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Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

Federal Communications Commission  
Office of the Secretary

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In the Matter of )  
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Review of the Policy Implications )  
of the Changing Video Marketplace )  
\_\_\_\_\_

MM Docket No. 91-221

OPP

To: The Commission

**REPLY COMMENTS OF  
MAJOR LEAGUE BASEBALL**

Major League Baseball ("Baseball") submits the following reply comments in response to the Commission's Notice of Inquiry, FCC 91-215 (August 7, 1991).

**BACKGROUND**

The Commission's Office of Plans and Policy Working Paper 26 ("OPP Report") correctly notes that Baseball entered into an agreement with ESPN that "increases the number of [Major League Baseball] games available nationally to cable subscribers. . . ." OPP Report at 79. That agreement authorizes ESPN to televise some 175 regular season games during each of the years 1990 through 1993. As a result, more than 50 million households around the country will be able to view a significant number of Baseball games that would not otherwise be televised in their geographic areas.

The OPP Report, however, goes on to suggest that the ESPN contract has caused "some over-the-air viewers to lose access to baseball telecasts." OPP Report at 79. The Association of Independent Television Stations ("INTV") likewise has filed comments complaining about the exclusivity provisions in the ESPN agreement and the alleged "migration of popular sports events telecasts to cable or pay media." Both the OPP Report and the INTV comments present an inaccurate picture of the availability of over-the-air Baseball telecasts to the American public.<sup>1</sup>

#### DISCUSSION

A. The ESPN And Other Cable Contracts Have Not "Siphoned" Baseball Telecasts From Free Over-The-Air Television

Baseball's contract with ESPN has not resulted in a diminution of the total number of Baseball games televised by conventional broadcast stations. To the contrary, in 1991 there were a total of 1,674 local, free over-the-air telecasts presented by the clubs' flagship stations -- a record high. By way of

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<sup>1</sup> Attachment A hereto is a paper prepared by the Office of the Commissioner of Baseball entitled "Major League Baseball and Television - A Look Ahead." That paper, prepared in 1990, discusses in greater detail the nature and basis for Baseball's telecasting arrangements under the ESPN and CBS national contracts.

comparison, there were 1,485 such Baseball telecasts in 1984 and 1,370 such telecasts in 1979.

Furthermore, individual Baseball clubs and their flagship stations have sought to increase both the number of regional over-the-air stations that carry their telecasts, and the number of games carried by those stations. In addition to the 24 U.S. flagship stations, the clubs have authorized the carriage of free over-the-air telecasts on approximately 200 broadcast stations located in the nation's smaller and medium sized communities.

As these data make clear, there is simply no basis for the claim that ESPN and other cable programmers have been "siphoning" Major League Baseball telecasts from free over-the-air television. The ESPN and other cable contracts have served as a supplement to, rather than a substitute for, local club telecasts. They have brought to millions of fans many Baseball games that otherwise would not have been televised at all.<sup>2</sup>

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<sup>2</sup> There has been a decrease in the number of national network telecasts of regular season Baseball games. Baseball's agreement with CBS calls for a total of 16 such telecasts on weekend afternoons during each of the 1990-93 seasons; previously, there were a total of 30 such telecasts. The reduction in network telecasts, however, does not reflect migration of Baseball to cable. Rather, it is a response to steadily declining national ratings, and the result of a competitive

[Footnote continued on next page]

B. The ESPN Contract, Including Its Limited Exclusivity Provision, Is Pro-Competitive And Consistent With The Public Interest

Under the terms of its agreement with Baseball, ESPN televises games on Sunday, Tuesday, Wednesday, and Friday nights, as well as on Opening Day, Memorial Day, Independence Day and Labor Day. ESPN has no exclusivity whatsoever with respect to its Tuesday and Friday telecasts. Nor does it have any exclusivity for the telecasts on Opening Day, Memorial Day, Independence Day and Labor Day. The exclusivity granted ESPN on Sunday nights affects only those clubs featured in the particular ESPN telecasts.<sup>3</sup> INTV, however, complains that the exclusivity afforded ESPN for Wednesday

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[Footnote continued from previous page]  
bidding process in which only one network expressed any desire to telecast a Baseball game each weekend. Under the CBS contract, Baseball's "crown jewels" -- the All-Star Game, League Championship Series and World Series -- remain on free over-the-air television. The reduced number of national broadcast network telecasts (which had been afforded exclusivity) also permits the telecast of an increased number of games by local stations, with their demonstrated higher appeal to local audiences.

<sup>3</sup> In general, the two featured clubs may not present any telecast of the game televised by ESPN. However, this limited restriction may not affect any club more than three times in any one season. Clubs other than the featured clubs may schedule games and authorize cable or free telecasts (except on superstations) at the same time as the ESPN games. It should be noted that in past years Baseball games rarely have been played on Sunday night.

nights -- against competing over-the-air telecasts of Baseball games -- is "contrary to the public interest."

INTV's complaints about the limited Wednesday night exclusivity are wholly unfounded. Each club retains the right to present at least 130 games on over-the-air television each season.<sup>4</sup> This is far more than the average club has in fact been able to license. Indeed, 23 of the 26 clubs place no more than 75 games on free television; while some clubs have sought to expand the number of free over-the-air telecasts, they have not found a market for such additional telecasts. Contrary to INTV's claims, the issue here is not availability, but simply scheduling.

INTV's references to the Supreme Court's 1984 NCAA decision are off the mark. See NCAA v. Board of Regents of the University of Oklahoma, 468 U.S. 85 (1984). The limited Wednesday exclusivity provision cannot be evaluated in isolation, but must be considered in the context of the entire ESPN contract. Baseball's agreement with ESPN bears no resemblance to the NCAA

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<sup>4</sup> The Wednesday night exclusivity afforded ESPN affects a maximum of 25 games per club. The Sunday night exclusivity afforded ESPN affects a maximum of three games per club. The exclusivity afforded CBS affects a maximum of four games.

It also should be noted that the Wednesday night ESPN exclusivity is comparable to that which had been demanded (and afforded) to the broadcast networks in past years.

arrangement, which prohibited member institutions from licensing independent broadcasts of their games (with only non-consequential exceptions). In stark contrast to the NCAA members, Baseball clubs retain extensive rights to authorize (and in fact do authorize) hundreds of over-the-air and cable telecasts of their games.

Furthermore, the ESPN agreement adds substantially to the total "output" of Baseball telecasts. It makes available each season some 175 games to more than 50 million households; the potential and actual total "viewership" of Baseball games (taking account of numbers of games and households) is thus far in excess of what it would have been absent the agreement. The ESPN agreement (including its limited exclusivity provisions) also stimulates competition between broadcast and cable; it is plainly pro-competitive and consistent with the public interest.

C. The Cable Compulsory License And The Commission's Exclusivity Policies Decrease The Interest Of Over-The-Air Broadcasters In Carrying Baseball Telecasts

Baseball remains committed to ensuring the availability of its telecasts for free over-the-air television. Indeed, there are a number of clubs that would like to be able to increase the number of games broadcast by flagship and regional network stations.

Unfortunately, however, many stations around the country have not had an interest in such games. The lack of a market for additional over-the-air Baseball telecasts in many areas is attributable, at least in significant part, to two federal governmental policies.

One such policy is the cable compulsory license embodied in Section 111 of the Copyright Act. As a result of the compulsory license and the growth of satellite-delivered superstations, cable systems may import a vast number of telecasts of Baseball games. Indeed, seven superstations (WTBS, WGN, WWOR, WPIX, WSBK, KTVT and KTLA) are all flagship stations of Baseball clubs and collectively broadcast more than 600 games each season. Many broadcast stations -- whether flagships or (more typically) regional networks -- are understandably reluctant to increase the number of their game broadcasts when their local coverage areas are inundated with superstation telecasts of Baseball games.

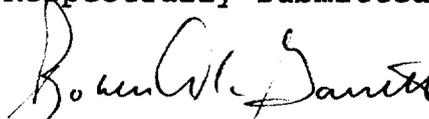
The second policy is reflected in the Commission's decision not to permit television stations to enforce the exclusive rights licensed them by Baseball clubs. See Memorandum Opinion and Order in CSR 3441 (released October 1, 1991). Broadcasters (as well as Baseball) had urged the Commission to protect such exclusivity rights, explaining that the lack of exclusivity significantly decreased broadcasters'

interest in televising Baseball games. The Commission's refusal to do so is itself an important contributing factor to the inability of many Baseball clubs to increase their over-the-air coverage, particularly on regional networks.

CONCLUSION

For the reasons stated above, it is incorrect to suggest that Baseball's contract with ESPN has deprived viewers of free over-the-air telecasts, and that there has been a "migration" of Baseball telecasts from free television to cable. Baseball also believes that the repeal of the cable compulsory license and reexamination of the Commission's decision in CSR 3341 will help promote increased availability of Baseball telecasts on free over-the-air television.

Respectfully submitted,



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MAJOR LEAGUE BASEBALL AND TELEVISION - A LOOK AHEAD

Baseball's future on national television will be expanded and deepened by both the CBS and ESPN contracts. The changes in the way Major League Baseball games will be telecast nationally beginning in 1990 will provide more viewing opportunities for baseball fans than ever before. As in the past, however, the national and local distribution of games will continue to provide substantial numbers of telecasts on both over-the-air and cable television.

The Current Market

Over the past few years, ratings have unfortunately steadily declined for baseball telecasts. NBC's Saturday afternoon telecasts have dropped from an average rating of 6.1 in 1984 to 5.5 in 1988 and an average of only 4.8 so far in 1989 through the end of May. Saturday afternoon telecasts have been losing viewers on a regular basis to the point where fewer than five million households viewed the average Saturday afternoon baseball Game-of-the-Week in 1988. While this trend developed, an increasingly large number of complaints were being received by MLB from fans concerning the repeated appearance of larger market clubs on the Game-of-the-Week. Of the 40 national exposures on NBC and ABC in 1988, only three did not feature a club from New York, Chicago or Los Angeles.

Prime-time baseball telecasts have fared even worse in relative terms. ABC's regular season rating dropped from an average of 18.8 in 1984 to 8.1 in 1988. Prime-time network Baseball has simply not delivered, in television terms, a competitive audience. This problem was heightened by the fact that individual clubs could more efficiently market their games to local fans by retaining local prime-time rights. Additionally, Baseball's current network partners chose not to utilize purchased prime time programming due to decreasing ratings. Considering the growing popularity of baseball, the inescapable conclusion is that national telecasts of regular season games have not been delivering audiences consistent with the increasing interest in the game.

The Future

In response to this trend, Major League Baseball will embark on a new approach beginning in 1990. Between network and cable television, the viewing of nationally televised baseball games will rise dramatically in 1990 and beyond--providing national coverage of the game to a vastly wider audience. The 40 nationally televised regular season games during the 1988 season on ABC and NBC produced approximately 221.4 million viewing households. It is estimated that viewing of the 12 CBS regular season games in 1990 plus the 175 games on ESPN will total 321.9 million viewing households--an increase of over 45%.

In 1990, Baseball will have a regular season presence on national network television, will allow the opportunity for increased local exposure, and will display the bulk of the regular season in a way

never before possible via cable, which is available for purchase in nearly 90% of the country's households. According to the Paul Kagan Media Index (4-14-89), 77.2 million of the country's 90 million television households are passed by cable. ESPN reaches 51.1 million of these homes and is also available for purchase by the 2,500,000 homes with satellite dishes. An important consideration in ESPN's selection was its availability to more homes than any other cable network. Just as important, in almost all cases ESPN is available on basic cable, meaning that viewers will pay only basic charges to receive it.

While cable is not available in some geographic areas, the inclusion of backyard dish subscribers brings availability of CBS and ESPN programming to most of the nation's remaining television households. In all, only about 11% of U.S. TV households do not own satellite dishes and are presently unserved by cable. Some of these unserved by cable are in major cities such as New York and Philadelphia, where many games are available on free over-the-air television. The expected wiring of the major cities will augment our reach even further.

The most noteworthy side effect of the CBS and ESPN contracts is the opportunity for increased local telecasting of baseball games. Contrary to popular belief, in each of the past five seasons, Baseball's clubs have increased the numbers of games available industry-wide on local, free over-the-air television. There were: 1485 such games in 1984, 1536 in 1985, 1578 in 1986, 1597 in 1987 and 1648 in 1988. The same number, 1648, are scheduled for 1989. Over 20 times each season, Baseball's current contracts with NBC and ABC require deletion of local telecasts in favor of national exclusivity. The new CBS and ESPN contracts reduce the number of "mandatory deletions" to fewer than 10. The net result will be increased local game telecasts, which the ratings show fans clearly favor.

The CBS and ESPN arrangements have numerous other attractive elements for baseball fans. The packages will permit baseball viewing on Sunday nights. A special package featuring all 26 Clubs will include viewing from early evening to late at night on Tuesdays and Fridays as well as viewing nearly all day on Opening Day, Memorial Day, Independence Day and Labor Day. The ESPN agreement will permit those who work late -- for instance, workers on evening shifts -- to watch late night games twice a week. ESPN will provide a daily baseball program and numerous special programs. Perhaps best of all, ESPN will, for the first time, switch from a regularly-scheduled telecast to any other game in progress...in order to cover a potential no-hitter, record-breaking event or other matter of extreme interest to viewers. Although there has always been national interest in no-hitters, record breaking streaks, and so forth, never before have viewers across the nation had the opportunity to see such events as they happen.

Ratings for locally televised baseball games have risen from an 11.8 Arbitron average of twenty reporting markets in 1984, to a 12.5 rating in 1987 and to a 13.0 in 1988. In short, Major League Baseball has responded to this consumer demand by designing a national television package that will offer viewers the kind of baseball they want to see when they want to see it. We have provided the opportunity for a dramatic increase in overall viewership at a

greater variety of hours. We have provided a continuing opportunity for the increase in local, free over-the-air telecasts. We have maintained the All-Star Game, both League Championship Series and World Series on free television. We have created daily and special baseball programs. We have provided the chance for baseball fans across the country to see a potential no-hitter or other exciting event no matter where it is taking place.

We believe televised baseball at both the local and national levels will be at its all time highest levels beginning in 1990, and that the game and its fans will experience a new level of enthusiasm for Major League Baseball as we enter the next decade.

Approved: \_\_\_\_\_  
Special Agent in Charge