

Minnesota Twins fans have also seen a decline in the number of games on over-the-air television. Seventy one games appeared on KSMP in 1985 and 1986. This number increased to 73 games for the 1987 and 1988 seasons.

For the 1989 season, the Twins wanted a local contract that combined both television and cable rights. As a result the contract went to Midwest Communications which owned both WCCO-TV and a pay cable sports channel. Under the new contract WCCO would broadcast 38 games. Because it is an affiliate, WCCO shifted 22 games to KITN. According to Broadcasting Magazine, this arrangement resulted in 60 games appearing on over-the-air television. The remaining games, approximately 74, would appear on a pay cable channel or pay-per-view. However, Broadcasting recently reported that only 38 games will appear on WCCO for the 1993 season.¹⁸

Putting aside the specifics of various contracts, it appears that the rise of pay cable sports channels and the ESPN contract have reduced the number of off-air games in many markets.

In 1980, the Baltimore Orioles broadcast 57 games on off-air-television. Today there are 50.

Seventy Cleveland Indian games were broadcast on television in 1980. This number has decreased by 10 to 60 games in 1993.

In 1983, Detroit fans could see 57 games on WDIV TV. Today the number has been reduced to 47.

¹⁸It is unclear whether Broadcasting simply forgot to include the 22 games that will appear on KITN. KITN's games were included in past surveys. Broadcasting Magazine, March 15, 1993 at 41.

White Sox fans enjoyed 60 games on off-air television in 1981. Today they are limited to 48 games. During this period the number of games appearing on cable channel increased from 80 to 110 games.

Mets games on WWOR-TV have declined from 90 games, in 1985, to 75 games in 1993. At the same time, games appearing on cable channels increased from 60 to 75 games.

In 1984, 75 Houston Astros games appeared on off-air television. Only 63 games will be broadcast in 1993.

This is not to say that cable sports channels have been successful in siphoning baseball games in all markets. Indeed, in many small and mid-sized markets cable sports channels no longer exist. However, the history of the rise and fall of pay cable channels in some markets proves that there is a direct inverse relationship between the number of games appearing on off-air television and cable sports channels.

In Milwaukee, 60 games were broadcast on off-air television in 1983. In 1984, a cable channel was created and telecasted 67 games. The number of off-air broadcasts immediately dropped to 38. However, after 1984, baseball did not appear on a cable channel. As a result the number of games appearing on off-air television has increased to 65 games in 1993.

In Kansas City, the Royals experimented with cable in 1984 giving it the ability to telecast 50 games. However, the cable service failed. Since that time the number of games on off-air television has increased. In 1993, 63 Royals games will appear on free television.

The Mariners have never appeared on a cable sports channel. As a result the number of games appearing on off-air television has increased from 50 in 1984 to 60 in 1993.

The Cardinals began to experiment with a cable sports channel in 1984, permitting it to telecast 52 games. Forty games remained on off-air television. By 1989, 60 games were broadcast by KPLR TV and 50 games appeared on a pay cable service. Once the cable service folded, the number of games on KPLR immediately increased to 76 games in 1990

Accordingly, the FCC cannot simply use examples like the Cardinals, Royals and Mariners to demonstrate that sports siphoning has not occurred. The reason that off-air games increased on these stations is because there is no cable sports channel to take them away.¹⁹ The markets are unique. For example, cable penetration in the market area for the Cardinals is relatively low. In fact the Cardinals have one of the largest off-air network in the country involving 23 television affiliates.

In those markets where cable channels exist, games are leaving off-air television. It is entirely possible that cable sports channels may develop in those few markets where none exist today. If this occurs, then games will migrate to those channels.

Perhaps the most telling example can be found with the new Colorado Rockies and Florida Marlins. The Rockies, which don't have a cable contract, will broadcast 80 games on KWGN this year. The Marlins, which have a cable contract, will broadcast 52 games of WBFS and 63 games cable's Sunshine Network.

¹⁹Importantly, cable sports channels need more than baseball to survive. It is difficult for a cable sports channel to survive unless it can acquire the rights to year round sporting events. In markets where they have acquired such rights, cable sports channels have aggressively taken sports off free television.

siphoning, the agency "has not established its jurisdiction on the record evidence before it."²⁷ Specifically, the court stated that "regulation perfectly reasonable and appropriate in the face of a given problem may be highly capricious if that problem does not exist," and found that the FCC had utterly failed to demonstrate the existence of such a problem.²⁸ For example, the court noted that "(a)s to the potential financial power of cable television we are left to draw the inference from two facts" -- ie., that some championship boxing matches and Evel Knievel's Snake River Canyon stunt were exhibited on closed-circuit television -- not on cable but in movie theatres.²⁹ Finally, the court found that the Commission "has not documented its case that the poor would be deprived of adequate television service" in the absence of anti-siphoning regulation. Id. at 39. In short, the court found that the FCC had no basis or record evidence to support anti-siphoning rules in 1977. Again, given the factual record in 1993, it would seem that record evidence to support some form of regulation today is abundant.

The HBO court squarely held that the former anti-siphoning rules were content-neutral and not intended to curtail free expression, and thus were subject to the First Amendment test of United States v. O'Brien, 391 U.S. 367, 377 (1968). HBO at 48.

²⁷Id. at 34.

²⁸Id. at 36, quoting City of Chicago v. FPC, 458 F. 2d 731, 742 (D.C. Cir. 1971).

²⁹Id. at 37.

However, the court found that the rules failed under O'Brien because it was not shown (1) that the rules furthered an important or substantial governmental interest, and (2) that the incidental restriction on First Amendment freedoms was no greater than essential to the furtherance of that interest. Id. 49-51. The court stated in this regard:

We have already concluded that the Commission has not put itself in a position to know whether the alleged siphoning phenomenon is a real or merely a fanciful threat to those not served by cable. Instead, the Commission has indulged in speculation and innuendo. O'Brien requires that "an important or substantial governmental interest" be demonstrated, however -- a requirement which translates in the rulemaking context into a record that convincingly shows a problem to exist and that relates the proffered solution to the statutory mandate of the agency. The record before us fails on both scores.

Id. at 50. The court further found that the rule was overbroad because, among other things, it treated films, sports events, program series and even commercials together, without differentiating the rationales for regulation of these very different types of programming. Id. Again, the current record of sports event "siphoning" from free to cable television would seem to support a finding of an "important or substantial governmental interest" under O'Brien; and a narrowly tailored statutory provision specific to sports events cablecasts should satisfy the final prong of the O'Brien test.

In short, there is a strong factual, statutory and constitutional basis for enactment of a provision under the Communications Act that would limit the cablecasting of sports

events that were recently telecast on free television stations.

IV. Conclusion

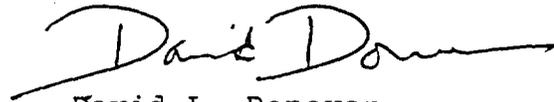
There can be no doubt that local college and professional sporting events are migrating away from over-the-air television. Moreover, there appears to be no legal impediment to reinstating some form of sports siphoning rules.

INTV does not believe that the enactment of retransmission consent will, by itself, cure the sports siphoning problem. Importantly, in each cable community there is only one monopsonist cable operator. This monopsonist will be negotiating with several stations that must compete against each other. With this dynamic, cable has the ability to drive retransmission consent payments downward. Moreover, because many of the regional cable sports channels are owned by the large MSOs, there is a natural incentive to pass these costs on to subscribers, while at the same time seeking to limit any retransmission consent payments to local television stations.

Accordingly for the foreseeable future, local television stations will be forced to rely on advertising revenues to compete with pay cable services. These cable services will continue to enjoy two revenue streams. Moreover, cable operators will be able to spread the costs of sports programming over a number of channels by bundling various cable services together.

rules is a difficult task. Nevertheless, something must be done. Congress has given the FCC an tremendous opportunity to prevent the further migration of sports programming. We hope the Commission accepts the challenge.

Respectfully Submitted



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EXHIBIT 5

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**ORIGINAL
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CLERK, U. S. DIST. COURT
Eastern District of California

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PAPPAS TELECASTING, INC., a
California corporation, and as
Public Trustee,

Plaintiff,

CV-F 92-5589-0WW

-vs-

PRIME TICKET NETWORK, a
California limited partnership,
BILL DANIELS, JOHN SEVERINO,
JERRY BUSS, The PACIFIC-10
CONFERENCE, a California
non-profit association, OREGON
STATE UNIVERSITY, WASHINGTON
STATE UNIVERSITY, CAPITAL
CITIES/ABC, INC., a New York
corporation, ABC SPORTS, INC.,
a New York corporation, and
DOES 1 through 20, inclusive,

Defendants.

ANSWER OF CAPITAL CITIES/
ABC, INC. AND ABC SPORTS,
INC. TO PLAINTIFF'S FIRST
AMENDED COMPLAINT

For their answer to plaintiff's First Amended
Complaint ("Complaint"), defendants Capital Cities/ABC, Inc.

1 ("CapCities") and ABC Sports, Inc. ("ABC Sports") state as
2 follows:

3
4 FIRST DEFENSE

5 Answering specifically the allegations contained in
6 the numbered paragraphs of the Complaint, CapCities and ABC
7 Sports:

8 1. State that paragraph 1 contains conclusions of
9 law to which CapCities and ABC Sports are not required to
10 plead; but if an answer is deemed to be required, state that
11 this Court appears to have subject matter jurisdiction over
12 the antitrust claims asserted in this action and deny the
13 remaining allegations contained in paragraph 1.

14 2. State that paragraph 2 contains conclusions of
15 law to which CapCities and ABC Sports are not required to
16 plead; but if an answer is deemed to be required, admit the
17 allegations contained in the first sentence of paragraph 2
18 respecting CapCities and ABC Sports and deny the remaining
19 allegations of paragraph 2 for lack of knowledge or
20 information sufficient to form a belief as to the truth
21 thereof.

22 3. State that paragraph 3 contains descriptive
23 matter to which CapCities and ABC Sports are not required to
24 plead; but if an answer is deemed to be required, acknowledge
25 that plaintiff purports to bring this action as licensee of
26 KMPH and as public trustee and deny the remaining allegations
27
28

1 of paragraph 3 for lack of knowledge or information sufficient
2 to form a belief as to the truth thereof.

3 4. Deny the allegations contained in paragraph 4
4 for lack of knowledge or information sufficient to form a
5 belief as to the truth thereof.

6 5. Admit on information and belief that the
7 University of Southern California, the University of
8 California at Los Angeles, Stanford University, the University
9 of California at Berkeley, the University of Arizona, Arizona
10 State University, the University of Oregon, Oregon State
11 University, the University of Washington, and Washington State
12 University are members of the Pacific-10 Conference ("Pac-10")
13 and deny the remaining allegations of paragraph 5 for lack of
14 knowledge or information sufficient to form a belief as to the
15 truth thereof.

16 6-7. Deny the allegations contained in paragraphs
17 6-7 for lack of knowledge or information sufficient to form a
18 belief as to the truth thereof.

19 8. Admit the allegations contained in the first
20 sentence of paragraph 8, except deny that American
21 Broadcasting Companies, Inc. is the predecessor in interest to
22 CapCities and deny that American Broadcasting Companies, Inc.
23 is currently a New York corporation with its principal place
24 of business in New York, New York; admit the allegations
25 contained in the second sentence of paragraph 8, except deny
26 that 240 television stations are owned or affiliated with
27 CapCities and deny that CapCities is "primarily" engaged in

1 television programming; admit the allegations contained in the
2 third sentence of paragraph 8, except deny that there are only
3 83 million television households in the United States; deny
4 the allegations contained in the fourth sentence of paragraph
5 8, stating instead that CapCities owns 100% of the voting
6 shares of ABC Holding Company, Inc., which owns 100% of the
7 voting shares of ESPN Holding Company, Inc., which owns 80% of
8 ESPN, Inc.; and admit the allegations contained in the fifth
9 and sixth sentences of paragraph 8.

10 9. Admit the allegations contained in the first
11 sentence of paragraph 9, deny that ABC Sports is a wholly
12 owned subsidiary of CapCities, stating instead that ABC Sports
13 is a wholly owned subsidiary of ABC Sports Holding Co., Inc.,
14 which is a wholly owned subsidiary of ABC Holding Co., Inc.,
15 which is a wholly owned subsidiary of CapCities, and deny that
16 ABC Sports is "primarily" engaged in sports programming
17 throughout the United States.

18 10. State that paragraph 10 contains descriptive
19 matter to which CapCities and ABC Sports are not required to
20 plead; but if an answer is deemed to be required, acknowledge
21 that plaintiff has asserted that he might seek leave to file a
22 second amended complaint adding additional parties and deny
23 the remaining allegations of paragraph 10 for lack of
24 knowledge or information sufficient to form a belief as to the
25 truth thereof.

26 11-13. State that paragraphs 11-13 contain
27 conclusions of law to which CapCities and ABC Sports are not

C. National Hockey League

It is common knowledge that the National Hockey League has had trouble obtaining a national contract. Currently, there is no coverage by the three major broadcast networks, save for the All Star Game. Hockey remains a local sport.

There is every reason to believe the number of NHL games appearing on local television stations has declined in recent years. According to NAB's 1990 sports survey, the number of games appearing on off-air television declined 7.4 percent from 1986 to 1989.²⁰ During this same time period the number of games appearing on local and regional cable channels increased by 136 games, amounting to a 29.3 percent increase.²¹ Indeed, the number of hockey games leaving off-air television appears to be accelerating.

The Philadelphia Flyers provide a typical example. For the 1988/1989, 1989/1990 and 1990/1991 seasons, 43 Flyers games appeared on off-air television. Beginning with the 1991/1992 season, the number of games began to decline. During the 1991/1992 season, 32 games were broadcast. This year only 28 games appeared on off-air television. For the 1993/1994 season only 23 games will be broadcast. At the same time, Prism, a pay

²⁰National Association of Broadcasters, Sports on Television, 1990 at 4.

²¹Id.

cable sports channel has increased its quantity of games from 10 in 1991 to 20 in 1993.

Perhaps the most egregious example of sports siphoning occurred during the 1990/1991 season with the then Minnesota North Stars. KSMP -TV had carried many of the North Star's regular season away games. However, when the North Stars made the Stanley Cup Playoffs, the games shifted to pay-per-view. Despite the fact that the Minneapolis market covers about 1.4 million television households, the North Stars found it more profitable to place the games on a restricted pay channel.

The first two games of the series drew between 15,000 and 18,000 subscribers. Game three lured 20,000; game four 24,000; game five 26,000 and game six 32,000. The Stanley Cup games cost 12.95 per game. Overall the North Stars netted about \$500,000 for the first six games. This compares to only \$20,000 per game averaged on KSMP.

The economics of this situation crystalize the public policy debate. Potentially over a million viewers were denied access to Stanley Cup Playoffs and replaced by 32,000 hockey fans that could both afford and had technical access to the pay-per-view offerings.

From a pure economic standpoint, it made perfect sense for the North Stars management. However, from a public policy perspective, the result was appalling. The citizens of Minneapolis, who helped support the team with tax breaks for the

stadium were left out in the cold. If this trend continues, there will be no hockey games on free television.

D. NBA

While the number of NBA games appearing on local television stations has increased in the aggregate, this growth is largely due to expansion.²² Importantly, games appearing on pay cable channels has increased rapidly, from 540 games in 1985/1986 to 750 games in 1989/1990. TNT will offer 50 games pursuant to a contract with the NBA that will last through the 1993/1994 season.

At the same time local stations are losing games. For example, WPHL-TV, Channel 17 in Philadelphia, broadcast 42 Seventy-Sixer games in 1988, 1989 and 1990. Beginning with the 1991/1992 season the number of basketball games appearing on the station dropped to a token 10 games. Prism, a pay cable sports channel secured the rights to the remaining games. In fact, if political pressure had not been applied, all the Seventy-Sixer games would have gone to pay cable. Beginning with the 1994/1995 season, all Seventy Sixer games will be on Prism or the SportsChannel.

²²NAB Sport on Television 1990 at 6.

III. FCC Should Enact Sports Siphoning Rules.

INTV recognizes that the FCC's former sports siphoning rules were struck down in Home Box Office, Inc. v. FCC, 567 F.2d 9 (1977). Nevertheless, perhaps most striking about the 1977 HBO case is the totally different factual situation regarding (1) the size and penetration of the cable industry, and (2) the extent of sports telecast migration from broadcast to cable television, then and now. The most casual perusal of that case indicates that the court invalidated the FCC's anti-siphoning rules largely because, given the relative audience sizes, financial strength and stature of broadcasting and cable, no problem requiring regulation was found to exist.

First, the court considered the subscriber penetration of the cable industry. The court cited 1975 statistics showing that 9.8 million households, or 14 percent of all U.S. television households, had "access" to cable; that cable systems were predominantly small businesses, with the largest having only 101,000 customers and with only 224 of approximately 3,405 systems having more than 10,000 subscribers;" that most of these systems were outside the major television markets; and that "extension of cable service with cablecasting capability to the country as a whole does not seem possible in the immediate future."²³ Indeed, the court noted that the FCC in 1969 had found that it "had no information which would indicate that pay cable

²³HBO, 567 F. 2d at 24 (footnotes omitted).

television could penetrate any television market to the extent needed to 'siphon' programming," but that it had nevertheless adopted the anti-siphoning rules only nine months later.²⁴ Today, in stark contrast, over 60 percent of U.S. households subscribe to cable. There are over 11,000 cable systems with 53 million basic subscribers and 37 million pay units.²⁵ It is a matter of public record that many sporting events, including college football, NFL football and major league baseball games, are migrating from broadcast to cable television with increasing frequency.

Second, the court correctly found that the FCC's jurisdiction over cable was limited to regulation "reasonably ancillary to the effective performance of the Commission's various responsibilities for the regulation of television broadcasting," United States v. Midwest Video Corp., 406 U.S. 649, 667-68 (1972) (plurality opinion). Thus, the HBO court found that "the Commission must either demonstrate specific support for its actions in language of the Communications Act or at least be able to ground them in a well-understood and consistently held policy developed in the Commission's regulation of broadcast television."²⁶

The court held that, given the totally speculative basis for the FCC rules in the absence of any measurable degree of

²⁴Id. at 22.

²⁵1993 TV and Cable Factbook, Cable Services Volume at F.4

²⁶Id. sy 28 (citation omitted).

1 required to plead; but if an answer is deemed to be required;
2 deny the allegations contained in paragraphs 11-13.

3 14. State that paragraph 14 contains conclusions of
4 law to which CapCities and ABC Sports are not required to
5 plead; but, if an answer is deemed to be required, admit that
6 CapCities and ABC Sports have at times engaged in interstate
7 commerce, admit that the televising of some college football
8 games is in and affects interstate commerce; admit that
9 CapCities and ABC Sports broadcast programs, including
10 intercollegiate football games, on a nationwide basis and that
11 CapCities and ABC Sports derive revenue through the sale of
12 advertising time during these broadcasts, but deny that all
13 college football games that CapCities and ABC Sports broadcast
14 are shown on a nationwide basis; admit on information and
15 belief that some athletic contests between members of the Pac-
16 10 and non-member institutions require interstate travel; deny
17 all other allegations contained in paragraph 14 respecting
18 CapCities and ABC Sports; and deny the remaining allegations
19 of paragraph 14 for lack of knowledge or information
20 sufficient to form a belief as to the truth thereof.

21 15-16. Deny the allegations contained in paragraphs
22 15-16 for lack of knowledge of information sufficient to form
23 a belief as to the truth thereof.

24 17. Deny that CapCities or ABC Sports makes
25 payments "directly" to members of the Pac-10 or to members of
26 other conferences and deny the remaining allegations of

1 paragraph 17 for lack of knowledge or information sufficient
2 to form a belief as to the truth thereof.

3 18. Admit on information and belief that FSU
4 defeated USC in the 1992 Freedom Bowl and deny the remaining
5 allegations of paragraph 18 for lack of knowledge or
6 information sufficient to form a belief as to the truth
7 thereof.

8 19. Deny the allegations contained in paragraph 19
9 for lack of knowledge or information sufficient to form a
10 belief as to the truth thereof.

11 20. State that paragraph 20 contains conclusions of
12 law to which CapCities and ABC Sports are not required to
13 plead; but if an answer is deemed to be required, admit on
14 information and belief that at times each member of the Pac-10
15 and Fresno State University ("FSU") was a member of the NCAA
16 and played NCAA Division I-A football, deny that there is a
17 "market" for live college football television broadcasts, and
18 deny the remaining allegations of paragraph 20 for lack of
19 knowledge or information sufficient to form a belief as to the
20 truth thereof.

21 21. Admit that television arrangements for some
22 college football games have been made by home teams and deny
23 the remaining allegations of paragraph 21 for lack of
24 knowledge or information sufficient to form a belief as to the
25 truth thereof.

26 22. State that the phrase "home rule" is undefined
27 in paragraph 22 and that CapCities and ABC Sports are thus

1 unable to answer; but if an answer is deemed to be required,
2 admit that television arrangements for some college football
3 games have been made by home teams and deny the remaining
4 allegations of paragraph 22 for lack of knowledge or
5 information sufficient to form a belief as to the truth
6 thereof.

7 23. State that the phrase "home rule" is undefined
8 in paragraph 23 and that CapCities and ABC Sports are thus
9 unable to answer; but if an answer is deemed to be required,
10 state that ABC Sports has contracted with the Pac-10 and Big
11 Ten Conference ("Big Ten") for the rights to televise certain
12 football games hosted by members of the Pac-10 and the Big
13 Ten, admit that the contract between ABC Sports and the Pac-10
14 and Big Ten does not prohibit members of the Pac-10 from
15 granting rights to televise their home football games,
16 provided that such a grant is not inconsistent with the terms
17 of the contract, and deny the remaining allegations of
18 paragraph 23 for lack of knowledge or information sufficient
19 to form a belief as to the truth thereof.

20 24. Admit on information and belief that the
21 members of the Pac-10 and FSU play NCAA Division I-A football
22 and deny the remaining allegations of paragraph 24 for lack of
23 knowledge or information sufficient to form a belief as to the
24 truth thereof.

25 25. State that paragraph 25 contains conclusions of
26 law to which CapCities and ABC Sports are not required to
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1 plead; but if an answer is deemed to be required, deny the
2 allegations contained in paragraph 25.

3 26-27. State that paragraphs 26-27 contain
4 conclusions of law to which CapCities and ABC Sports are not
5 required to plead; but if an answer is deemed to be required,
6 deny the allegations contained in paragraphs 26-27 for lack of
7 knowledge or information sufficient to form a belief as to the
8 truth thereof.

9 28. State that paragraph 28 contains conclusions of
10 law to which CapCities and ABC Sports are not required to
11 plead; but if an answer is deemed to be required, admit that
12 at times prior to June 27, 1984, ABC Sports negotiated with
13 the NCAA to purchase the rights to telecast college football
14 games and deny the remaining allegations of paragraph 28 for
15 lack of knowledge or information sufficient to form a belief
16 as to the truth thereof.

17 29-30. State that paragraphs 29-30 contain
18 conclusions of law to which CapCities and ABC Sports are not
19 required to plead; but if an answer is deemed to be required,
20 deny the allegations contained in paragraphs 29-30 for lack of
21 knowledge or information sufficient to form a belief as to the
22 truth thereof.

23 31. Admit the allegations contained in the first
24 sentence of paragraph 31, except deny that CapCities has
25 broadcast college football games for 28 years, deny the
26 allegations contained in the second sentence of paragraph 31,
27 stating instead that American Broadcasting Companies, Inc.,

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1 and not CapCities, televised college football games pursuant
2 to agreements with the NCAA, and deny the allegations
3 contained in the third sentence of paragraph 31.

4 32. Deny the allegations contained in paragraph 32.

5 33-34. State that paragraphs 33-34 contain
6 conclusions of law to which CapCities and ABC Sports are not
7 required to plead; but if an answer is deemed to be required,
8 admit on information and belief that two members of the NCAA
9 brought a lawsuit against the NCAA alleging that the NCAA had
10 violated the antitrust laws, state that the Complaint
11 mischaracterizes the Supreme Court's decision in NCAA v. Board
12 of Regents of the University of Oklahoma, and state that the
13 Supreme Court's decision in the that case speaks for itself.

14 35. Admit the allegations contained in paragraph 35
15 on information and belief.

16 36-38. State that paragraphs 36-38 contain
17 conclusions of law to which CapCities and ABC Sports are not
18 required to plead; but if an answer is deemed to be required,
19 state that the Complaint mischaracterizes the decision of the
20 Court of Appeals in Regents of the University of California v.
21 ABC, Inc., and state that the decisions of the Court of
22 Appeals and the District Court in that case speak for
23 themselves.

24 39. Deny the allegations contained in paragraph 39
25 for lack of knowledge or information sufficient to form a
26 belief as to the truth thereof.

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40-41. Deny the allegations contained in paragraphs 40-41 respecting CapCities and ABC Sports and deny the remaining allegations of paragraphs 40-41 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

42. State that the phrases "general policy," "exclusive rights," and "sports events" are undefined in paragraph 42 of the Complaint and that CapCities and ABC Sports are thus unable to answer; but if an answer is deemed to be required, admit that CapCities and ABC Sports have often obtained some kind of exclusive rights to televise certain sports events, deny the remaining allegations contained in paragraph 42 respecting CapCities and ABC Sports, and deny the remaining allegations of paragraph 42 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

43. State that CapCities and ABC Sports have not yet located transcripts containing the statements allegedly made by Charles Lavery and Herbert Granath, and thus deny that those statements were made for lack of knowledge or information sufficient to form a belief as to the truth thereof and deny the remaining allegations of paragraph 43.

44. Deny the allegations contained in paragraph 44 respecting CapCities and ABC Sports and deny the remaining allegations of paragraph 44 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

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45. Deny the allegations contained in paragraph 45 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

46. Admit that ESPN, Inc. at one time discussed with Prime Ticket Network ("Prime") the possibility of acquiring an interest in Prime, and deny the remaining allegations contained in paragraph 46.

47. Deny the allegations contained in paragraph 47 respecting CapCities and ABC Sports and deny the remaining allegations for lack of knowledge or information sufficient to form a belief as to the truth thereof.

48-52. Deny the allegations contained in paragraphs 48-52 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

53. Admit the allegations contained in paragraph 53.

54-56. State that paragraphs 54-56 contain conclusions of law to which CapCities and ABC Sports are not required to plead; but if an answer is deemed to be required, deny the allegations contained in paragraphs 54-56.

57. State that paragraph 57 contains conclusions of law to which CapCities and ABC Sports are not required to plead, but if an answer is deemed to be required, admit that CapCities and ABC Sports have the right of first selection for certain Pac-10 college football games and deny the remaining allegations of paragraph 57.

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58-62. State that paragraphs 58-62 contain conclusions of law to which CapCities and ABC Sports are not required to plead; but if an answer is deemed to be required, deny the allegations contained in paragraphs 58-62 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

63. State that paragraph 63 contains conclusions of law to which CapCities and ABC Sports are not required to plead; but if an answer is deemed to be required, deny the allegations contained in paragraph 63 respecting CapCities and ABC Sports and deny the remaining allegations of paragraph 63 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

64-66. Deny the allegations contained in paragraphs 64-66 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

67. Admit on information and belief that any conflict with an exclusive telecast period could have been resolved by changing the starting time of one or both of the games at issue or by obtaining a waiver of exclusive telecast rights, deny the remaining allegations contained in paragraph 67 respecting CapCities and ABC Sports, and deny the remaining allegations of paragraph 67 for lack of knowledge or information sufficient to form a belief as to the truth thereof.