

January 19, 2001

CS Dkt. No. 00-2

Philip R. Hochberg, Esq.  
Verner, Liipfert, Bernhard, McPherson & Hand  
901 15<sup>th</sup> Street, N.W.  
Washington, D.C. 20005-2301

Re: Application of Satellite Sports Blackout Rules, 47 C.F.R. §76.127

Dear Mr. Hochberg:

This letter is in response to your recent request for clarification of the Commission's Satellite Sports Blackout Rule (47 C.F.R. §76.127), which was adopted on October 27, 2000, and took effect on November 29, 2000, pursuant to the Satellite Home Viewer Improvement Act of 1999. Your request is on behalf of the National Basketball Association and the National Hockey League. Because your letter and our response have relevance for many parties affected by the sports blackout rule, we are putting both your letter and this response on the public record.

Subsection (c) of Section 76.127 requires that rights holders for sporting events must give notice for sports blackout deletion requests within 48 hours of the time the telecast schedule is known. As is clear from the text of the *Implementation of the Satellite Home Viewer Improvement Act of 1999: Application of Network Non-Duplication, Syndicated Exclusivity, and Sports Blackout Rules to Satellite Retransmission of Broadcast Signals*, Report and Order, CS Docket No. 00-2 (FCC 00-388), the new satellite sports blackout rule can be applied to events scheduled as soon as March, 2001, provided the satellite carrier receives notice at least 60 days prior to the event. Your letter seeks clarification for how to apply this new rule for sports events scheduled to occur sometime after the effective date of the rule, but for which the telecast schedule was announced and known before the rule was promulgated and took effect.

As you noted, with respect to the network non-duplication and syndicated program exclusivity rules, the new satellite rules provide for special language in exclusive contracts to specify application of the contractual protection to satellite retransmission and allow a period of time for renegotiating such contracts and providing notice accordingly. (See Report and Order at paragraphs 37, 48-49; and 47 C.F.R. §§76.122(d), 76.123(f), and 76.124.) For contracts that contained the appropriate language prior to the November 29, 2000 effective date and did not require renegotiation, notification is required to be given by January 31, 2001. Similarly, in the context of the sports blackout rule, for regularly scheduled events for which the telecast was scheduled some time before the effective date of the rule, the 48 hour notification requirement is adjusted to the date the rule takes effect. It is not necessary, as your letter queries, to "go back and reschedule the telecasts for the sole purpose of giving adequate '48 hour' notice." We see no point in requiring this exercise. Notification for sports events to be deleted by satellite carriers must be received by the satellite carrier within 48 hours after the time of the telecast to be deleted

is known or within 48 hours of the effective date of the rule if the telecast was scheduled prior to November 29, 2000. For sports events to be deleted on or before March 31, 2001, the notification must be received at least 60 days prior to the date the telecast is to be deleted, and for deletions after March 31, 2001, notifications as to regularly scheduled events must be received no later than the Monday preceding the calendar week during which the program deletion is to be made, as provided in Section 76.127 of the Commission's rules.

This response should not be read as bearing in any way on the issues raised in the Petitions for Reconsideration filed in Docket No. CS 00-2, which will be considered following Commission procedures as set forth in our rules.

Sincerely,



*for* Deborah A. Lathen  
Chief

Cable Services Bureau

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December 4, 2000

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Chief, Cable Services Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

Re: Application of New Satellite Sports Blackout Rules

Dear Ms. Lathen:

I am writing on behalf of my clients, the National Basketball Association ("NBA") and the National Hockey League ("NHL"), concerning an immediate problem with the enforcement of the satellite sports blackout rules recently adopted in the Report and Order in CS Docket No. 00-2, released November 2, 2000. This may be a one-time situation, dealing with telecasts in the latter part of the NBA's and NHL's 2000-2001 seasons.

The rules in force as of November 29, 2000 require that notice of the need to blackout game telecasts be given to satellite carriers within 48 hours of the time the telecast is "known" or "scheduled." See Report and Order at Para. 69 and Section 76.127(c). In a forthcoming Petition for Reconsideration, the NBA and NHL intend to demonstrate substantial problems with this rule. However, during the period the rule is in effect, an anomalous – and obviously unintended – circumstance has arisen.

The Commission adopted general blackout rules which do not begin until April 1, 2001, to "afford satellite carriers an opportunity to adjust their schedules to these new regulatory requirements." Report and Order at Para. 75. The Commission recognized, as well, that earlier blackouts could be requested:

[F]or sports events to be deleted on or before March 31, 2001, notification must be

Deborah A. Lathen, Esq.  
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received by satellite carriers at least 60 full days prior to the day the telecast is to be deleted.

Section 76.127(f). As the Commission said, "For example, a satellite carrier would be required to black out a sports event to be telecast on February 16, 2001, only if the carrier receives notification on or before December 18, 2000." Report and Order at Note 279.

However, the NBA and NHL find themselves in the anomalous position of providing the 60 day notice – or even the notice for April 1, 2001 and beyond – but facing the argument that these notices are not being given within 48 hours after the "time of the telecast to be deleted is known," as required in Section 76.127(c). Indeed these telecasts to be deleted were scheduled in the August-September, 2000 time period. There would be no way of complying with the requirements for deletion of any telecasts during the NBA's and NHL's regular seasons, save going back and "rescheduling" the telecasts for the sole purpose of giving adequate "48 hour" notice.

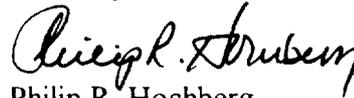
In the like circumstance of satellite network non-duplication and satellite syndicated program exclusivity, the Commission adopted special rules dealing with contracts negotiated prior to the November 29, 2000 effective date. See Sections 76.122(d), 76.123(f) and 76.124. Contracts entered into prior to November 29, 2000 are not denied the right to obtain the full force of exclusivity protection.

This network nonduplication and syndicated exclusivity situation is analogous to the scheduling of NBA and NHL telecasts for their 2000-2001 regular seasons. The telecasts of NBA and NHL teams are entitled to the same kind of protection afforded stations and syndicators. Until such time as the Commission rules on the efficacy of retaining the "48 hour rule," it should be waived for pre-existing schedules of telecasts.

Should you have any questions, please do not hesitate to contact me.

With kindest regards, I am

Sincerely,



Philip R. Hochberg

cc: Eloise Gore, Esq.  
Ron Parver, Esq.

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