

Sotomayor Law

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Mediation & Arbitration Services

Should Arbitration Be Used to Decide the Terms of a Business Deal?

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According to a number of California Congressmen, and the Chairman of the Federal Communications Commission, arbitration would be a good way to resolve the dispute between Time Warner Cable and television providers regarding the cost and manner of getting TV coverage of Dodger baseball games out to the public.

Apparently in the interest of the Dodgers TV-viewing public, these Congressmen and the FCC Chairman sent letters to DirecTV and Time Warner Cable Chief Executives urging the disputing entities to commit to "binding arbitration" in which the arbitrator would determine the price and the terms under which cable television subscribers could watch the Dodgers' network, SportsNet LA.

Time Warner Cable acquired the rights to distribute access to the Dodgers network in a "record-breaking" deal that most expect would result in substantial rate hikes. Negotiations with DirecTV and other distributors regarding the cost of providing the programming to consumers have been stalled. The TV distributors have refused to carry the channel, and fans have been unable to follow Dodger games on TV.

Although Time Warner Cable expressed interest in the arbitration process, others have dismissed its approach as a public relations tactic. DirecTV and other distributors have not been as receptive. They view the tactic as designed to potentially force rate hikes on consumers who have no interest in the sports programming.

Leaving the terms of business deals in the hands of an arbitrator is risky business. When it comes to the business context, arbitrators should be called in to resolve disputes over deals that are already done. An arbitrator should not be a random or unapproved designee for business negotiators' principals and constituents. The terms of business deals should be left to the businesses themselves. If the businesses cannot come to a meeting of the minds, the very validity of the arbitrator's decision to impose deal terms could be in question.

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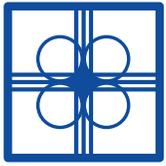
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Even if that consequence were avoidable, businesses that answer to consumers' demand should remain the sole "arbiters" of the business deals they develop on their customers' behalf. Delegating that role to a third person relinquishes control that is best left in the hands of those responsible for the interests of the companies and their customers.

The facts in this post are based on Los Angeles Times articles, "Time Warner Cable says yes to arbitration to end Dodgers TV standoff," <http://www.latimes.com/entertainment/envelope/cotown/la-et-ct-dodgers-time-warner-cable-arbitration-20140728-story.html>, and "Lawmakers, FCC chairman urge arbitration over Dodgers channel," <http://www.latimes.com/entertainment/envelope/cotown/la-fi-ct-dodgers-arbitration-20140730-story.html>.

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