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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of Section 26 of the able Television Consumer Protection and Competition Act of 1992	)))	PP Docket No. 93-21

Inquiry into Sports Programming Migration

To: The Secretary, Federal Communications Commission

COMMENTS OF NLBA TO FURTHER NOTICE OF INQUIRY

The National Licensed Beverage Association (NLBA) herein submits these comments in response to the Commission's Further Notice of Inquiry on the issue of sports programming migration. The NLBA represents the retail alcohol beverage hospitality industry, including owners of sports bars, taverns, restaurants and hotels that seek access to broadcasts of all sporting events. We submit these comments on behalf of our membership and in response to your request for further information on this issue.

A. Professional Football

In the Commission's Further Notice of Inquiry, information was requested on the schedule and impact of the NFL's scrambling of its regional broadcast signals and on the terms fees to sports-bars for these programs. In early April 1994, the NFL will offer sports-bars and other retail establishments satellite packages of games on a sliding scale fee based on the occupancy of each establishment. The NFL's season package for commercial establishments will have annual fees as follows: up to 100 seats, $699; 101-200 seats, $1,299; 201-600 seats; $1,899; and more than 600 seats, $2,499. These fees are not final. The NFL's season package will be subject to football stadium blackouts and have other restrictions. We have enclosed an April 1994 "AdWeek" article, "NFL to Satellite Dish Owners: Pay Up," regarding the proposed NFL package.

1. The price structure of the NFL's season package is unreasonable and will cause financial hardship to sports-bars and other small retail establishments which offer customers sports programming. Major League Baseball is considering its own season package, with unknown costs and restrictions.

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2. The NLBA is concerned that once the NFL's season package proposal is presented, the other sports leagues will quickly follow suit. The price structure for the NFL packages is prohibitive. We hope that the FCC can take action now to prevent the marketing of these packages until Congress reviews these recommendations.

B. Commercial Availability of Sports Programming

1. The NLBA recommends that the FCC include a discussion of the problems of owners of sports-bars, taverns and other retail establishments in receiving broadcasts of all sports events. Not only do the professional sports teams and sports channels not make the programming available to establishment owners but our industry has been targeted for harassment, lawsuits and monopolistic practices by the sports leagues.

2. During the past six years, the major leagues have launched a nation-wide campaign against retail establishments by suing individual bars for the unauthorized reception of sports programming under the Federal Communications and Copyright Acts. In almost every instance, bar owners were found guilty of unauthorized reception of sports programming and, in many cases, were held liable and assessed penalties of more than $100,000. In 1989 and 1990, over 200 bars were sued for intercepting signals carrying baseball games. In a 1992 court decision, the owner of a sports club in Florida was found guilty of displaying broadcasts without authorization. The owner paid a total of $31,000 to Satellite Sports Network for statutory damages and attorneys' fees. In that same month, HBO was investigating 64 establishments across the country to confirm reported unauthorized reception of a fight. A previous sweep of bars and restaurants resulted in 127 lawsuits, as well as many out-of-court settlements.

3. Sometimes these lawsuits are brought against owners who cannot even purchase satellite programming if they want to, or whose premises are not wired for cable, making it impossible for these establishments to intercept the programming. For example, one bar owner was accused of showing a fight on the premises of his bar. He had no cable, no satellite antenna and, therefore, no way of showing the fight even if he had wanted. The cable company told him to get a lawyer and a settlement would be reached. This happens all too often. The bar owners consider these settlement to be legalized blackmail. Cable companies also have spotters out to catch bar owners who shows unauthorized programming, which results in more lawsuits.

   The bar owners feel that the existing structure does not provide adequate protection for consumers. The sports teams and cable companies can set their own prices for programming.

4. When the national sports leagues grant a commercial establishment the right to receive their signals, the issue becomes one of the costs involved. In almost every situation, these costs set are at the sole discretion of the sports teams or the local cable company. In many instances, there is discrimination between establishments as to who can receive the signal. In the case of a Northwest basketball team, the

NLBA understands that the team will permit only six or seven commercial establishments in a particular city to show the games. The other owners may not participate, regardless of price. In this particular instance, the team involved continues, to this very day, to send monitors into the field to every commercial establishment to verify the headcounts of customers and document signal theft for lawsuit purposes.

Therefore, the NLBA respectfully requests that the Commission include in its final report to Congress, which is due on July 1, 1994, the impact on the retail community and its customer base of NFL-type satellite packages, pay-for-view and closed circuit systems and consider recommending that Congress support changing both the Copyright Law and the Communications Act to incorporate the provisions of H. R. 1988, the Right to View Sports Programming Act that is now pending in Congress. The NLBA supports passage of this legislation, a copy of which is attached. Also attached is Rep. William Lipinski's (D-IL) Dear Colleague letter to the U. S. House of Representatives, dated May 5, 1993. The recommendation would establish fees that owners of small businesses could afford, protect the copyright ownership of the sports teams and provide for the basic right of access to all sports programming for small business in a marketplace that is open and competitive.

The NLBA urges the FCC to immediately take action to prevent the NFL or any other sports league from implementing a commercial establishment purchase package until Congress has had a chance to review your report and this industry's concerns.

Respectfully submitted,

THE NATIONAL LICENSED BEVERAGE ASSOCIATION

By _____
John Chwat
Washington Representative

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April 11, 1994

NFL to Satellite Dish Owners: Pay Up

Individuals and Sports Bars Will Be Charged to Receive Unscrambled Signal

By Michael Krantz and Michael Börgi

NEW YORK—For owners of sports bars and backyard satellite dishes, the NFL free lunch is over. Next season, the NFL will begin scrambling its regional broadcast signals. Owners of sports bars and of satellite dishes, accustomed to picking up the games for free, will have to either buy a de-scrambler or pay the NFL for a season package.

The NFL will offer private satellite dish owners a full-season "all-game package" for $100 to $150, says Ron Bernard, president of NFL Enterprises. A similar package for sports bars will cost substantially more, depending on the size of the venue. An employee at Frankie's bar in Atlanta said the league has asked for $1,500. The NFL has hired Margeotes Fertitta Donaher & Weiss, New York, to create a consumer and trade ad campaign touting the satellite packages. Ads are expected to break in June.

The NFL will offer private satellite dish owners a full-season "all-game package" for $100 to $150, says Ron Bernard, president of NFL Enterprises. Bars will pay much more.

The NFL considered scrambling its signal last year, but backed off following opposition from sports-bar owners and breweries. But apparently now the lure has become too great for the NFL to ignore. "It's an attractive revenue stream for us," said Bernard, who refused to project the NFL's take from satellite-delivered games. "We're not doing anything that anyone else isn't doing."

For sports bars that opt not to buy the NFL package, the decision swings open the bar door to alternative sports programming services. One such venture is a new sports-related programming company dubbed Prostar Entertainment Network, led in part by Lou LaTorre, former exec vp at Turner Broadcasting Sales.

Prostar is offering a mix of MTV-style "extreme" sports footage (i.e., bungee jumping and air surfing), trivia, news segments and the Dow Sports Ticker. ■

WILLIAM O. LIPINSKI
3D DISTRICT, ILLINOIS

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May 5, 1993

Right To View Professional Sports Act of 1993

It's Pro-Sports Fan, Pro-Small Business, and Pro-Consumer!!

Dear Colleague:

I urge you to become a cosponsor of the "Right to View Professional Sports Act of 1993." This legislation would insure that commercial establishments have the ability to purchase professional sports programming for their patrons at fair and reasonable fees.

Restaurants and sport bars have been sued by professional sporting leagues and cable systems for showing broadcasts of games in their establishments. Many of these suits were brought against business people who did not even have the opportunity to purchase the satellite programming. Small business owners do not have the resources to fight against these powerful leagues in court, and as a result, are subjected to tremendous fines.

Sports bar owners are willing to pay for such programming, but cannot afford the outrageous fees the leagues are asking. My bill would put an end to all of this—The Right To View Professional Sports Act would authorize the Copyright Tribunal to establish fees that small business owners can afford.

My bill would insure the right of sports bars to purchase professional sports programming at reasonable fees while at the same time protecting the copyright ownership of these sports teams. This legislation would provide basic rights of access to sports programming and establish a marketplace that is open and competitive for small businesses to purchase programming at fair prices. Professional sports franchises enjoy antitrust exemption—it is only right that businesses be able to purchase their programming at fair prices!

Enjoying sporting events in neighborhood bars and taverns is a traditional part of American life and is in danger of being extinguished by greedy professional sports teams. My legislation will prevent "piracy", but ultimately will make organized sports more responsive to the people who make its existence possible—the fans.

If you would like to cosponsor or have any questions, please contact Holly Gaudreau of my staff at 5-5701.

Sincerely,

WILLIAM O. LIPINSKI
Member of Congress

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103D CONGRESS
1ST SESSION

H. R. 1988

To amend title 17, United States Code, and the Communications Act of 1934 with respect to the public performance, by means of the display of video programming at places of public accommodation, of games between professional sports teams.

IN THE HOUSE OF REPRESENTATIVES

MAY 5, 1993

Mr. LIPINSKI introduced the following bill; which was referred jointly to the Committees on the Judiciary and Energy and Commerce

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A BILL

To amend title 17, United States Code, and the Communications Act of 1934 with respect to the public performance, by means of the display of video programming at places of public accommodation, of games between professional sports teams.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 **SECTION 1. SHORT TITLE.**
4 This Act may be cited as the "Right to View Profes-
5 sional Sports Act of 1993".

1 SEC. 2. COPYRIGHT EXCEPTION FOR BROADCASTS OF PRO-
2 FESSIONAL SPORTS TEAMS.

3 (a) EXEMPTION.—(1) Chapter 1 of title 17, United
4 States Code, is amended by adding at the end the
5 following:

6 **"§ 121. Limitations on exclusive rights: exemption for**
7 **certain displays of video programming**

8 "(a) EXEMPTION FOR CERTAIN DISPLAYS OF VIDEO
9 PROGRAMMING.—The public performance by means of the
10 display of video programming at a place of public accom-
11 modation of any game between professional sports teams,
12 which would otherwise be an infringement of copyright to
13 which section 411(b) of this title applies, shall not be an
14 infringement of copyright if a reasonable fee (as deter-
15 mined under chapter 8) is paid to the copyright owners
16 for such performance.

17 "(b) DEFINITIONS.—As used in this section—

18 "(1) PROFESSIONAL SPORTS TEAM.—The term
19 'professional sports team' means a professional team
20 engaged in the sport of football, baseball, basketball,
21 ice hockey, boxing, or other sport.

22 "(2) PLACE OF PUBLIC ACCOMMODATION.—The
23 term 'place of public accommodation' means an inn,
24 hotel, motel, or other place of lodging, or a res-
25 taurant, bar, or other commercial establishment
26 serving food or drink.".

1 (2) The table of sections at the beginning of chapter
2 1 of title 17, United States Code, is amended by adding
3 at the end the following:

"121. Limitations on exclusive rights: exemption for certain displays of video programming.".

4 (b) ESTABLISHMENT OF FEES.—Section 801(b) of
5 title 17, United States Code, is amended—
6 (1) by striking "and" at the end of paragraph
7 (2);
8 (2) by striking the period at the end of para-
9 graph (3) and inserting "; and"; and
10 (3) by adding after paragraph (3) the following:
11 "(4) to determine and adjust the reasonable
12 fees to be paid to copyright owners for public per-
13 formances of games between professional sports
14 teams at places of public accommodation for pur-
15 poses of section 121 of this title, and to publish such
16 fees.
17 In determining or adjusting fees under paragraph (4) with
18 respect to places of public accommodation, the Tribunal
19 shall take into account the average fair market price for
20 comparable programming provided by cable systems (as
21 defined in section 111(f)) and satellite carriers (as defined
22 in section 119(d)) to other places of public accommodation
23 (as defined in section 121(b)) in the same local geographic
24 area.".

1 **SEC. 3. TREATMENT OF COPYRIGHT SYSTEM AS MARKET-**
2 **ING SYSTEM FOR PURPOSES OF COMMUNICA-**
3 **TIONS ACT OF 1934.**

4 Section 705(b) of the Communications Act of 1934
5 (47 U.S.C. 605(b)) is amended—

6 (1) by redesignating subsections (c) through (g)
7 as subsections (d) through (i), respectively;

8 (2) by inserting after subsection (b) the follow-
9 ing new subsection:

10 "(c) The provisions of subsection (a) shall not apply
11 to the interception, receipt, and display of video program-
12 ming at a place of public accommodation of any game be-
13 tween professional sports teams if the copyright owners
14 for public performances of such game receive, from the
15 owner or operator of such place of public accommodation,
16 a reasonable fee determined in accordance with section
17 801(b) of title 17, United States Code. For purposes of
18 this section, the terms 'public accommodation' and 'profes-
19 sional sports team' have the meanings provided in section
20 121(b) of such title 17.".

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