

1 68-69. Deny the allegations contained in paragraphs
2 68-69 for lack of knowledge or information sufficient to form
3 a belief as to the truth thereof.

4 70. Admit that plaintiff did not seek a waiver from
5 CapCities or ABC Sports, deny that plaintiff had any basis for
6 believing such a request would have been futile, and deny the
7 remaining allegations contained in paragraph 70 for lack of
8 knowledge of information sufficient to form a belief as to the
9 truth thereof.

10 71. Deny the allegations contained in paragraph 71
11 respecting CapCities and ABC Sports and deny the remaining
12 allegations of paragraph 71 for lack of knowledge or
13 information sufficient to form a belief as to the truth
14 thereof.

15 72. Refer to and incorporate by reference as though
16 fully set forth herein paragraphs 1-71 of this Answer.

17 73-76. State that paragraphs 73-76 contain
18 conclusions of law and descriptive matter to which defendants
19 are not required to plead; but if an answer is deemed to be
20 required, deny the allegations contained in paragraphs 73-76
21 as to CapCities and ABC Sports and deny the allegations as to
22 other defendants for lack of knowledge or information
23 sufficient to form a belief as to the truth thereof.

24 77. Refer to and incorporate by reference as though
25 fully set forth herein paragraphs 1-76 of this Answer.

26 78. State that paragraph 78 contains conclusions of
27 law and descriptive matter to which defendants are not
28

1 required to plead; but if an answer is deemed to be required,
2 deny the allegations contained in paragraph 78 as to CapCities
3 and ABC Sports and deny the allegations as to other defendants
4 for lack of knowledge or information sufficient to form a
5 belief as to the truth thereof.

6 79. Refer to and incorporate by reference as though
7 fully set forth herein paragraphs 1-78 of this Answer.

8 80-83. State that paragraphs 80-83 contain
9 conclusions of law and descriptive matter to which defendants
10 are not required to plead; but if an answer is deemed to be
11 required, deny the allegations contained in paragraphs 80-83
12 respecting CapCities and ABC Sports and deny the allegations
13 as to other defendants for lack of knowledge or information
14 sufficient to form a belief as to the truth thereof.

15 84. Refer to and incorporate by reference as though
16 fully set forth herein paragraphs 1-83 of this Answer.

17 85. State that paragraph 85 contains conclusions of
18 law and descriptive matter to which defendants are not
19 required to plead; but if an answer is deemed to be required,
20 deny the allegations contained in paragraph 85 as to CapCities
21 and ABC Sports and deny the allegations as to other defendants
22 for lack of knowledge or information sufficient to form a
23 belief as to the truth thereof.

24 86. Refer to and incorporate by reference as though
25 fully set forth herein paragraphs 1-85 of this Answer.

26 87. State that paragraph 87 contains conclusions of
27 law and descriptive matter to which defendants are not

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1 required to plead; but if an answer is deemed to be required,
2 deny the allegations contained in paragraph 87 as to CapCities
3 and ABC Sports and deny the allegations as to other defendants
4 for lack of knowledge or information sufficient to form a
5 belief as to the truth thereof.

6 88. Refer to and incorporate by reference as though
7 fully set forth herein paragraphs 1-87 of this Answer.

8 89. State that paragraph 89 contains conclusions of
9 law and descriptive matter to which defendants are not
10 required to plead; but if an answer is deemed to be required,
11 deny the allegations contained in paragraph 89 as to CapCities
12 and ABC Sports and deny the allegations as to other defendants
13 for lack of knowledge or information sufficient to form a
14 belief as to the truth thereof.

15 90. Refer to and incorporate by reference as though
16 fully set forth herein paragraphs 1-89 of this Answer.

17 91-93. State that paragraphs 91-93 contain
18 conclusions of law and descriptive matter to which defendants
19 are not required to plead; but if an answer is deemed to be
20 required, deny the allegations contained in paragraphs 91-93
21 as to CapCities and ABC Sports and deny the allegations as to
22 other defendants for lack of knowledge or information
23 sufficient to form a belief as to the truth thereof.

24 94. Refer to and incorporate by reference as though
25 fully set forth therein paragraphs 1-93 of this Answer.

26 95-96. State that paragraphs 95-96 contain
27 conclusions of law and descriptive matter to which defendants

28

1 are not required to plead; but if an answer is deemed to be
2 required, deny the allegations contained in paragraphs 95-96
3 as to CapCities and ABC Sports and deny the allegations as to
4 other defendants for lack of knowledge or information
5 sufficient to form a belief as to the truth thereof.

6 97. Deny each and every averment of the Complaint
7 not specifically admitted herein.

8 98. State that plaintiff's prayer for relief
9 contains conclusions of law and descriptive matter to which
10 defendants are not required to plead; but if an answer is
11 deemed to be required, deny that plaintiff is entitled to the
12 relief specified.

13 AFFIRMATIVE DEFENSES

14 SECOND DEFENSE

15 99. Plaintiff fails to state a claim against
16 CapCities or ABC Sports upon which relief can be granted.

17 THIRD DEFENSE

18 100. Plaintiff has not been injured in its business
19 or property within the meaning of the Clayton Act.

20 FOURTH DEFENSE

21 101. If, and to the extent, plaintiff suffered any
22 injury, it was not injured by reason of anything forbidden in
23 the antitrust laws.
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NINTH DEFENSE

106. Plaintiff's claims are barred by the doctrine of laches and/or the relevant statutes of limitations.

TENTH DEFENSE

107. No enforceable contract was formed, and no consideration was offered or exchanged, between Fresno State University and Oregon State University or between Fresno State University and Washington State University.

ELEVENTH DEFENSE

108. The agreement entered into by CapCities and ABC Sports with the Pac-10, regarding telecasts rights to certain college football games, preexisted any agreement between Fresno State University and Oregon State University and any agreement between Fresno State University and Washington State University, and CapCities and ABC Sports had the privilege to secure performance of their agreement with the Pac-10 to the exclusion of any rights subsequently acquired by others.

TWELFTH DEFENSE

109. Plaintiff has unclean hands, and therefore is not entitled to injunctive or other equitable relief.

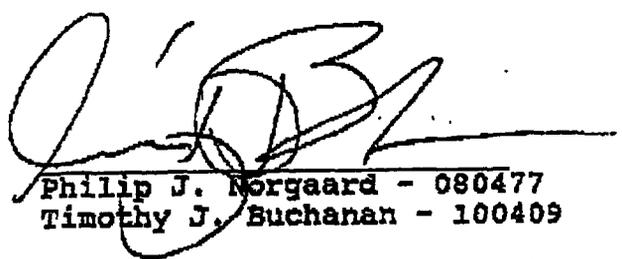
THIRTEENTH DEFENSE

110. The injunctive relief that plaintiff seeks would not enhance competition, and therefore is not authorized by Federal or State antitrust laws.

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WHEREFORE, having fully answered plaintiff's
Complaint, defendants CapCities and ABC Sports respectfully
pray that plaintiff take nothing by virtue thereof; that the
same be dismissed with prejudice; that judgment be entered in
favor of CapCities and ABC Sports on all counts of plaintiff's
Complaint; and that CapCities and ABC Sports be awarded costs
and reasonable attorneys' fees and such further and different
relief as the Court may deem just.

Dated: March 30, 1993



Philip J. Norgaard - 080477
Timothy J. Buchanan - 100409

DIETRICH, GLASRUD & JONES
5250 North Palm Avenue
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Counsel for Defendants
Capital Cities/ABC, Inc.
and ABC Sports, Inc.

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PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA, COUNTY OF FRESNO

I am a resident of the County of Fresno; I am over the age of 18 years and not a party to this action. My business address is 5250 North Palm Avenue, Suite 402, Fresno, California 93704.

I am completely familiar with the ordinary business practice of this office regarding collection and deposit of mail with the United States Postal Service. In the ordinary course of business of this office, the document(s) described below will be deposited with the United States Postal Service the same day they are placed in a designated area of this office for the collection and deposit of mail.

On March 30, 1993, I served the within ANSWER OF CAPITAL CITIES/ABC, INC. AND ABC SPORTS, INC. TO PLAINTIFF'S FIRST AMENDED COMPLAINT on the interested parties in this action, by placing a true copy thereof enclosed in a sealed envelope on this date in a place designated for collection and processing of mail at 5250 North Palm Avenue, Suite 402, Fresno, California 93704, following ordinary business practices of this office, addressed to the following person(s):

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2436 North Euclid Avenue, Suite 5
Upland, California 91786
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ATTORNEYS FOR WASHINGTON STATE UNIVERSITY

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ATTORNEYS FOR PRIME TICKET NETWORK

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct.

Executed on March 30, 1993, at Fresno, California.

Lori L. Stewart

LORI L. STEWART

EXHIBIT 6

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(714) 624-1671

Attorneys for Plaintiffs
PAPPAS TELECASTING, INCORPORATED
and HARRY PAPPAS

FILED

OCT 28 3 10 PM '91

CLERK
BY _____ PF

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PAPPAS TELECASTING, INCORPORATED, a)
California corporation, and as a public
trustee, HARRY J. PAPPAS, an individual,
Plaintiffs,

v.

SPORTSCHANNEL AMERICA, INC., a
corporation, SPORTSCHANNEL LOS
ANGELES HOLDING CORP., a corporation;
SPORTSCHANNEL BAY AREA HOLDING
CORP., a corporation; CREATIVE SPORTS
MARKETING, INC., a corporation and the
BIG WEST CONFERENCE, an
unincorporated association, and DOES 1
through 20, inclusive,
Defendants.

Case No. CV-F-91-577 REC

EX PARTE APPLICATION FOR
TEMPORARY RESTRAINING ORDER
("TRO"); NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
INJUNCTION; MEMORANDUM OF
POINTS AND AUTHORITIES;
DECLARATIONS AND EXHIBITS IN
SUPPORT THEREOF

Date: October 30, 1991
_____, 1991

Time: 8:00 a.m.
_____m

Place: Courtroom of
Honorable Robert E.
Coyle

3/4/5/6/7/8/9/10/11/12/13/14/15/16/17/18/19/20/21/22/23/24/25/26/27/28

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1 NOW COMES THE PLAINTIFFS BY THEIR UNDERSIGNED ATTORNEY AND MOVE
2 THIS COURT AS FOLLOWS:

3 To grant forthwith and without notice to the Defendants personally a temporary
4 restraining order ("TRO") restraining and enjoining the Defendants, their members,
5 agents, representatives, affiliates and employees and all persons acting in concert with
6 them from interfering with or preventing Plaintiffs from televising the Fresno State
7 University versus University of the Pacific football game on November 9, 1991, and the
8 Fresno State University versus San Jose State University football game on November 23,
9 1991, and from threatening to impose sanctions or imposing sanctions against any Big
10 West Conference member pending a hearing on and disposition of Plaintiffs' Motion for
11 Preliminary Injunction filed concurrently herewith on October 28, 1991, and scheduled
12 by the Court for hearing on _____, 19____; and for cause refers to the
13 Complaint herein, the affidavits annexed to this motion of Plaintiffs', together with
14 attached affidavits of the attorney for Plaintiffs, dated October 28, 1991, and the
15 attached certificate of applicants' attorney certifying the efforts which have been made to
16 give the Defendants and their attorneys notice and the reasons notice of this motion
17 should not be required.

18 TO DEFENDANTS AND THEIR ATTORNEY OF RECORD:

19 PLEASE TAKE NOTICE that on October _____, 1991, at _____, or as soon
20 thereafter as the matter may be heard, in the courtroom of the Honorable Robert E.
21 Coyle, at the United States District Courthouse, located at 5408 Federal Building, 1130
22 "O" Street, Fresno, California 93721, Plaintiffs Pappas Telecasting, Incorporated, and
23 Harry J. Pappas, will move the Court for a preliminary injunction enjoining Defendants
24 during the pendency of this action as follows:

25 1. Prohibiting Defendants, and each of their officers, employees, agents, members,
26 and all persons acting in concert with them, from preventing or interfering in any way
27 with live television coverage by KMPH-Channel 26 ("KMPH"), of the intercollegiate
28 football games between Fresno State University ("FSU") and the University of the Pacific

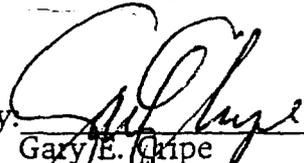
1 ("UOP") in Stockton, California, on November 9, 1991, a between FSU and San Jose
2 State University ("SJSU") in Fresno, California, on November 23, 1991; and,

3 2. Prohibiting the Defendants, and each of its members, officers, employees,
4 agents and all persons acting in concert with them, from threatening to impose or
5 imposing any sanctions on FSU, UOP and SJSU, or taking any other action to prohibit
6 FSU, UOP or SJSU from appearing in the FSU versus UOP, FSU versus SJSU games to be
7 televised by KMPH.

8 This motion and these motions are made upon the grounds that Plaintiffs are
9 likely to succeed on the merits of their claims alleged in the Complaint, that Plaintiffs
10 will suffer irreparable injury if the TRO and preliminary injunction is/are not granted,
11 that the balance of the hardships tip sharply in favor of Plaintiffs, and that the public
12 interest will be served by the granting of the TRO and the preliminary injunction. This
13 motion is based upon this Notice, the attached Memorandum of Points and Authorities,
14 the Complaint, the Declarations of Howard Zuckerman, Scott Johnson, LeBon
15 Abercrombie, Harry J. Pappas, and Lise' M. Markham, Debbie Davis and Gary E. Cripe
16 and accompanying Exhibits "A" through "P," inclusive, filed concurrently with this motion,
17 the pleadings, files and records in this action and any further evidence or argument
18 presented by Plaintiffs at the hearing of this motion.

19 DATED: October 28, 1991.

LAW OFFICES OF HERBERT HAFIF

20
21 By: 

22 Gary E. Cripe
23 Attorneys for Plaintiff
24 PAPPAS TELECASTING,
25 INCORPORATED and
26 HARRY J. PAPPAS
27
28

1 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
2 OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING
3 ORDER AND PRELIMINARY INJUNCTION

4 I

5 INTRODUCTION

6 On November 9, 1991, the University of the Pacific ("UOP") will host Fresno State
7 University ("FSU") in a college football game at UOP's home stadium in Stockton,
8 California. That game will attract a great deal of interest from alumni, local sports
9 writers and football fans because the two teams are traditional rivals, FSU is currently
10 ranked No. 22 (USA Today/CNN Poll) and both teams feature potent offenses. UOP's
11 quarterback leads the nation in total offense. FSU is undefeated (3-0 in conference play)
12 and UOP has a record of (2-1) in conference competition.

13 On November 23, 1991 FSU will host San Jose State University ("SJSU") in a
14 college football game at the Bulldog's home stadium in Fresno, California. This game
15 will also attract widespread interest. FSU and SJSU are traditional rivals and the
16 outcome of their games have frequently decided the Conference Championship. This
17 season may be no exception. Moreover, last season the FSU versus SJSU game was the
18 highest rated KMPH telecast of an FSU football game.

19 At issue in this case is the right of KMPH to telecast FSU athletic events and the
20 right of the viewing public to continue to receive, for free, FSU athletic events over the
21 public airwaves of KMPH-Channel 26 (hereinafter "KMPH"). These rights are being
22 threatened by the Defendants SportsChannel America, Inc., SportsChannel Los Angeles
23 Holding Corp., SportsChannel Bay Area Holding Corp. (collectively hereinafter
24 "SportsChannel"), Creative Sports Marketing, Inc. ("Marketing"), and the Big West
25 Conference (the "Big West"). The Defendants, in total disregard of the preexisting
26 contractual rights of KMPH, of which they are aware, United States anti-trust laws and
27 the public interest, and for their own pecuniary gain, intend to deprive 50% of the KMPH
28 viewers access to these games at all. They intend to charge the other 50% a fee to watch

1 that which they have historically been able to watch for on KMPH.

2 For these and other reasons, KMPH as a public trustee of the airwaves, seeks to
3 invoke the protections of the anti-trust laws of the United States in order to protect the
4 rights of both the public and KMPH. Further, KMPH seeks to protect rights created
5 pursuant to a contract entered into between Plaintiff KMPH and FSU on July 1, 1985, as
6 extended in 1987, and as further extended through June 30, 1991. KMPH intends to
7 televise these two FSU football games to an anticipated audience of between 400,000 to
8 500,000 KMPH viewers. If Defendants get their way, only one-half (1/2) that many fans
9 will be able to watch these games, and it will cost them a fee.¹

10 KMPH has the right to and wants to televise the games. FSU acknowledges the
11 rights of KMPH and wants the games televised on KMPH. UOP has no objection to
12 KMPH televising the game between it and FSU. Undoubtedly 500,000 viewers in the San
13 Joaquin Valley want it televised, for free, on KMPH. The athletes, many of whom are
14 San Joaquin Valley residents and who came to FSU because of the stature of its football
15 program, among other reasons, surely want the game televised locally. One would
16 expect that the individual members of Defendant, the Big West Conference (the "Big
17 West"), if free to speak their minds would want the game televised since they will share
18 in the revenues generated by the telecast and the concomitant prestige which inures to
19 the benefit of the entire Conference when one, or more, of its members receive television
20 coverage. Bulldog fans who cannot travel to Stockton to view the game live surely will
21 want it televised for free on KMPH. Bulldog fans who will not be able to attend the FSU
22 v. SJSU game, which is expected to be a sell out, surely would want the game televised
23 for free on KMPH. The many rural residents and FSU fans within the KMPH television
24 market area, and others who do not have access to cable television would want the game

25
26 ¹On October 24, 1991, Continental Cablevision ("Continental") and Defendant
27 SportsChannel announced they had entered into a contract pursuant to which
28 SportsChannel events will be carried over Continental. Before these recent event,
SportsChannel has not been carried in the TV market area (Area of Dominant Influence,
"ADI") of KMPH. Please see Exhibit "K."

1 televised for free over KMPH, the signal of which reaches nearly 100% of the viewers in
2 its television market. Surely those who cannot afford the installation fee and/or the
3 monthly expense of cable television, an ever increasing number during this recession or
4 depression (depending upon who has lost a job) would like the game telecast by KMPH
5 for free.

6 In fact, everyone but the Defendants, who cannot deliver the game to 50% of the
7 television viewers within the ADI of KMPH, want the game televised for free over KMPH.
8 The Defendants' apparent attitude is even though we cannot deliver the product, those
9 who can should be prevented from doing so, and the "public be damned."

10 The Defendants have totally ignored the preexisting contractual rights of KMPH to
11 televise these games which rights vested with KMPH by virtue of its contract with FSU in
12 1985. Further, they have and they continue to engage in a naked restraint of trade by
13 asserting a purported exclusivity provision in a contract executed over four and one half
14 years after FSU granted contractual rights to KMPH to televise all FSU athletic events
15 excepting a national television network "telecast" (not cable carriage), and a single game
16 of the week to be telecast over a regional television network (not a cable carriage
17 network). The contract between FSU and KMPH specifically reserves to KMPH the right
18 to sell its FSU television rights to cable companies.

19 The Defendants apparently rely on a contract dated April, 1990 between
20 Defendants, the Big West and Marketing, which purports to convey to Marketing as the
21 sole conference representative the right to sell exclusive cable carriage rights on behalf of
22 all conference participants. That provision states, in pertinent part:

23 "Once the telecast schedule has been finalized for the Conference's television
24 package and after games have been sold to national and regional cable
25 networks (no later than July 1 of each year for football; and September 1 in
26 the sport of men's basketball without consent of the Conference), then each
27 member institution may contract to telecast in its local television market
28 only, any games that are not a part of the Conference's television package

1 and which have not been sold to a national or regional cable network."
2 Defendants apparently assert that, that provision in the agreement prohibits any member
3 of the Big West from appearing on local television, even if rights were previously sold to
4 someone else and even if Defendants cannot telecast the game on television, or carry the
5 game via cable to all of the viewers within the ADI of, for example, FSU and KMPH.

6 Interestingly, that contract, just as the earlier contract between KMPH and FSU,
7 draws a distinction between a ". . . telecast schedule. . . for the Conference's television
8 package" [emphasis added] and selling games to national and regional cable networks.
9 Not coincidentally, that same distinction was drawn in the contract between KMPH and
10 FSU over four-and- one-half years earlier to distinguish between communication media.
11 Television is telecast by signal over the airwaves and is received by viewers free of
12 charge. Cable re-transmits the telecast and carries it over cable to subscribers who pay a
13 fee. KMPH had the right to telecast FSU athletic events and the right to sell those rights
14 to cable carriers long before the Big West contracted with Marketing.

15 Clearly, two separate subsets of the total number of conference athletic events
16 have been created by that agreement. Those that are part of a television package, and
17 those which have been sold to a cable network. The Big West does not have a television
18 package for Big West football games.

19 Nevertheless, by virtue of their apparent stranglehold on the individual member
20 institutions of the Big West, Defendants have managed to instill fear of reprisals in both
21 FSU, which acknowledges the preexisting contractual rights of KMPH, and UOP which is
22 happy to have KMPH broadcast the game back to its television market, but only ". . . with
23 the blessings of Sports Channel [sic] and the Big West Conference." Perhaps because of
24 their fear of reprisals, neither UOP or FSU have been heard to complain on behalf of
25 their fans who are being denied the opportunity to watch these games by the Defendants.

26 The ostensible reason for the restriction on local television coverage is to limit the
27 number of Conference games on television. The motivation is obvious. By limiting the
28 output of a product in demand, one is able to raise the price of individual units because

1 there are not enough units (Big West football games) to satisfy the demand.

2 The Defendants insist on depriving a significant percentage of the public of the
3 opportunity to see either game this season because next season these viewers, who have
4 been without cable and are hungry for FSU sports, will pay the price to SportsChannel.
5 The viewers may not be happy to pay for that which they historically have had for free,
6 but they will have no alternative. In the cable industry that is called "driving
7 distribution."

8 The United States Supreme Court has held that the control previously exercised by
9 the National Collegiate Athletic Association ("NCAA") over the market for live television
10 coverage of college football games constituted an unreasonable restraint of trade in
11 violation of Section 1 of the Sherman Act, 15 U.S.C. Section 1. NCAA v. Board of
12 Regents of the University of Oklahoma, et al., 468 U.S. 85, 104 S.Ct. 2998 (1984) (the
13 "NCAA Decision"). In the NCAA Decision, the Supreme Court found that the NCAA's
14 control over the rights of its members to televise their games was a classical horizontal
15 agreement to limit output and enhance price in restraint of trade.

16 Further, only months after that landmark decision the United States Ninth Circuit
17 Court of Appeals affirmed a preliminary injunction issued by the United States District
18 Court for the Central District of California prohibiting two members of the College
19 Football Association (a consortium of major college football powers hereinafter "CFA"),
20 Notre Dame and Nebraska, from withholding consent to the CBS broadcast of their
21 games against two Pacific 10 teams, USC and UCLA (not members of the CFA) based
22 solely on the terms of a contractual provision which sought to exclusively restrain
23 national television coverage involving CFA teams to ABC - even if ABC did not intend to
24 televise the games. The District Court further enjoined the CFA and its members from
25 imposing or threatening to impose any sanctions on either Nebraska or Notre Dame to

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1 inhibit these schools from voluntarily consenting to a CL cross-over² game broadcast.
2 The Regents of the University of California, et al. v. American Broadcasting Companies,
3 Inc., et al., 747 F.2d 511 ("the ABC Decision").

4 In affirming the District Court decision the Ninth Circuit relied heavily on the
5 NCAA Decision. "Indeed our confidence in the District Court's finding on this matter
6 cannot ask for a more firm footing than that found in the Supreme Court's recent
7 decision in NCAA v. Regents of the University of Oklahoma." Id. at 516.

8 Moreover, the Ninth Circuit rejected the argument made by Defendants that the
9 ABC/CFA contract bore heavily on the operative rules of collegiate football. The Court,
10 noting that the NCAA relying as it did upon the rule of reason, agreed that the NCAA did
11 play a vital role in maintaining industry (college football) uniformity and product
12 integrity. The Ninth Circuit concluded, however, that if the NCAA played that role and
13 was depended upon by the college football industry for its very sinews then, the Court
14 logically concluded, there could be only one such entity per industry. "With the NCAA
15 having already occupied the field of 'college football' the CFA and the ABC-CFA contract
16 appear to constitute classical horizontal restraints unadorned by any organic relationship
17 to the 'character and quality of the product.'" 747 F.2d 516. Accordingly, the Ninth
18 Circuit concluded that the NCAA Decision suggested that the traditional antitrust analysis
19 and the illegal per se label should apply to the Plaintiffs' boycott and price fixing
20 allegations. Id.

21 It is abundantly clear that none of the Defendants oppose the concept of
22 monopolizing television and cable carriage rights to the Big West college football games.
23 They simply intend to substitute their horizontal cartel composed of the Big West and its
24 individual members, and the vertical monopoly comprised of the Big West, Marketing
25 and SportsChannel for the CFA. The CFA attempted, unsuccessfully, to substitute itself
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27 ² "Cross-over" games are those between non-conference opponents or in that context
28 games between a CFA member and a non-CFA member.

1 for the NCAA. The Defendants attempt must similarly ~~fail~~. The NCAA, CFA and the
2 Defendants herein have all attempted to exclude others from participation in order to
3 maintain an exclusive club to the detriment of consumers.

4 Under the principles announced in the NCAA Decision, and the ABC Decision, the
5 Defendants are violating Section 1 of the Sherman Act and engaging in conduct, the
6 intended purpose of which is to induce FSU to breach its contract with KMPH. Plaintiffs
7 will suffer irreparable harm if KMPH is not permitted to televise the UOP and SJSU
8 games. As described in detail below, appearance on local television is of crucial
9 importance to universities with prominent football programs. Televising the games is
10 crucial to maintaining the franchise value of KMPH, and crucial to its affirmative
11 obligation as mandated by the Federal Communications Commission ("FCC") to serve the
12 needs, interests and desires of its viewers. A significant portion of the viewing public
13 (200,000 to 250,000 viewers within the KMPH ADI) will be deprived of the opportunity
14 to view two of the premier Big West Conference games of the 1991 season. An equal
15 number of viewers will have to pay for that which they have historically received for free
16 on KMPH. The Defendants' attempted interference with the rights of KMPH, if
17 successful, will hasten what many believe may be the ultimate result--athletic events "for
18 pay" only.³ Plaintiffs respectfully request this Court to enter a temporary restraining and
19 a preliminary injunction prohibiting Defendants from interfering with the televising of
20 these games by KMPH.

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22 II

23 STATEMENT OF FACTS

24 This Statement of Facts is based upon the Complaint, the NCAA Decision, the ABC
25 Decision and the Declarations of Howard Zuckerman, Scott Johnson, LeBon Abercrombie,

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27 ³Please see Chicago Tribune article, "Pay TV Money, A Powerful Lure for Sports,"
28 October 27, 1991, a true and accurate copy of which is attached hereto as Exhibit "P"
and incorporated herein by reference.