November 14, 2007

Mr. Kevin Martin
Chairman, Federal Communications Commission
445 12th Street SW:
Room: 8-B201
Washington, DC 20554

Re: **Big Cable dispute with Independent Programmers**

Dear Chairman Martin:

I am writing to urge the Federal Communication Commission to take action to resolve the ongoing dispute between vertically integrated cable operators, like Comcast, and independent programming channels NFL Network and Big Ten Network. I have received a number of constituent letters and emails complaining about this stalemate. Many of those letters note that those cable systems require them to purchase other sports networks – such as Versus and the Golf Channel – that those constituents never watch; and that my constituents are troubled by cable companies' discrimination against NFL Network and against high-quality non-sports independent channels in favor of less popular channels that the cable companies own.

To address these constituent concerns, I have introduced legislation in the Illinois General Assembly. House Bill 4169, the Fair Access and Independent Resolution Act (FAIR Act) creates a dispute resolution mechanism that will allow for a quick resolution through an independent arbitrator in the narrow instances where cable companies own channels that compete with independently owned channels. The arbitrator would select between the competing proposals for carriage. As a result, disputes will be quickly and fairly resolved.

I turn to you since I understand that the FCC has opened a rulemaking proceeding (MB Docket 07-42) to consider program carriage issues such as these – particularly as they relate to independent and diverse channels.

I have seen a number of recent press stories noting that – just like NFL Network and other independent sports channels -- non-sports independent channels face discrimination from big cable companies that own channels of their own, and that some independent channels like the Oxygen Network are choosing to sell themselves to large media holding companies rather than to try to continue as stand-alone businesses. It is not a good trend since this increasing concentration will reduce media diversity and consumer choice.

I also note that in connection with another high-profile sports channel carriage dispute – the one between Comcast and the Mid-Atlantic Sports Network (MASN) in the Washington, DC area in 2005 – the FCC's decision to appoint an arbitrator to settle the dispute caused the parties to reach a negotiated solution. I would urge the FCC to consider changing its rules to facilitate appointment of an arbitrator in disputes like the one involving the NFL Network, so they can be resolved more quickly (preferably through negotiation between the parties) and with consumers' interests foremost in mind. If such a mechanism were in place, it might help persuade the cable companies to negotiate a carriage deal with NFL Network before my constituents are deprived of the NFL Network game telecasts that begin this season on Thanksgiving night.

For your consideration and review, I have enclosed a copy of our legislation in Illinois as well as several newspaper articles that underscore the significance of this issue.

Thank you for reviewing these matters.

Sincerely,

Harry R. Ramey, Jr.

Cc: Commissioner Michael J. Copps
Commissioner Jonathan S. Adelstein
Commissioner Deborah Taylor Tate
Commissioner Robert M. McDowell

95TH GENERAL ASSEMBLY
State of Illinois
2007 and 2008
HB4169

Introduced , by Rep. Robert S. Molaro

SYNOPSIS AS INTRODUCED:

220 ILCS 5/21-1150 new

Amends the Cable and Video Competition Law of 2007 in the Public Utilities Act. Provides that a vertically integrated cable operator that carries, on its extended basic service a programming channel that it owns has a duty to treat, in a fair, reasonable, and nondiscriminatory manner, a cable programming channel that competes in the same programming category with the programming channel that the vertically integrated cable operator owns. Provides that, if an independent programmer has reason to believe that it has not been treated in a fair, reasonable, and nondiscriminatory manner concerning carriage of a competing programming channel, then it may submit a request for commercial arbitration with the vertically integrated cable operator over the terms and conditions of carriage within 90 days after a first-time request for carriage or renewal of a carriage agreement. Provides that if the dispute remains unresolved 10 days after submission of the request for arbitration, then either party may file with the American Arbitration Association a formal demand for arbitration and shall include a final offer with the filing. Provides that the AAA shall notify the other party of the demand for arbitration and submit to the other party the final offer submitted by the initiating party, and that within 5 days after receipt of that notice from the AAA, the other party shall submit its responses on price, but not terms and conditions, to the AAA. Contains provisions concerning the manner in which arbitration proceedings shall be conducted. Effective immediately.

LRB095 14310 MJR 40198 b

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Public Utilities Act is amended by adding
5 Section 21-1150 as follows:

6 (220 ILCS 5/21-1150 new)
7 Sec. 21-1150. Program carriage dispute resolution.
8 (a) For purposes of this Section:
9 "AAA" means the American Arbitration Association.
10 "Affiliated" means (1) controlling, controlled by, or
11 under common ownership or control with a cable operator, (2)
12 with any ownership interest, voting or non-voting, in an entity
13 held by a cable operator in a cable programming channel, and
14 any debt or other instrument that is convertible to an
15 ownership interest, or (3) with any financial interest that
16 enables a cable operator to benefit from the financial
17 performance of the cable programming channel.
18 "Cable operator" includes (1) any multichannel video
19 programming distributor, as that term is defined at 47 U.S.C.
20 522, and (2) any affiliate or subsidiary of the cable operator
21 or multichannel video programming distributor.
22 "Extended basic service" means a category of cable service
23 provided by a cable operator that is immediately superior, in

1 terms of price and number of channels, to an offering of basic
2 cable service, as that term is defined at 47 U.S.C. 522.
3 "Final offer" means a submission in the form of a contract
4 for carriage of the programming for a period of at least 3
5

years.

"Independent programmer" means a person engaged in the production, creation, or wholesale distribution of video programming that is not affiliated with a vertically integrated cable operator and that offers a cable programming channel that competes in the same programming category as a cable programming channel owned by a vertically integrated cable operator.

"Programming category" means programming that contains of the following:

(i) sports;

(ii) news and public affairs;

(iii) entertainment; or

(iv) any additional category that the arbitrator may identify.

"Programming channel" means a channel with programming generally considered comparable in terms of signal quality and other features to programming provided by a television broadcast station.

"Vertically integrated cable operator" means a cable system franchisee (1) to which more than 50% of the television households in its franchise area subscribe for video service,

and (2) that, through one or more companies controlling, controlled by, or under common control with the cable system franchisee, acts as both a distributor of content, as well as a producer of content for its own and other cable systems. For purposes of clarification but not limitation, in a vertically integrated cable operator there is common ownership between the cable system franchisee and certain cable networks that are carried by the cable system franchisee.

(b) A vertically integrated cable operator that carries, on its extended basic service, a programming channel that it owns has a duty to treat, in a fair, reasonable, and nondiscriminatory manner, an independent programming channel

that competes in the same programming category with the
14 programming channel that the vertically integrated cable
15 operator owns.
16 (c) If an independent programmer has reason to believe that
17 it has not been treated in a fair, reasonable, and
18 nondiscriminatory manner concerning carriage of a competing
19 programming channel, then it may submit a request for
20 commercial arbitration with the vertically integrated cable
21 operator over the terms and conditions of carriage within 90
22 days after a first-time request for carriage or renewal of a
23 carriage agreement. If the dispute remains unresolved 10 days
24 after submission of the request for arbitration, then either
25 party may file with the AAA a formal demand for arbitration and
26 shall include a final offer with the AAA filing. The AAA shall

1 notify the other party of the demand for arbitration and submit
2 to the other party the final offer submitted by the initiating
3 party. Within 5 days after receipt of that notice from the AAA,
4 the other party shall submit its responses on price, but not
5 terms and conditions, to the AAA.
6 (d) Arbitration proceedings shall be conducted in the
7 following manner:
8 (1) The arbitration shall be decided by a single
9 arbitrator under the expedited procedures of the
10 commercial arbitration rules of the AAA that are in effect
11 at the time of arbitration. The arbitrator shall conduct a
12 baseball-style arbitration, in which the arbitrator shall
13 choose the cash price (no other consideration may be
14 considered) of the party that most closely approximates the
15 fair market value of the programming carriage rights at
16 issue and shall use the terms and conditions and form of
17 the contract of the initiating party.
18 (2) In order to determine fair market value, the
19 arbitrator may consider any relevant evidence and may
20 require the parties to submit, on a confidential basis,
21

such evidence to the extent that it is in their actual possession or control, including, but not limited to, the following:

(A) current or previous contracts between the independent programmer and other cable operators in which the vertically integrated cable operator does

and does not have an interest, as well as offers made in such negotiations;

(B) current or previous contracts for the affiliated channel with other cable operators, including related and integrated carriage or other arrangements for the affiliated programming channel;

(C) price, terms, and conditions that the independent programmer has for carriage with other cable operators;

(D) evidence of the relative value, including without limitation ratings and advertising rates, of the independent programming compared to the affiliated programming channel being carried by the vertically integrated cable operator;

(E) the extent of national carriage of the independent programmer's competing cable programming;

(F) other evidence of the value of independent programming;

(G) whether the independent programmer and any company controlled by, controlling, or under common control by the vertically integrated cable operator have pursued the same programming from third parties in the past 5 years; and

The arbitrator may not consider offers prior to the arbitration made by the independent programmer or the vertically integrated cable operator in the course of their

negotiations.

(e) A judgment upon an award by the arbitrator may be entered by any court having competent jurisdiction over the matter. If the arbitrator finds that one party's conduct during the course of the arbitration has been unreasonable, then the arbitrator may assess all or a portion of the other party's costs and expenses, including attorney fees, against the offending party.

Section 99. Effective date. This Act takes effect upon becoming law.

CHICAGO TRIBUNE

Cowboys' Jones channels outrage

Jerry Jones is on a campaign.

By Ed Sherman

November 16, 2007

The Dallas Cowboys owner is working the phones, hitting the streets and conducting news conferences. His message: If you want to see upcoming games on the NFL Network, change your cable carrier or sign up for a satellite service.

The NFL Network launches an eight-game package Thanksgiving night when the Colts visit Atlanta. However, more than half the country doesn't receive the channel.

This is where it could get ugly because many fans won't be able to see games that include Cowboys-Packers on Nov. 29, Bears-Redskins on Dec. 6 and a season finale in which the Patriots could be going for an undefeated season on Dec. 30 against the Giants.

"We have some critical games coming up [on the NFL Network]," Jones said in a phone interview Wednesday between meetings in New York. "We're trying to point out to our fans that [the major cable companies] have no intention of making a deal with us. They need to do something else if they want to watch these games."

Substitute the Big Ten Network for the NFL Network, and the issues are the same.

Each is battling the major cable companies in a quest to be placed on the widely distributed basic package.

Comcast, the largest carrier in the Chicago area, argues these are niche channels and wants to place them on a sports tier.

The BTN controversy already has fans worked up. The intensity level, though, will be much hotter for the NFL, the king of the sports jungle.

The NFL Network is seen in only 43.55 million homes. ESPN, in comparison, is in more than 90 million homes.

Locally, the Bears-Redskins game will air on WPWR-Ch. 50 in addition to the NFL Network. But if you live outside the Chicago area, such as in Champaign or Peoria, and don't have the NFL Network, you will be out of luck.

Imagine the uproar in Madison, Wis., where Time-Warner is the largest cable operator. It also doesn't have a deal with the NFL Network, meaning many Packers fans will be scrambling on the night of their game with the Cowboys. Cable operators in that area should take cover.

Jones, whose team has two games on the NFL Network, already has made trips to San Antonio and Austin, Texas, large Cowboys hotbeds, to spread the word.

Jones admits it is not a coincidence his fellow owners have tabbed him to be the point man on the NFL Network situation. Nobody carries a higher profile in that fraternity.

Jones doesn't hold back. He goes after Comcast, pointing out that two of the networks it owns, the Golf Channel and Versus, which has the little-viewed NHL package, are carried on its basic service. He sees a clear conflict of interest that hurts consumers.

"If you're in the content business, it is too tempting not to favor and put on your own programming," Jones said. "The fact is, if they had an [ownership stake] in the NFL Network, we wouldn't be having this conversation."

Comcast will be a part owner of the upcoming MLB Channel, which surprise, surprise, will make its debut on basic, perhaps in 2009.

Last year's games on the NFL Network averaged a 4.1 rating; 1 ratings point is worth more than 1 million homes. Despite limited distribution, each of the eight games was the highest-rated show on cable that night.

The numbers would be much higher if the NFL Network were available in 85-90 million homes.

"This is happening at a time when the cable companies are having erosion in their subscribers," Jones said. "They can get the No. 1 most visible programming, and not just in sports, anywhere. When they push back, it's easy to read their minds."

The NFL Network could receive relief from possible federal legislation that would require arbitration to settle the differences with the cable companies. But that won't help the situation this year.

Jones, meanwhile, is upping the ante by saying the NFL Network eventually could increase its schedule to 16 games.

"Ultimately, we have to resolve to build the network through arbitration or the marketplace to get the subscribers we need," Jones said. "[The cable companies] have to be shown for what they are."

Chicago Tribune
Comcast adding costs, not choices
By Ed Sherman
October 31, 2007

Comcast Cable included a message in its last bill informing subscribers that rates are going up.

Too bad the note didn't end with an upbeat line saying, "But the good news is we've added the Big Ten Network to our lineup."

The move definitely qualifies Comcast for the bad timing award. On one hand, the company is in a very public battle by taking the hard line on adding the BTN to its basic package.

The company says it doesn't want to pass the additional cost to consumers.

Yet Comcast's other hand doesn't appear to have a problem reaching in our pockets to raise fees to those consumers. The price increases vary depending on your level of service.

The Silver package I receive is going up to $80.99 from $75.99 per month. In addition, my DVR service will be bumped up to $13.99 from $11.99.

That's an additional $7 per month or $84 more per year going to Comcast. And I still won't have access to the best game of the day Saturday: Ohio State-Wisconsin airs on BTN.

Richard Ruggiero, a Comcast spokesman for the Chicago region, says the average increase per customer is 3.8 percent.

"In a nutshell, the increase is reflective of increased services we're giving to the customer," Ruggiero said. "We have a budding video-on-demand library. We're offering more in high definition, better customer service. This really represents the investments we've made in the company."

Ruggiero said "the price adjustment" and the BTN stalemate are separate issues. Try telling that to disappointed Comcast subscribers who want to watch Saturday's big game on BTN. They definitely will see the issue as being intertwined.

Ruggiero continues to maintain the company line that adding BTN to its basic service would cost consumers "hundreds of millions of dollars." Comcast says BTN is asking for a monthly fee of $1.10 per subscriber.

BTN, however, said it is willing to structure a deal that would cost Comcast much less.

"There has been no movement," BTN President Mark Silverman said.

The NFL Network can relate to the BTN's frustration. It would like to be on the basic package but has been placed on Comcast's sports and entertainment package.

A closer examination shows that package is overpriced.

If you want the NFL Network, like I do, Comcast requires you to purchase the service for an additional monthly fee of $6.99.

Comcast throws in a bunch of other networks to the package, making it a smorgasbord ranging from

NBA TV to the Tennis Channel to the Game Show Network.

I can easily do without all of them. However, I have no choice but to ante up if I want the NFL Network.

According to SNL Kagan, a media research firm, the NFL Network costs operators 80 cents per month for each subscriber.

The average collective expense for all those sports and entertainment channels to cable and satellite companies is $2.90 per month.

Assuming it pays the industry average, Comcast then charges the sports and entertainment buyer more than $4 per month above its cost.

Does that sound like a company looking out for the consumer?

Ruggiero declined to get into the specifics of Comcast's costs for the sports and entertainment package.

"It's a choice the customer has," Ruggiero said. "We think we have a great mix that appeals to fans and superfans."

Comcast says it wants to place BTN on its sports tier. Why wouldn't it? It would drive sports fans to purchase the service, thus filling up its pockets even more considering its profit margin there.

The BTN is holding firm that it belongs on the basic level of service like the Golf Channel and Versus, two sports networks Comcast owns.

The standoff appears to be having an effect on Comcast. It is losing subscribers and its stock is going down.

A factor, according to the analysts, is Comcast's stance on the BTN and NFL Network.

Pali Research cited Comcast for "poor management decision-making on sports programming." It went on to say the competition such as DirecTV and Dish Network has "used sports to its marketing advantage."

The satellite companies will kick up the marketing hard this week with the BTN airing such a marquee game.

And with the Big Ten basketball season just around the corner, they figure to pick up more subscribers who want the BTN.

Undoubtedly, a few of them will be Comcast customers who will make the jump after seeing their last bill.