

THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

NEW YORK JETS LLC and JETS DEVELOPMENT LLC, x

Plaintiffs, :

-against- :

CABLEVISION SYSTEMS CORPORATION,
CSC HOLDINGS, INC., and
MADISON SQUARE GARDEN LP, :

Defendants. :

Hon. HAROLD BAER, JR., District Judge: x

While the movant has any number of strings to its bow, the one that gives me the most pause is what I'll call the Noerr Pennington string, see E. R.R. Pres. Conf. v. Noerr Motor Freight, Inc., 365 U.S. 127 (1961), and Mine Workers v. Pennington, 381 U.S. 657 (1965), and whether the holding spelled out by the Supreme Court in those cases and their progeny is, when juxtaposed with the facts here, sufficient to provide immunity for the defendants and thus a winning motion. After some thought, to engage in an analysis of the relevant market, anti-competitive behavior, anti-competitive injury, and the remaining State law claims might turn out to have been wasted effort.

Consequently, while victory in 12(b)(6) motions and especially in Sherman Act § 2 cases are fraught with problems, I am ready, indeed anxious, for further education with respect to the issue of political versus commercial speech. Other than some allegations in the Complaint and some less than illuminating exhibits there is very little to go on. Consequently, to help me resolve this issue the parties have 30 days for discovery of whatever sort they think helpful, on this issue alone. Assuming there is a continuing interest to pursue this matter at all with its attended expense, simultaneous briefs of no more than 15 pages, not including exhibits, will be due on August 30, and should either party request oral argument, let me know and it will take place at 2 p.m. on September 26, 2005.

IT IS SO ORDERED

New York, New York

July 21, 2005

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U.S.D.J.