Kuhn*, 407 U.S. 258 (1972) (upholding baseball's antitrust exemption but noting: "If there is any inconsistency or illogic in all this, it is an inconsistency and illogic of long standing that is to be remedied by the Congress, and not by this Court.").

⁵ *Curt Flood Act of 1998*, 105th Cong. (1998).

⁶ *MLB Hopes to Gain Control of Local Broadcast Deals*, Associated Press (Mar. 27, 2019) (online at www.apnews.com/543763b9f20d4ed3b026bf36f22a6198).

⁷ *Laumann v. National Hockey League*, 56 F. Supp. 3d 280 (S.D.N.Y. 2014). See also *MLB TV Settlement is 'Big Win for Baseball Fans'*, Washington Post (Jan. 19, 2016) (online at www.washingtonpost.com/news/early-lead/wp/2016/01/19/mlb-tv-settlement-is-big-win-for-baseball-fans/?utm_term=.abd3cf7a7bf6).

Mr. Robert Manfred

Page 3

4. Any strategies, plans, or efforts to use MLB's control over baseball content or distribution to MLB's advantage in operating RSNs, including to give MLB a competitive advantage over competing networks.

We request that you produce these documents, as well as a briefing for Committee staff on these issues, by April 25, 2019.

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X.

An attachment to this letter provides additional instructions for responding to our request. If you have any questions, please contact Committee staff at (202) 225-5051.

Thank you for your attention to this matter.

Sincerely,



Elijah E. Cummings
Chairman



Raja Krishnamoorthi
Chairman
Subcommittee on Economic and
Consumer Policy

Enclosure

cc: The Honorable Jim Jordan, Ranking Member

The Honorable Michael Cloud, Ranking Member
Subcommittee on Economic and Consumer Policy

Responding to Oversight Committee Document Requests

1. In complying with this request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.
2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.
4. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions.
5. Documents produced in electronic format should be organized, identified, and indexed electronically.
6. Electronic document productions should be prepared according to the following standards:
 - a. The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - b. Document numbers in the load file should match document Bates numbers and TIF file names.
 - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - d. All electronic documents produced to the Committee should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,

INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.

7. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
8. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.
9. When you produce documents, you should identify the paragraph(s) or request(s) in the Committee's letter to which the documents respond.
10. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.
11. The pendency of or potential for litigation shall not be a basis to withhold any information.
12. In accordance with 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
13. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
14. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
15. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) every privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the privilege(s) asserted.
16. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control.
17. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

18. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.
19. All documents shall be Bates-stamped sequentially and produced sequentially.
20. Two sets of each production shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2105 of the Rayburn House Office Building.
21. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic

message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term “including” shall be construed broadly to mean “including, but not limited to.”
5. The term “Company” means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.
6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; (b) the individual’s business or personal address and phone number; and (c) any and all known aliases.
7. The term “related to” or “referring or relating to,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term “employee” means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
9. The term “individual” means all natural persons and all persons or entities acting on their behalf.