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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

March 29, 1993

HAND DELIVER

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Dear Ms. Searcy:

On behalf of Capital Cities/ABC, Inc., transmitted herewith for filing with the Commission are an original and five copies of its Comments in PP Docket No. 93-21.

If there are any questions in connection with the foregoing, please contact the undersigned.

Sincerely,

Kristin Gerlach

Kristin C. Gerlach

KCG/ak
Enclosures

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of Section 26 of the Cable Television Consumer Protection and Competition Act of 1992	)	PP Docket No. 93-21
	)	
Inquiry Into Sports Programming Migration	)	

COMMENTS OF CAPITAL CITIES/ABC, INC.

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March 29, 1993

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Summary

I. Sports Migration.

To assist the Commission in its analysis, we have prepared and attached an Exhibit which summarizes professional and college sports games (including the average ratings) that have appeared on the ABC Television Network in each broadcast season since 1980. To date, we have not seen significant migration of major sports programming to cable services. While there has been a considerable increase in the number of sports events shown on cable, these have been largely in addition to -- not in replacement of -- sports events shown over-the-air. ABC's pay-per-view experiment with College Football is an example of an arrangement that has added sports programming, but not detracted from over-the-air broadcasters.

II. Professional Sports Anti-Trust Exemption.

To the extent that the anti-trust exemption enables the professional leagues efficiently to assemble season-long packages of games that will be attractive to viewers and can be marketed effectively to advertisers, it serves our company's interest as a television network buyer of sports rights. The exemption may also make it easier for the leagues to grant exclusivity protections as part of the rights packages. These exclusivity provisions serve important procompetitive purposes.

III. Exclusivity and "Preclusive Contracts."

We agree with the Commission's tentative conclusion that the term "video programming vendors" (which is critical to the definition of "preclusive contract") refers to cable program networks and thus excludes broadcast television networks.

In response to the Commission's request for information concerning exclusivity in contracts of college conference with broadcast networks, we are furnishing the Commission with information concerning the CFA/ABC arrangement. The exclusivity provisions in ABC's contract with the CFA are ordinary, procompetitive and lawful. These provisions give ABC certain limited exclusivity rights to televise the home games of CFA members. By enabling ABC to reach a larger audience, this exclusivity creates a genuine efficiency: It enhances the value of ABC's telecasts to its customers, the advertisers. The resulting increase in advertising revenue enhances the ability of ABC to compete against cable programmers in bidding for rights to televise sports events and thereby reduces the likelihood that sports programming will migrate to subscription services.

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To: The Commission

COMMENTS OF CAPITAL CITIES/ABC, INC.

Capital Cities/ABC, Inc. ("Capital Cities/ABC") submits herewith its Comments in response to the Notice of Inquiry in the above-entitled proceeding ("Notice").[1] Our interest in this proceeding reflected in these Comments is as a television network and local broadcaster. Capital Cities/ABC also owns a majority interest in ESPN, the national cable sports programming network. ESPN is filing separate comments in this proceeding.

[1] PP Docket No. 93-21, Notice of Inquiry, FCC 93-77 (rel. February 9, 1993).

Introduction

The Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act" or the "Act") requires the Commission to prepare a study analyzing trends in the migration of sports programming from broadcast television to cable programming networks and pay-per-view services.[2] The Notice requests extensive factual data regarding the telecast of professional and college sports events over a twelve-year period.

The ABC Television Network has, and has had, contracts to broadcast sports events of many of the leagues specified in the Notice, including Major League Baseball, the National Football League, the National Basketball Association and college football and basketball. Because these leagues control and act as individual clearinghouses for telecast exhibition rights, we will leave it to those entities to provide the bulk of the information requested in paragraphs 11 through 22 of the Notice. To assist the Commission in its analysis, we have prepared and attach as Exhibit A a summary of professional and college sports games (including the average ratings) that have appeared on the ABC Television Network in each broadcast season since 1980. We limit our comments below to three specific aspects of the Notice: (1)

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[2] Sports programming migration is considered to be "the movement of sports programming from broadcast television to a subscription medium (i.e., one for which viewers pay a fee)." Notice at paragraph 2.

the extent to which there has been sports migration; (2) the importance of the Professional Sports Anti-trust Exemption; and (3) the importance of exclusivity for the broadcasting of sports events.

I. There Has Been No Wholesale Sports Migration.

To date, we have not seen significant migration of major sports programming to cable or subscription services. There has been, to be sure, a large increase in the number of sports events shown on cable,[3] but with very few exceptions, these have been in addition to -- not in replacement of -- sports events shown over-the-air.[4]

ABC's pay-per-view experiment with College Football is an example of an arrangement that has added sports programming, but not detracted from over-the-air broadcasters. For the 1992 College Football broadcast season, ABC offered

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[3] For this purpose, superstations outside their local areas should be considered as cable program networks. To a local broadcaster, a superstation is one more cable channel competitor for both audience and advertising. Specifically in terms of sports, the availability of games on superstations has no less impact on local broadcasters and their exercise of local sports rights than the impact of cable sports networks.

[4] See, generally, Comments of ESPN, Inc. filed in this proceeding. We also note that boxing, which was not listed in the Notice, has essentially moved from broadcast media to cable and other subscription services. This sport, however, has a more specialized audience than the sports listed in the Notice, and does not have as extensive a history on broadcast television. Even before cable service became widely available, major boxing bouts largely appeared on closed-circuit television rather than broadcast television.

a limited pay-per-view option to its viewers. All games in the ABC College Football package were produced for over-the-air broadcast, and viewers being offered the pay-per-view opportunity already had access to the over-the-air game in their geographic area. The intent of the pay-per-view plan was to broaden the programming choices for viewers by making regional college football games available on pay-per-view cable in areas where such games would not otherwise be seen on over-the-air television. In choosing the regional games it offered to its broadcast affiliates, ABC consistently followed one fundamental principle: that the game selected for over-the-air broadcast in an area would be the game of greatest local appeal. For example, on October 31, 1992, the network offered a PAC 10 game, Stanford v. Washington, to affiliates in areas on the West Coast, where the strongest local interest lay. In contrast, the pay-per-view games offered on that date in those areas were Florida v. Georgia and Ohio State v. Iowa.

This result combined the best of both worlds: The most desirable (i.e., local) game in a particular area was broadcast over-the-air in that area; other games, of less local interest, were offered as pay-per-view alternatives in that area and broadcast over-the-air in other areas where they were more desirable. The result was to increase program diversity without diminishing the amount of over-the-air programming or undermining the value of the over-the-air

broadcasts to advertisers or affiliates. This strategy also made the most business sense, since stronger local appeal translates into higher ratings, both for the affiliate and for the network. The experiment was designed to explore additional revenue sources to strengthen the network's ability to commit the financial resources necessary to continue to deliver outstanding college football programming to its broadcast audience, while avoiding a significant negative impact on station (and network) ratings. The network plans to continue the pay-per-view project for the 1993 College Football season.

This is not to say that there could not at some future time develop a problem with sports siphoning. The most serious potential threat to the public interest would be the movement of high-interest, "big ticket" events (such as the World Series, Olympic Games and the Superbowl) to cable. If rights fees for these events continue to escalate, it is possible that subscription services (which have the benefit of dual revenue streams) would outbid the broadcast media for telecast rights. A significant portion of the viewing public, households without cable service, would then be unable to enjoy these events. An even more extreme scenario would be the movement of these events to pure pay-per-view. In that case, two significant groups of viewers would lose access to these international sports events -- those without cable service (either because it is beyond their means or simply not

available) and viewers with cable who are unable to afford the one-time charge to view the event. Under those circumstances, the Congress might wish to consider governmental intervention in this area, but we are not close to this situation yet.

II. The Professional Sports Anti-Trust Exemption Is Important To Broadcasters.

The Commission seeks comment on the effect of the exemption on the distribution of sports rights. To the extent that the exemption enables the professional leagues efficiently to assemble season-long packages of games that will be attractive to viewers and can be marketed effectively to advertisers, the exemption also serves our company's interest as a television network buyer of such sports rights. The exemption may also make it easier (because of the freedom from legal challenge) for the leagues to grant exclusivity protections as part of the various rights packages they sell to television networks. This too assists our company as a network broadcaster because exclusive access to attractive sports programs helps us differentiate our programming from that of our competitors and enables us to increase the value of our programming to our advertising customers. Exclusivity protections generally promote competition and further the public interest.

III. Exclusivity Is Important To Broadcasters.

A. "Preclusive Contracts" and Definition of "video programming vendor."

As directed by Section 26 of the 1992 Cable Act, the Commission requests comment on "preclusive contacts between college athletic conferences and video programming vendors" and whether these contracts restrict the ability of local television stations to broadcast local college sports events.[5]

We agree with the Commission's tentative conclusion that the term "video programming vendors" refers to cable program networks (thus excluding broadcast television stations or networks). Thus, the inquiry required by the Cable Act does not include contracts between college athletic conferences and broadcast television networks. We believe this conclusion is sound for the following reasons.

First, the overall goal of Section 26 of the Cable Act is preparation of a study to examine the migration of sports programming from broadcast media to cable services.[6]

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[5] [A] "preclusive contract" is defined as any contract that prohibits (A) the live broadcast by a local television station of a sporting event of a local college team that is not carried, on a live basis, by any cable system within the local community served by such local television station; or (B) the delayed broadcast by a local television station of a sporting event of a local college team that is not carried, on a live or delayed basis, by any cable system within the local community served by such local television station.

[6] Section 26(a) requires the Commission to "analyze, on a sport-by-sport basis, trends in the migration of [local, regional and national sports] programming from carriage by broadcast stations to carriage over cable programming networks and pay-per-view systems..."

The analysis of preclusive contracts is to be made "in conducting that study."[7] The common sense reading of this requirement is that only preclusive contracts relevant to the study's purpose need be analyzed.

Moreover, as the Commission notes, "preclusive contract" is defined in the context of the inability of a local television station to carry a local sporting event in relation to cable carriage (or lack thereof) of that event in the station's market. There is no suggestion that contractual arrangements between college athletic conferences and national television networks are relevant for this purpose.

Finally, the House Report makes it clear that Congress' concern focussed on cable distribution of college athletic sports programming:

> The Committee's concern about sports migration is not confined to professional sports. Evidence has been submitted to the Committee suggesting that, in recent years, contracts between cable sports channels and college athletic conferences have effectively precluded local television stations from obtaining rights to broadcast local college games.[8]

Moreover, among the "sports migration" issues the House Committee asks the Commission to address is:

> The number of professional and college sporting events that could be made available to local television stations, but for exclusive arrangements between cable sports services, basic cable sports

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[7] Section 26(c) of the Cable Act.

[8] H. Rep. No. 628, 102nd Cong., 2nd Sess. 125-26 ("House Report") (emphasis added).

services and pay-per-view services.[9]

Accordingly, "video programming vendor" does not include television broadcast networks for this purpose.[10]

B. The College Football Association/ABC Television Network Contract.

Despite its tentative conclusion that the definition of "video programing vendor" is limited to cable programming networks, the Commission nevertheless also requests information concerning television contracts of college conferences with broadcast networks and stations. Footnote 35 also makes explicit reference to the contract between the College Football Association (CFA) and the ABC Television Network. Accordingly, we will take this opportunity to furnish the Commission with information concerning the CFA/ABC arrangement that may be considered relevant to the Commission's consideration of "preclusive contracts."

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[9] Id. at 126 (emphasis added).

[10] The definition of "video programming vendor" in Section 12 of the Act does not change or dilute this conclusion. As the Commission indicates in footnote 33 of the Notice, "video programming vendor" is defined for that purpose as "a person engaged in the production, creation, or wholesale distribution of video programming for sale." That section addresses program carriage agreements between program distribution systems ("cable operators or other multichannel video programming distributors") on one hand and "video programming vendors" on the other. "Video programming vendors" clearly means sellers of programming negotiating with cable operators (and other distribution systems) to have that programming exhibited to the public. It cannot sensibly be read in this context as including a television broadcast network which is itself a program distribution system. See also S. Rep. No. 92, 102nd Cong., 1st Sess. 77-79 (1991).

At the outset, we note that the Act's definition of "preclusive contract" is keyed to the exclusivity acquired by a national or regional cable programmer as against local television exposure (see A. above). Since by its terms this would not be applicable to television networks, we will assume that the Commission is interested in information concerning television network contract exclusivity terms to the extent that they preclude broadcast of games by local television stations and we will respond accordingly.

The exclusivity provisions in ABC's contract with the CFA are ordinary, procompetitive and lawful. These provisions give ABC certain limited exclusivity rights to televise the home games of CFA members. One provision, which appears to be beyond the scope of the Commission's inquiry, prohibits the CFA or its members from selling television rights to other networks. The other provision, which is relevant to local station telecasts, restricts live telecasts on Saturday afternoons of games that begin after 12:10 PM local time (or 12:40 PM local time, in the case of games involving members of the Southeastern Conference). The schools are free to begin all games not televised by ABC before 12:10 (or 12:40) PM, so the contract in effect permits live over-the-air telecasts, either locally or by nationwide syndication, of every CFA game that is not televised by ABC.[11]

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[11] ABC's college football television contract with Pac 10/Big 10 includes similar provisions, although the details differ.

Indeed, the contract does not even give ABC an exclusive window for telecasts of CFA games that begin after 12:10 (or 12:40) PM. To the contrary, the contract permits non-ABC late afternoon telecasts in the home towns of the participating schools, closed-circuit and pay-per-view telecasts during the late afternoons, and national late afternoon cable telecasts. In addition, because the local time of the kickoff is controlling, West Coast games can be televised live in the East at mid-afternoon. A game beginning, for example, at noon in Los Angeles could be shown live at 3:00 in the afternoon in Washington, DC.

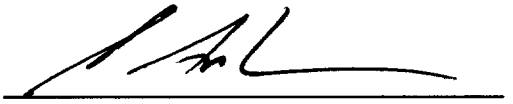
Similar exclusivity provisions are commonly incorporated in agreements governing the telecast of sporting events. While different sports have their own unique characteristics and requirements, all are televised pursuant to contracts that restrict the rights of other telecasters to carry games played by members of the associations or conferences that are parties to the contracts.

The exclusivity provisions in ABC's agreement with the CFA reduce the extent of direct, head-to-head competition between ABC's college football telecasts and other college football telecasts and thereby enable ABC to achieve higher audience ratings for its telecasts than would otherwise be available. Ratings are what telecasters sell to advertisers. In fact, in order to reach the widest unduplicated audience, advertisers would generally rather reach a large audience on

a single program than advertise on multiple programs with smaller audiences, even if the sum of the smaller audiences is equal to or, in some cases, even greater than the single large audience. Thus, by enabling ABC to reach a larger audience, the limited time-period exclusivity creates a genuine efficiency: It enhances the value of ABC's telecasts to its customers, the advertisers. Moreover, by increasing the value of ABC's telecasts to advertisers and thus the advertising revenues available to ABC, the exclusivity provisions enhance the ability of ABC to compete against cable programmers in bidding for rights to televise sports events and thereby reduce the likelihood that sports programming will migrate to subscription services.

In sum, the limited exclusivity in ABC's agreement with the CFA serves legitimate, procompetitive purposes and furthers the public interest. It enables ABC to increase the value of the product it offers to its advertising customers, and it reduces the likelihood that sports programming will migrate to cable. It also, among other things, promotes program diversity among telecasters and encourages ABC's investment in promotion and high quality telecasts of college football games.

Respectfully submitted,

By: 

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March 29, 1993

EXHIBIT A

1980 - 1981 Season

		No. of Regular Season Games	Average Rating/ Regular Season	No. of Post-Season Games	Average Rating/ Post-Season
1.	NFL	20	20.3	--	--
* 2.	Major League Baseball	23	8.5	8	20.4
3.	NBA	--	--	--	--
4.	NHL	--	--	--	--
* 5.	College Football	54	11.5	3	19.9
* 6.	College Basketball	--	--	--	--

Overview - In calendar year 1980, ABC Sports broadcast a total of 542 hours of programming comprised generally of the above mentioned properties, auto racing, boxing, bowling, golf, tennis, ABC's Wide World of Sports and other assorted "Special" programs.

*The "No. of Games" figures on each page reflect all games telecast. Because the network often provides regional coverage of these games, there typically are several games broadcast in the same "window" or time period. Similarly, the ratings figures reflect the average ratings for all games in all time periods and dayparts.

1981 - 1982 Season

		No. of Regular Season Games	Average Rating/ Regular Season	No. of Post-Season Games	Average Rating/ Post-Season
1.	NFL	20	21.2	--	--
*2.	Major League Baseball	18	6.4	6	30.1
3.	NBA	--	--	--	--
4.	NHL	--	--	--	--
*5.	College Football	64	12.0	3	12.1
*6.	College Basketball	--	--	--	--

Overview - In calendar year 1981, ABC Sports broadcast a total of 457 hours of programming comprised generally of the above mentioned properties, auto racing, boxing, bowling, golf, tennis, ABC's Wide World of Sports, and other assorted "Special" programs.

1982 - 1983 Season

		No. of Regular Season Games	Average Rating/ Regular Season	No. of Post-Season Games	Average Rating/ Post-Season
1.	NFL	12	19.3	--	--
*2.	Major League Baseball	31	10.8	9	17.7
3.	NBA	--	--	--	--
4.	NHL	--	--	--	--
*5.	College Football	36	10.9	2	18.9
*6.	College Basketball	--	--	--	--

Overview - In calendar year 1982, ABC Sports broadcast a total of 429 hours of programming comprised generally of the above mentioned properties, auto racing, boxing, bowling, golf, tennis, ABC's Wide World of Sports, and other assorted "Special" programs.

1983 - 1984 Season

		No. of Regular Season Games	Average Rating/ Regular Season	No. of Post-Season Games	Average Rating/ Post-Season
1.	NFL	12	17.4	--	--
*2.	Major League Baseball	31	9.2	5	23.3
3.	NBA	--	--	--	--
4.	NHL	--	--	--	--
*5.	College Football	36	9.9	2	10.2
*6.	College Basketball	--	--	--	--

Overview - In calendar year 1983, ABC Sports broadcast a total of 480 hours of programming comprised generally of the above mentioned properties, auto racing, boxing, bowling, golf, tennis, ABC's Wide World of Sports, and other assorted "Special" programs.

1984 - 1985 Season

		No. of Regular Season Games	Average Rating/ Regular Season	No. of Post-Season Games	Average Rating/ Post-Season
1.	NFL	21	16.1	1	46.4
* 2.	Major League Baseball	20	8.6	8	16.1
3.	NBA	--	--	--	--
4.	NHL	--	--	--	--
* 5.	College Football	20	8.3	2	9.2
* 6.	College Basketball	--	--	--	--

Overview - In calendar year 1984, ABC Sports broadcast a total of 712 hours of programming comprised generally of the above mentioned properties, auto racing, boxing, bowling, golf, tennis, ABC's Wide World of Sports, and other assorted "Special" programs.

1985 - 1986 Season

		No. of Regular Season Games	Average Rating/ Regular Season	No. of Post-Season Games	Average Rating/ Post-Season
1.	NFL	21	18.5	--	--
* 2.	Major League Baseball	18	8.1	7	25.3
3.	NBA	--	--	--	--
4.	NHL	--	--	--	--
* 5.	College Football	22	6.9	2	9.2
* 6.	College Basketball	--	--	--	--

Overview - In calendar year 1985, ABC Sports broadcast a total of 455 hours of programming comprised generally of the above mentioned properties, auto racing, boxing, bowling, golf, tennis, ABC's Wide World of Sports, and other assorted "Special" programs.

1986 - 1987 Season

		No. of Regular Season Games	Average Rating/ Regular Season	No. of Post-Season Games	Average Rating/ Post-Season
1.	NFL	21	17.6	1	--
* 2.	Major League Baseball	37	5.5	13	15.6
3.	NBA	--	--	--	--
4.	NHL	--	--	--	--
* 5.	College Football	22	7.0	3	7.4
* 6.	College Basketball	11	2.4	--	--

Overview - In calendar year 1986, ABC Sports broadcast a total of 439 hours of programming comprised generally of the above mentioned properties, auto racing, boxing, bowling, golf, tennis, ABC's Wide World of Sports, and other assorted "Special" programs.