

ORGANIZED CRIME KEEPS BETTER BOOKS

Big Money TV Negotiation Needs a Clearer Paper Trail



When General Electric bought NBC in 1986, its financial people were aghast at what they did not find in the files. More than a billion dollars on the books for that year, but not one agency-signed contract.

If Jack Welch had bought J. Walter Thompson instead, he would have fared no better. Dozens of order letters to the TV networks detailing what had been bought, but no network-signed copy. It's the same today. After weeks of negotiation and specification leading to a deal, no one wants to go on record.

Eight Billion Dollars Upfront on a Handshake

Television buyers and sellers are not embarrassed by this commercial malpractice. Far from it. They exult in the informal nature of the TV marketplace. *Eight billion dollars upfront on a handshake. Wow!* They point-out that it is the relationship, the trust and the unwritten rules of what is and what is not done that makes the business work. To my wife it sounds a lot like dealing with Tony Soprano.

But the absence of a signed contract is parsley. The red-meat issue is “how did the negotiation actually proceed?” Buyers and sellers start many dollars apart. Negotiation is give-and-take. What was given and what was taken?

Few advertisers, whose money is being spent, have a clue. In those frantic hours of negotiation, their agency may have traded away day parts, programs, days of the week, weekly scheduling, cancellation protection -- none of them trivial chips -- to arrive at a CPM acceptable to the advertiser.

Without questioning the outcome, financial people might ask, “how did we get here?” Where is the paper trail from the initial offering to the final deal? Exactly what is it we gave up, why and when?

On the Back of an Envelope

Not an unreasonable request for information -- except in television. In fact it's hard to imagine a giant corporation spending millions on anything else and not getting those answers. But that is not the kind of information buyers are asked to provide.

The common practice of negotiating TV on the back of an envelope is not limited to network and it is risky. In 1998, Miller Brewing sued Bates and Zenith Media Services for \$6.9 million, plus damages, for spot TV under delivery.

Miller claimed the agencies had not used their best efforts to buy television at the lowest cost to Miller, although this was the contractual agreement. The suit was settled, but regardless of what actually happened,

there was no paper trail, which might have allowed the agencies to claim they had made an honest effort.

An Open Market for Television

In many ways an open market would be better than the one-on-one clandestine negotiations of today. Like Wall Street, it would give more buyers and sellers better information and a paper trail. It would probably result in lower television costs to advertisers. Open markets have done just that for other procurement.

That's why the idea of an open "hedge market" in television, as proposed by Enron, the H.J. Heinz reverse auction for cable time and the general idea of Media E-Markets - online media exchanges where all buyers and all sellers can meet to set price - has created interest and opposition.

Big sellers are reluctant; claiming central exchanges will turn all of television into a "commodity." But fear of commoditization, though real, is a diversion. Neither the TV networks nor the mega-media agencies are interested in an enabled open market for the same reason. It would cost them competitive advantage.

Why Give the Small Guys Equal Access?

Why would a major television network with a battalion of sales-people covering clients across the country want to give smaller sellers equal access? And why would a major agency, with many buyers and contacts with all sellers want to give smaller agencies equal access?

No, the big guys like things as they are and the lowest price to advertisers is not the central issue to either party. There is no complicity here, simply shared interests. But the point is clear. At least an open market would let demand set price.

There are benefits in buyers and sellers getting to know each other well enough to keep things informal, but there are also best practices in business, which say, "Write it all down."

If we do that, perhaps both parties will be willing to sign it.

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